

(2010) 04 AP CK 0089

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 3866 of 2002

Badarla Suryakumari Murthy

APPELLANT

Vs

Badarla Vamana Murthy and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29
Armed Forces Tribunals Act, 2007 — Section 33, 34
Benami Transactions (Prohibition) Act, 1988 — Section 4, 4(1), 4(2), 5
Family Courts Act, 1984 — Section 8
General Clauses Act, 1897 — Section 6
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31
Waqf Act, 1995 — Section 6, 7, 83, 85

Citation : AIR 2010 AP 209

Hon'ble Judges : P.S. Narayana, J;G.V. Seethapathy, J;G. Chandraiah, J

Bench : Full Bench

Advocate : A. Ramalingeswara Rao, for the Appellant; Jagan Mohan Reddy, for Respondents 1 and 4 to 6, Syed Ahmed Khan, SC for Wakf Board and Vidya Sagar, SC for High Court, for the Respondent

Judgement

G. Chandraiah, J.—Heard the Counsel appearing for both the parties.

2. This matter came up for reference before this Full Bench, as one of us (PSN, J) entertained a doubt in view of the two decisions of co-ordinate Division Benches of this Court in P. Rama Rao and others Vs. High Court of Andhra Pradesh and others, and M. Bikshapathi Vs. Government of Andhra Pradesh and others, with regard to jurisdiction of civil courts vis-a-vis Wakf Tribunal to entertain and decide the disputes relating to wakf and wakf property and other matters, which were filed in civil court after Wakf Act, 1995 (for short "the Act") coming into force and before the Constitution of the Tribunal as envisaged u/s 83 of the Act, in view of the specific bar of jurisdiction of the civil courts u/s 85 of the Act.

3. The learned single Judge (PSN, J) by order dated 26.6.2003 framed the following questions to be decided by a Division Bench:

1. Whether the suits instituted after the Wakf Act, 1995 came into force are to be filed before the Wakf Tribunal only, though the Wakf Tribunal was constituted on a later date? In other words, whether the views expressed by the respective Division Benches in the decisions referred to (1) and (2) supra require reconsideration?

2. What is the scope and ambit of Sections 6, 7, 83 and 85 of the Wakf Act, 1995?

4. On reference of the above questions to the Division Bench, the matter was posted before the Division Bench comprising of PSN, J and GVS,J (Justice P.S. Narayana and Justice G.V. Seethapathy). Again by order dated 5.12.2009, the said Division Bench (Per PSN, J) on the ground that inasmuch as it is stated that the views expressed by the respective Division Benches referred to supra, continue to hold the field and there is no subsequent change of law i.e., an authoritative pronouncement by a Full Bench or a Larger Bench in relation to the questions involved, referred the matter to the Full or Larger Bench. As per the administrative order of the Hon'ble the Chief Justice, the matter is placed before this Full Bench for answering the reference.

5. The facts, which are not in serious dispute, are that the suit schedule property is wakf property and the plaint was presented on 23.12.1996 and it was numbered as O.S. No. 18 of 1999 on the file of Principal Senior Civil Judge, Eluru, which is filed for partition of Acs.9-00 of land and for recovery of past profits and future mesne profits. By the impugned order dated 13.12.2002, the court below returned the plaint for presenting before the Wakf Tribunal. Aggrieved by the same, the plaintiff filed the present appeal. As stated above, the learned single judge in view of the judgments 1 and 2 supra, referred the matter to the Division Bench and again the Division Bench referred the matter to this Full Bench for answering the reference.

6. Before the Full Bench the Learned Counsel appearing for the appellant Sri A. Ramalingeshwara Rao, submitted that as on the date of the presentation of the plaint, though the Act came into force, no Tribunal was constituted and, therefore, though there is specific bar of jurisdiction of civil courts u/s 85, as there is no forum, the civil court has jurisdiction to entertain and dispose of the suit. He submitted that the issue involved in the present appeal is aptly answered by the Division Bench of this Court in P. Rama Rao's case (1 supra). With these submissions he sought to set aside the impugned order of the court below dated 13.12.2002 and to direct the court below to entertain and dispose of the matter in accordance with law.

7. Sri G. Vidyasagar, who represented High Court, also supported the decision of the Division Bench in P. Rama Rao's case (1 supra) and submitted that the Division Bench in P. Rama Rao's case need not be reconsidered and there is also no conflict between the decisions of two co-ordinate Division Benches of this Court referred to 1 and 2 supra.

