

(2001) 10 AP CK 0075

In the Andhra Pradesh High Court

Case No : WA No's. 983 and 1109 of 2001

Allauddin Charities and Zakath Wakf

APPELLANT

Vs

Hameed Ali and Others

RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 25, 4, 4(3), 40(1), 40(3)

Citation : (2002) 1 ALD 67 : (2002) 2 ALT 534 : (2003) 1 RCR(Civil) 214

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : A.M. Qureshi, K.R. Prabhakar, for the Appellant; V. Venkataramana, B. Nalinkumar and Asfak Ahmed and Government Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—These two writ appeals are directed against the order of the learned single Judge in W.P.No.9434 of 2000 declaring the order dated 15.5.2000 passed by the Chief Executive Officer (CEO) of the A. P. State Wakf Board directing eviction of the petitioners from the premises in question as illegal and without jurisdiction and further declaring the property as not wakf property.

2. While the 5th respondent preferred W.A.No.983 of 2001, the A.P. State Wakf Board filed W.A.No.1109 of 2001.

3. We have heard the appeals together and the same are being disposed of by this common judgment. For convenience sake, the parties will be referred to by their status in the Writ Petition.

4. Briefly noted, the facts are: The petitioners" claim that the 4th petitioner is a trust by name Faizana-e-AI-Husnain Trust incorporated under the provisions of the Trust Act and registered as such, vide document No.21/1988 dated 22.5.1998. Petitioners 1 to 3 claims to be the founder trustees of the said trust.

They further claim that the property in dispute bearing D.No.21-1-1098/9, 10 and 11 admeasuring 538 sq. yards was gifted in favour of the Trust by three separate deeds of settlement bearing Nos-1280/98, 1271/98 and 1272/98 dated 30.5.1998 executed by the original owners. The municipality granted permission on 29.1.1999 and 5.3.1999 to make constructions but the same was cancelled at the instance of the 1st respondent - Wakf Board. The petitioners challenged the same in a suit before the VII Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.664 of 1999 and obtained interim injunction. While things stood thus, the Wakf Board issued notice dated 20.5.1999 calling upon the petitioners to vacate the premises on the ground that the property was a wakf property.

5. In the notice, it was stated that Macca Madina Alladin (4th respondent) is a registered wakf and notified in A.P. Gazette No.6-A dated 9.2.1989 and it had property to an extent of 9,126.06 sq. yds bearing premises N.o.21-1-1098, Ward No.21, Rikab Gunj, Hyderabad. It was further stated that the petitioners I to 3 and one Mohd. Raoof formed a Trust with the name of Faizana-e-AI-Hussanain and occupied the above land to an extent of 536.7 sq. yds belonging to 4th respondent institution. It is also alleged in the notice that the petitioners upon encroaching the property obtained permission from the Municipal Corporation of Hyderabad with three different assignment Nos viz., 21-1-1098/9, 21-1-1098/10 and 21-1-1098/11 for an extent of 126.28, 130.23 and 191.88 sq. mts. respectively.

6. The petitioners submitted representation to the aforementioned notice on 4.6.1999 stating that the property does not belong to Mecca Madina Allauddin Trust nor it was a wakf property and claimed ownership thereto. By letter-dated 1.7.1999, the petitioners were called upon to submit the necessary documents in proof of their alleged title to the property. The petitioners submitted the documents on 28.7.1999. The Chief Executive Officer of the Wakf Board after conducting an enquiry and after hearing the parties, by order-dated 15.5.2000 recorded a finding that the petitioners are encroachers and they obtained permission from the MCH by producing forged and fabricated documents.

7. It was also recorded that the total extent of 9126.06 sq. yds. including the extent covered by the alleged three gift deeds is a wakf property attached to wakf institution viz., Alladin Charities and Zakath Trust, Hyderabad (5th respondent) notified as wakf in A.P. Gazette No.6-A dated 9-2-1989 at page No.93, S.No.2373 with shopping complex constructed covering a total area of 9126.06 sq. yards in Ward No.21, Block No. 21-1-1098 situated at RikabGunj. Subsequently, the Revenue Divisional Officer - 2nd respondent initiated proceedings on 24.5.2000 u/s 55 of the Wakf Act for eviction of the petitioners. According to the petitioners, they had already made constructions on ground, first and second floors.

