

**(2014) 11 CHH CK 0003**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (C) No. 2248 of 2014**

Anjuman Islamiya Committee

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

**Date of Decision :** 24-11-2014

**Acts Referred:**

Waqf Act, 1995 — Section 3(g), 4, 5, 5(2), 6, 37, 85

**Citation :** (2014) 11 CHH CK 0003

**Hon'ble Judges :** Prashant Kumar Mishra, J

**Bench :** Single Bench

**Advocate :** A.V. Sridhar, Advocate for the Appellant; S. Rathod, Dy. Govt. Advocate and Prateek Sharma, Advocate for the Respondent

**Final Decision :** Dismissed

## Judgement

Prashant Kumar Mishra, J.

1. The petitioner has called in question the impugned order passed by the Collector, District Kondagaon, deciding the petitioner's application for removal of encroachment from kabrastan, stating the same to be a waqf property.

2. After making enquiry and hearing the parties, the Collector, Kondagaon, has concluded that the subject land bearing khasra No. 823 area 2.33 acres situated at village Vishrampuri, Keshkal, District Kondagaon, is Government forest land, having been entered in the revenue record as "Chhote Jhad Ke Jungle". The Collector has recorded the findings by a detailed order running into 14 pages. It has considered the submission and evidence put forth by the petitioner as well as the enquiry report received from Tahsildar, Vishrampuri.

3. When confronted with the query as to why petitioner cannot move civil suit to establish its title over the land, learned counsel would submit that the remedy is to decide the dispute under Section 6 of the Waqf Act, 1995 (for short "the Act, 1995") and a civil suit or revenue proceeding is barred under Section 85 of the Act, 1995. He would submit that as a matter of fact, the Collector should have

referred the matter for adjudication to Waqf Tribunal for trying the same as a suit.

4. Having heard learned counsel for the parties and having perused the scheme of the Act, 1995, it is manifest that the list of auqaf, is defined under Section 3(g) of the Act, 1995 to mean the list of auqaf published under sub-section (2) of Section 5 or contained in the register of auqaf maintained under Section 37.

5. Under Section 4 of the Act, 1995 survey of auqaf is conducted by the State Government, by publication of notification in the official gazette and then list of auqaf is prepared under Section 5 which is also required to be published in the official gazette. A separate list of sunni or shia muslim is published under this provision.

6. Under Section 6 of the Act, 1995, if any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia or Sunni, the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matters shall be final. The first proviso to this provision says 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 auqaf.

7. Thus, before raising a dispute under Section 6, the property has to be included in the list of auqaf, declaring the property as waqf property. Admittedly, the property in question has not been notified for its inclusion in the list of auqaf.

8. The petitioner has not annexed any such gazette notification enlisting the subject property in the list of auqaf. Thus, the bar under Section 85 and the remedy under Section 6 is not attracted and it would be open for the petitioner to establish its title before the jurisdictional civil Court.

9. Be that as it may, it is also well settled that ordinarily the writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated. (See: M/s. Real Estate Agencies Vs. Govt. of Goa and Others, .

10. As an upshot, the writ petition, being devoid of merit, is liable to be and is hereby dismissed at the motion stage itself.