8. It appears that there existed disputes between the 6th respondent (who was earlier a member of the 4th petitioner-trust) and the petitioners 1 to 3. Petitioners are alleged to have filed O.P.NO.252 of 2000 in the Court of the Chief

Judge, City civil Court, Hyderabad for his removal from the trusteeship and by order dated 13.3.2000, on an interim application, the Civil Court restrained the 6th respondent from entering into any transaction on behalf of the trust. The 1st respondent also filed a suit in O.A.No.40 of 1999 before the Wakf Tribunal, Hyderabad on 10.5.1999 for determination whether the property in question is a wakf property or not. According to the respondents, the petitioners also preferred an appeal before the Wakf Tribunal against the order of the 1st respondent dated 15.5.2000.

9. According to the petitioners, there was discrepancy in the show-cause notice dated 20.5.1999 and the final order dated 15.5.2000 as regards the holding of property by the 4th respondent and the 5th respondent. The properties held by the 4th respondent - Macca Madina Alladdin Wakf are quite different and distinct from the properties held by the 5th respondent -Alladdin Charities and Zakath Wakf. It was contended that the Chief Executive Officer acted only at the instance of orders of the Chairperson of the Wakf Board and as such the order-dated 15.5.2000 is illegal and without jurisdiction.

10. The learned counsel appearing for the Wakf Board submitted that the property in question was notified as wakf property in the A.P. Gazette No.6-A dated 9.2.1989 at page No.93, SI.No.2373 and this Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot go into the nature of such property. Learned counsel would further urge that only the Tribunal constituted u/s 83 of the Wakf Act has jurisdiction to go into the disputed questions of fact and the petitioners may seek redressal before the Tribunal. He would further urge that the basic documents upon which the petitioners have placed reliance are fabricated documents and origin of the title is not traced and such disputed questions have to be decided only by the Tribunal constituted under the Act.

11. The learned counsel appearing for the 5th respondent (appellant in W.A.No.1105 of 2001) would submit that the writ petition is liable to be dismissed being not maintainable as the petitioners had an effective alternative remedy of appeal before the Tribunal u/s 54(4) of the Act. He would further urge that the statutory authority recorded a finding that the petitioners are encroachers and the property is part and parcel of the Trust property of the 5th respondent and as such this Court in exercise of the writ jurisdiction cannot sit in appeal over such finding by re-appreciating the material evidence particularly when an alternative remedy of appeal is available under the Statute. In support of the same, learned counsel placed reliance on the decision of the Apex Court in Visakhapatnam Port Trust and Another Vs. M/s. Ram Bahadur Thakur Pvt. Ltd., etc., .

12. The Wakf Tribunal has exclusive jurisdiction to deal with the matter connected with wakfs and in support of the same relied upon the decisions in P. Rama Rao and others Vs. High Court of Andhra Pradesh and others, and Syed Muneer Vs. Chief Executive Officer and Others, . It was further contended that

the municipal numbers 1098/ 9, 10 and II were brought into existence from 1.4.1998 on the basis of fabricated documents. Learned counsel would further urge that 5th respondent is the sister trust of the 4th respondent which came into existence pursuant to the orders of the Chief Judge, City Civil Court, Hyderabad in 1976.

13. The learned counsel appearing for the respondents-petitioners submitted that the Wakf Board having filed a suit in O.S.No.40 of 1999 before the Wakf Tribunal ought not to have passed the orders u/s 54(1) of the Act having regard to the principle of doctrine of election. In support of the said contention, learned counsel relied upon the decisions of the Apex Court in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, and BHAHU RAM v. BAUNATH SINGH AIR 1961 SC 1327. Learned counsel would urge that where there was a bona dispute as to title, eviction ought not to have been taken recourse to in a summary proceeding. Mr. Venkatarmana would further urge that the order-dated 15.5.2000 has been passed at the dictation of the Chairperson though the power has to be exercised by the Chief Executive Officer and as such the same is without jurisdiction. Learned counsel would also urge that after the petitioners submitted their explanation, the Wakf Board deputed its surveyor and on the basis of the report of surveyor, orders have been passed in relation where to no opportunity of hearing was given to the petitioners.

14. The questions, which arise for consideration in these two appeals, are:

1. Whether the impugned order is liable to be set aside as the same has been exercised at the instance of the Chairperson of the Wakf Board?
2. When a title is disputed, whether a proceeding for eviction can be taken recourse to in a summary proceeding?
3. Whether, in the facts and circumstances of this case, as the writ petitioners had an alternative remedy to prefer an appeal, in terms of Sub-section (4) of Section 83 of the Wakf Act, the Writ petition is maintainable?

15. Section 4 of the Wakf Act, 1995 deals with preliminary survey of wakfs. Under Sub-section (3) of Section 4 the Survey Commissioner after making an enquiry in respect of wakfs existing at the date of the commencement of the Act has to submit a report to the State Government. During such enquiry the Survey Commissioner shall have the same powers as are vested in a civil Court under the CPC in respect of summoning and examining any witness, requiring the discovery and production of any document, making any local inspection or local investigation, requisitioning any public record from any Court or Officer, issuing commissions for the examination of any witness or accounts. Under Sub-section (5), if during any such inquiry, any dispute arises as to whether a particular Wakf is a Shia Wakf or Sunni Wakf and there are clear indications in the deed or Wakf as to its nature, the dispute shall be decided on the basis of such deed. Under Sub-section (6), the State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey

of wakf properties in the State. Section 5 provides for publication of list of Wakfs in the Official Gazettee.

16. Sub-section (1) of Section 6 clearly provides that when a question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not, the Board or the mutawalli of the Wakf or any person interested therein may institute a suit in the Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final. Under Sub-section (1) of Section 7 the Tribunal is empowered to determine such question. However, no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs. Further, under Sub-section (1) of Section 40, the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a sunni wakf or a shia wakf, it may after making such enquiry as it may deem fit, decide the question. Under Sub-section (2) such decision of the Board unless revoked or modified by the Tribunal shall be final. Therefore, the power of the Board to make an inquiry as regards the nature of the property is undisputed. Sub-sections (3) and (4) of Section 40 read as follows:

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is Wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, call upon the Trust or society, as the case may be, either to register such property under this Act as Wakf property or show cause why such property should not be so registered. Provided that in all such cases, notice of the action proposed to be taken under this Sub-section shall be given to the authority by whom the Trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under Sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

Section 83 of the Wakf Act reads as follows:

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

(2) Any mutawalli person interested in a Wakf 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 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 mutawalli 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 interest of the Wakf or any other person interested in 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 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 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 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding any thing contained in the CPC 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.

17. As noticed hereinbefore, according to the writ petitioners, the Gazette notification published in A.P. Gazette No.6-A dated 9.2.1989 at page 93, S.No.2373 does not contain the municipal numbers in relation to the properties in dispute and, therefore, no presumption of correctness of the entries therein arises under the Act. The contention of the appellant, on the other hand, is that the boundaries having been mentioned in the said gazette notification, the authority has jurisdiction to go into the aforementioned question.

18. In view of the said dispute, the question is can a writ of prohibition would lie?

19. The provisions of the said Act as noticed hereinbefore, clearly envisages that the Board is also empowered to make an inquiry if it has reason to believe that any property of any trust or society registered in pursuance of the Indian Trust Act, 1882 or under the Societies Registration Act, 1860 is wakf property and upon such enquiry if it has satisfied that it is a wakf property, it may call upon the Trust or society either to register such property under the Act as wakf property or show cause why such property should not be so registered. The orders passed by the Board under Sub-section (4) shall become final unless it is revoked or modified by the Tribunal.

20. Furthermore, Section 54 of the Act is absolutely clear and unambiguous. Whenever an encroachment is complained of, the CEO has wide power to pass appropriate orders upon conducting an enquiry as contemplated under subsections (1) to (3) of Section 54. Against the order passed by the CEO under subsection (3) of Section 54, any person aggrieved thereof has a remedy under subsection (4) by instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building space or other property and such a remedy shall be treated to be a superior remedy as propounded by the Apex Court in a matter arising under A.P. Land Encroachment Act in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , which was followed in State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others, . In Govt. of A.P. v.. T. Krishna Rao, it was held:

The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin" cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in Mehrunnissa Begum and Another Vs. Government of Andhra Pradesh and Others, . It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The

Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property open for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

It is one thing to say that for the purpose of considering a question as to whether there exists a bona fide dispute with regard to title of the property, which in other words would mean that such a dispute being serious in nature, the summary proceedings for eviction should not be taken recourse to, but it is another thing to say that a provision has been made in the Act itself for filing a suit for the said purpose. If a remedy of filing a suit exists, in our opinion, the statutory authority must be allowed to play its role in the matter and only because a bona fide dispute is raised, the same should not be allowed to be nullified.

21. Mis-description of property in the records itself being a question of fact would fall for consideration in terms of the provisions of the said Act. In Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , it was held:

While making an enquiry in the present case as to find out whether the inam land was held by the Dargah, the Tahsildar was not required to enquire into and adjudicate upon the character of the wakf property mentioned in the list of wakfs published in the official gazette under Sub-section (2) of Section 5 of the Wakf Act, as the dispute in that regard as to its character could only be decided in the manner provided in Section 6 of the Wakf Act.

22. In M. BIKSHAPATHI v. GOVT. 3F ANDHRA PRADESH 1999 (6) ALD 170 (DB), this Court observed:

...the jurisdiction of the Wakf Tribunal cannot be limited by reading Section 6 alone providing for the decision to determine the nature of the wakf property i.e., to the effect whether it is a wakf property or not; whether it is a Shia Wakf or Sunni Wakf and who is the interested person who can institute a suit. Section 6 further specifies that the person interested shall, in relation to the property, include every person who though not interested in the wakf concerned, is interested in such property. We are of the considered view that reading both the sections together and permitting them to operate in their totality, it is within the jurisdiction of the Tribunal to determine whether the wakf property has been rightly leased or wrongly leased or any questions relating to wakf property.

23. The submission of Mr. Venkataramana is to the effect that the petitioners had purchased the property under a bona fide belief that in view of the grant of permit by the MCH and having regard to the fact that earlier writ petition being W.P.No.10158 of 1999 filed by the 5th respondent was dismissed, no proceedings under Sub-section (1) of Section 54 could be initiated cannot be accepted. Only when an encroachment has been made in relation to a registered wakf property,

the CEO exercises the wide jurisdiction in relation thereto. In a case of this nature, the statutory authority exercises a wide power. Recently in Syed Muneer Vs. Chief Executive Officer and Others, , a Division Bench of this Court while considering the provisions of Section 83 of the Wakf Act, 1955 and having regard to the decisions of this Court in WAKF BOARD v. PARVTHI BAI 1973 (I) AWR 85, SHIVAEINGAM v. A.P. WAKF TRIBUNAL (supra) and Chowk Mosque, Nandyal, by Mutavalli P.V.H. Abdul Razack Miah Vs. P.V.H. Maqbal Basha and others, , held that the same confers wide power on the Tribunal and it is entitled to determine all disputes. It was also held that even assuming that in the writ petition a jurisdictional fact is required to be gone into, the same can also be directed to be gone into by the Tribunal at the first instance. Therefore, whether the wakf property is a registered one or not can also be gone into by the Tribunal u/s 83 of the Act.

24. In U.P. SHIA CENTRAL BOARD OF WAKF v. U.P. SUNNI CENTRAL BOARD OF WAKF 2001 AIR SCW 1777, it has been held:

From the conspectus of the statutory provisions noted above, the scheme of the statute is clear that in case of any dispute, whether a particular property is Wakf property or not or whether a Wakf is a Shia Wakf or Sunni Wakf the Board concerned or the mutawalli of the Wakf or any person interested in the Wakf may in accordance with the provisions of the law refer the dispute for adjudication to the Tribunal. Under the proviso to Sub-section (1) a restriction is imposed that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of publication of the list of Wakfs under Sub-section (4) of Section 6. On a plain reading of the provision in subsection (1) it is clear that it is expressed in wide terms taking within its fold different types of disputes relating to a Wakf and its properties. The statute enables different classes of persons interested in the Wakf and its properties like the Board concerned, the mutawalli and any person interested in the Wakf to raise a dispute. The only restriction sought to be placed on such a reference is in the proviso, wherein it is laid down that after the list of Wakfs is published by the Commissioner under Sub-section (4) of Section 6 of the Act then the dispute has to be made to the Tribunal within one year from the date of publication and the Tribunal is precluded from entertaining the dispute after the expiry of one year. The section does not make any provision that the publication of a list of Wakfs by the Commissioner u/s 6 is a sine qua non for a reference u/s 8(1) of the Act. All that is laid down in the proviso to Sub-section (1) is that after a list of Wakfs has been published by the Commissioner then a dispute as contemplated in the proviso has to be raised within one year from the date of the publication of the list of Wakfs and not thereafter. It is pertinent to note here that in the present case no list of Wakfs has been published by the Commissioner u/s 6(4). Therefore, the limitation prescribed in the proviso to Sub-section (1) of Section 8 has no application in the case.

25. In Durga Prasad Vs. Naveen Chandra and Others, , the Apex Court held that

the procedure prescribed under the CPC cannot be bypassed by availing of the remedy not maintainable under Article 226 of the Constitution of India. In VISAKHAPATNAM PORT TRUST AND ANOTHER v. RAM BAHADUR THAKUR PVT. LTD (supra) it was held that where highly disputed questions of fact arises for decision, civil suit instead of writ petition would be appropriate action. In P. RAMA RAO v. HIGH COURT OF A.P. (supra) dealing with Section 85 of the Wakf Act, this Court held:

The fundamental postulate of Section 85 read with the other relevant provisions is that the Wakf Tribunal shall be a substitute for the Civil Courts in respect of matters required to be dealt with by the Tribunal under the Act. The scheme of the Act contemplates and unfolds the intention of the Legislature in clearest terms that the obliteration of the jurisdiction of the Civil Court and the creation of the Tribunal to take over the exclusive jurisdiction confided to it is simultaneous process. No vacuum or hiatus could have been intended by the Legislature. The delay in the constitution of the Tribunal just as it has happened in this State, would not have been foreseen by the legislature. Surely, it could not have been the intention of the Legislature that the existing remedy or recourse to Civil Court should be extinguished as a first step and that remedy should be made available only when the Wakf Tribunal is set up.

26. In Jai Bharat Co-operative Housing Society Ltd. Vs. Andhra Pradesh. State Wakf Board, Hyd., , a learned single Judge of this Court held:

Reading Sections 7, 84 and 85 together it leaves no doubt that whenever there is a dispute with regard to certain property as to whether it is wakf property or not the only forum which can decide it is the Tribunal created under the Wakf Act, 1995. The judgments of this Court in T. Shivalingam Vs. A.P. Wakf Tribunal, Presiding Officer, Hyderabad and others, , M. Bikshapathi Vs. Government of Andhra Pradesh and others, are also laying down the same principle.

27. In SINGAM CHETTY ATTENDROOLOO v. STATE OF TAMIL NADU 2001 AIR SCW 1777, the Apex Court held:

The question whether the Order was without jurisdiction had already been decided against the Appellants by Order dated 5/8/1969. The first portion of Section 77 undoubtedly talks bout an endowment made or property given for support of an institution. But that is not the only provision. Section 77 also applies when an endowment is made or property given partly to religious and partly to secular uses. Clause 7 of the Trust Deed and List E show that endowments have been made and property given partly for religious and partly for secular uses. It, therefore, could not be said with absolute certainty that Section 77 did not apply. If there was a dispute as to whether Section 77 applied or not then the Board could decide the question and pass an Order. It did so on 10th December, 1947. Such an Order would be one which was passed with jurisdiction. As the same was not challenged within the time provided it became final as against the Appellants.

28. A writ of prohibition as is well known is not normally be issued unless it is found that the statutory authority has proceeded wholly without jurisdiction. Inherent lack of jurisdiction is a sine qua non for issuing a writ or in the nature of writ of prohibition. It is well settled that before a Writ Court exercises its public law jurisdiction, it would insist, as a general rule, that alternative remedies available under the statutes be first taken recourse to unless strong reasons exist therefor.

29. A writ of prohibition can be issued only when three conditions are satisfied, namely, 1) that the authority against whom it is sought is about to exercise judicial or quasi judicial power, 2) that the exercise of such power is unauthorised by law and 3) that it will result in injury for which no other adequate remedy exists. It is provided for an extraordinary remedy and can be issued only in cases of extreme necessity. Before such writ is issued, the Court must arrive at a finding that the party aggrieved had applied in vain to the inferior Tribunal for relief. It is also trite that a writ of prohibition is not to be claimed as a matter of right but the same is granted to do justice and the same must be based on sound judicial discretion depending upon the facts and circumstances of each case. In *U.P. Sales Tax Services Association Vs. Taxation Bar Association, Agra and others*, , the apex Court observed that a writ or order of prohibition cannot be issued prohibiting a quasi-judicial or statutory authority from discharging its statutory functions or transferring those functions to another jurisdiction. Exercise of such power, the Supreme Court held, generates its rippling effect on the subordinate judiciary and statutory functionaries.

30. In *Guduthur Bros. Vs. The Income Tax Officer, Special Circle, Bangalore*, , the Apex Court refused to issue a writ of prohibition when merely a show cause notice was issued. A writ of prohibition is a negative remedy.

31. Recently, the Apex Court in an appeal filed by one Teki Venkata Ratnam claiming ownership of Sri Panduranga Vital Swami Temple in Chilakapudi has clearly held that Deputy Commissioner has the power and jurisdiction to decide whether the temple in question is a public temple or a private temple. It was also held that every religious institution is a public property, unless proved otherwise.

32. We are of the opinion that only because Wakf Board filed a suit for temporary injunction and the same is pending, having regard to the statutory power conferred upon the C.E.O., it cannot be said that by virtue of doctrine of election, the Wakf Board could not have invoked the power under Sub-section (3) of Section 54 of the Act or that the final orders have been issued with mala fide intention. The doctrine of election has no role to play when the authority under the Act is empowered to take action in accordance with the provisions of Sub-section (1) of Section 54 of the Act whenever an encroachment is complained of. Independent of such power, the Wakf Board, may, under the relevant provisions of the Act, institute a suit before the Tribunal for decision of the Tribunal. The decision relied upon by the learned counsel for the petitioners in *BEEPATHUMA v. SHANKARANAYANA* has no application to the facts of the present case.

33. We may now examine the contention of the petitioners that the order has been passed at the instance of the Chairperson. No doubt the impugned order dated 15.5.2000 mention that the said order has been passed in pursuance of the orders of the Chairperson dated 19.5.2000. But, as can be seen from the order, the Chief Executive Officer had applied his mind to the various aspects of the matter and passed a detailed order. Para 6 of the order of the CEO reads thus:

The Chief Executive Officer, in exercise of the powers conferred u/s 54(3) of the Wakf Act, 1995 conducted an enquiry by deputing the Surveyor and Inspector-Auditor to inspect the spot and submit the factual report and the surveyor and Inspector-Auditor after joint inspection submitted the report that the schedule property is part and parcel of 21-1-1098 which is wakf property, besides this report the Muntakhab, Survey Commissioner's report and Gazette Notification established that the property covered by M.C.H.No-21-1-1098 is a total extent of 9126.06 sq. yds including the extent covered by the alleged three gift settlement deeds, is wakf property attached to the wakf institution viz., Alladin Charities and Zakath Trust, Hyderabad. The Chief Executive Officer after perusing and examining the said three gift settlement deeds found them to be fabricated documents to base the false claims by the encroachers over the schedule property. Accordingly, the said documents relied upon by the encroachers does not bear any merit for consideration. Accordingly they are rejected.

34. From the above, it is evident that the CEO independent of the orders of the Chairperson has examined the matter taking into consideration the reports of Inspector-Auditor and the Surveyor who conducted joint inspection of the property in dispute. An enquiry as required under Sub-sections (1), (2) and (3) was conducted. Therefore, we are unable to accede to the contention of the learned counsel for the petitioners that the CEO had passed the orders at the instance of the Chairperson.

35. The issue may be examined from another angle also. Although a statutory authority must act within the four comers of the statute and while doing so, it should not be guided by the higher authority, but certain exceptions to the said rule exist. Sections 25 and 27 of the Wakf Act read thus:

25. Duties and powers of Chief Executive Officer :--(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include:

(a) investigating the nature and extent of Wakfs and Wakf Properties and calling whenever necessary, an inventory of Wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of wakf properties and accounts, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for, the control,

maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under Sub-section (1) in respect of any Wakf, the Board shall act in conformity with the directions by the Wakf in the deed of the wakf, the purpose of wakf and such usage and customs of the Wakf as are sanctioned by the school of Muslim law to which the wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

27. Delegation of powers by the Board:-- The Board may, by a general or special order in writing delegate to the Chairperson, any other member, the Secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under the Act, as it may deem necessary.

36. The Chairperson exercises the power of delegation of the Board. The CEO in terms of the provisions of Section 25 of the Act acts in terms of the directions of the Board. Thus, if a direction has been issued by the Chairperson to the CEO to make an enquiry as to whether the property in question is wakf or not and the nature and extent, if any, in exercise of the jurisdiction conferred on the CEO u/s 54, the same cannot be said to be illegal. Furthermore, in terms of Section 54(1) of the Act, the CEO may act on receipt of any complaint or on his own motion. The directions of the Chairperson may be considered to be a complaint.

37. Wrong mention or non-mentioning of a provision of law would not invalidate a valid order which is otherwise valid one. In *M/s. UNIPLAS INDIA LTD. v. STATE (GOVT. OF NCT OF DELHI)* 2001 AIR SCW 2567, the Apex Court has held that notice under the provisions of Section 434 of the Companies Act may be held to be a notice u/s 138(2) of the Negotiable Instruments Act.

38. In any event, by reason of Section 54(4) a statutory remedy has been provided for against the orders of the CEO and it is alleged that the petitioners have availed of such statutory remedy and the matter is said to be pending before the Tribunal.

39. When the statute provides for an alternative remedy of filing a suit against the orders of the CEO passed u/s 54(1) to establish that they have a right, title or interest in the land, building space or other property and when disputed questions of fact arise in relation thereto, the learned single Judge ought not to have gone into such disputed questions of title and determined the nature of property as wakf property or not. It is well settled principles of law that when a statutory authority or a Tribunal or a Court has been conferred with certain powers in relation to any dispute or with regard to determination of the nature or title of the property, such authority should be allowed to play its role as per the statutory provisions. The Court should not enter into the arena or jurisdiction of such statutory authority or Tribunal.

40. Under Sub-section (5) of Section 83, the Tribunal constituted under Subsection (1) of Section 83 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. The jurisdiction of the Civil Court is specifically barred u/s 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act and acts as a Civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to Sub-section (9) of Section 83 of the Act gets jurisdiction and can go into the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order it may think fit. We are, therefore, of the view that unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the Statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into question of validity of the orders passed by the Chief Executive Officer.

41. In this view of the matter, it is not necessary to go into the other aspects of the matter. The parties hereto may bring all materials for the purpose of proving their respective contentions, which include the existence of jurisdictional facts also before the Wakf Tribunal.

42. For the reasons aforementioned, we are of the opinion that the learned single Judge has erred in issuing a writ of prohibition. The order of the learned single Judge is, therefore, liable to be set aside and it is accordingly set aside. The Writ Appeals are allowed. There shall be no order as to costs.