8. On the other hand, the Learned Counsel for the respondents 1 and 4 to 6 Sri Jagan Mohan Reddy appearing for Sri A. Narasimha Reddy and the Standing Counsel for Wakf Board Sri Syed Ahmed Khan, vehemently argued that in view of the express bar u/s 85, the civil court has no jurisdiction and the impugned order does not warrant any interference.

9. With regard to the decision of Division Bench in P. Rama Rao's case (1 supra), the Learned Counsels submitted that it requires reconsideration. They contended that Section 85 of the Act expressly bars the jurisdiction of the civil court and the language employed in the section is clear and unambiguous and, therefore, even the pending cases also have to be transferred to the Wakf Tribunal, though there is no specific provision for transfer and by doing so, the avowed object envisaged by the Legislature, in enacting this special enactment, would be fulfilled. They submitted that when the jurisdiction of the civil court is barred, again directing the civil court to deal with the pending cases filed prior to the constitution of the Tribunal, is nothing but defeating the very object of creating the special Tribunal under the Act. It is contended that the Division Bench added the words "after the constitution of the Tribunal" after the words "should lie" occurring in Section 85 of the Act and the causes omisus in the present circumstances by the Court, is not warranted, as the language employed in the section is clear and unambiguous. Relying on the judgments of the Apex Court reported in Union of India (UOI) and Another Vs. Hansoli Devi and Others, , Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, , Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, , Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, and Union of India (UOI) Vs. Rajiv Kumar, they contended that when the language used in the section is clear and unambiguous, literal meaning has to be given irrespective of its consequences and the courts cannot legislate and the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation and the other rules of interpretation viz., reading down the statute, purposive interpretation etc., can be resorted to, when the plain words of a statute are ambiguous or lead to no intelligible results and if read literally, would nullify the very object of the statute. They contended that where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than literal rule. With these submissions, the law laid down by the Division Bench in P. Rama rao's case (1 supra) was sought to be reconsidered.

10. In order to answer the reference, certain admitted facts, relevant provision under the Act and, the two judgments of this Court referred to 1 and 2 supra and the law laid down by the Apex Court, are required to be considered.

11. The Act came into force on 1.1.1996 and Section 83 of the Act provided for constitution of the Wakf Tribunal. The Government of Andhra Pradesh issued G.O. No. 88 Minorities Welfare Department dated 20.6.1997 constituting the Wakf Tribunal with effect from 1.7.1997.

12. Therefore, it is clear that though the Act came into force with effect from 1.1.1996, the Tribunal under the Act was constituted with effect from 1.1.1997 i.e., after a period of about one and half year and u/s 85 of the Act, the jurisdiction of the civil court is expressly barred.

13. The High Court of A.P. issued circular in R.O.C. No. 2960/E1/98 dated 13.7.1999 directing all the civil courts in the State to return the complaints/petitions instituted on or after 1.7.1997, enabling the parties to present them before the A.P. Wakf Tribunal, Hyderabad. The relevant portion of the circular at paragraph Nos. 2 and 3 is extracted as under for ready reference:

The suits or other proceedings including determination of dispute or question relating to wakf or wakf property or other matters falling within the purview of the Wakf Tribunal cannot be entertained by civil court, when once the Wakf Tribunal is constituted. (Vide Sections 83 and 85 of the Wakf Act, 1995).

The High Court of Andhra Pradesh hereby directs all the Civil Courts in the State to return the complaints/petitions instituted on or after 1.7.1997, so as to enable the parties to present them before the Andhra Pradesh Wakf Tribunal, Hyderabad, after giving notice to the Counsel and hear them if there is any dispute as regards the maintainability of the suit and then take appropriate steps.

14. In the decision of the Division Bench of this Court in P. Rama Rao's case (1) supra, the above circular of the High Court dated 13.7.1999, came to be challenged. The question arose for consideration was "What is the position of the suits or other proceedings instituted between 1.1.1996 and 30.6.1997?". It was contended that In view of the express bar created by Section 85 of the Act, the civil court cannot proceed with the matter, because its jurisdiction has been taken away. Considering this contention and the facts and circumstances, and also Sections 83, 85 and 7 of the Act, and also taking into consideration that the Tribunal was constituted after a period of about one and half year after the Act came into force and as there is no specific provision for transfer of cases from civil court to Tribunal, which provisions existed in several State and Central enactments like Section 29 of the Administrative Tribunals Act, Section 8 of Family Courts Act, Section 31 of Recovery of Debts due to the Banks and Financial Institutions Act, etc. the Division Bench upheld the circular of the High Court dated 13.7.1999 and qualified Section 85 of the Act by adding the words "after the constitution of the Tribunal" immediately after the words "should lie" occurring in the said section. The relevant paragraphs are extracted as under, for better appreciation:

3. Though the Act came into force on 1.1.1996 and the Act provided for constitution of the Tribunal, actually, the Tribunal was constituted by the State Government by G.O. No. 88, Minorities Welfare Department, dt. 20.6.1997 with effect from 1.7.1997. A Judicial Officer of the rank of District Judge was posted some time later and the Tribunal is now functioning. In several Central and State enactments wherein an exclusive Tribunal is created for the purpose of dealing

with the specified matters, provision is made for the transfer of pending cases, for example, Section 29 of the Administrative Tribunals Act, Section 8 of Family Courts Act, Section 31 of Recovery of Debts due to the Banks and Financial Institutions Act, etc. But, no such provision is found in the Wakf Act.

4. Then, the question is what is the position of the suits or other proceedings instituted between 1.1.1996 and 30.6.1997....

5. ...

6 It is true as pointed out by the learned Addl. Advocate General and also the Learned Counsel for the petitioners, on the plain language of Section 85, the bar against the entertainment of suit seems to arise on and from the date of the commencement of the Act. The moment the Act came into force, the bar operates, *prima facie*. 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 a 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. What should be the remedy of the aggrieved party or Institutions or Wakf during the intervening period? Should they indefinitely wait in order to pursue their remedy till the State Government issues a notification constituting the Tribunal? In the instant case, the Tribunal was constituted 1 1/2 years after the Act came into force which is fairly a long period. If the aggrieved persons or Institutions are left without any remedy to move the Court or a judicial body during this period, absurd and unintended results would follow. Such consequences are manifestly contrary to the legislative intention. Not only that, even the provision i.e., Section 85 would be vulnerable to attack on the ground of infringement of Article 14 inasmuch as a particular class of litigants would be left without remedy to prevent invasion of their rights recognized by law on account of sheer delay in constituting the Tribunal. Obviously, such construction should be avoided. Literal interpretation should yield to purposive construction and a construction which preserves the Constitutionality of the provision. The fact that the provision for transfer of cases from the Civil Court to the Wakf Tribunal is not provided for in the Act is also a pointer to the legislative intention that the suits filed earlier to the constitution of the Tribunal shall continue to be dealt with by the Civil Court. We are therefore of the view that in the interests of imparting rationality to the provision and accomplishing the legislative object, Section 85 has to be qualified by the words "after the constitution of the Tribunal" immediately after the words

"should lie". No doubt by doing so, the literal construction is eschewed and certain words which are really implicit are read into the Section. But such reading and interpretation is not an impermissible exercise. As long back as in 1955, the Supreme Court in *Tirath Singh Vs. Bachittar Singh and Others*, laid down that in order to avoid absurd and anomalous consequences, there could be addition or modification of the words.

7. The addition of qualifying words as mentioned supra would result in reading down the wide sweep of the embargo laid down in Section 85. Reading down a legal provision to save it from unconstitutionality or unjust or absurd consequences or even to make it subserve its avowed purpose has now come to be recognized as an effective tool of statutory interpretation. To cite a few recent examples of such reading down, we may refer to the decisions in *Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others*, , *M/s. B.R. Enterprises Vs. State of U.P. and Others*, , *Madan Singh Shekhawat Vs. Union of India and Others*, *In Sunil Batra Vs. Delhi Administration and Others etc.*, the rule of reading down and reading wide was acclaimed as an integral part of interpretational engineering.

8. In the light of the foregoing discussion, we uphold the circular of the High Court and hold that the plaint in the suit referred to above need not be returned, nor the suit be transferred to Wakf Tribunal. It can be dealt with by the Civil Court. The writ petition is therefore dismissed. No costs.

15. Coming to the co-ordinate Division Bench decision of this Court in *M. Bikshapathi's case* (2 supra), the dispute related to jurisdiction of the Tribunal to determine whether the wakf property has been rightly leased or wrongly leased and questions relating to wakf property. The Division Bench considering Section 6, which deals with disputes regarding wakf and also considering Section 83, which deals with constitution of the Tribunal by the State Government, held that jurisdiction of the Wakf Tribunal u/s 6 is not limited to the matters prescribed in Section 6, and it is competent to determine the question relating to management of the wakf property including its lease. The relevant portion at paragraph Nos. 6 and 7 is extracted as under:

6. Going by the principles of interpretation of a statute, a section should be read in a manner that both the sections should be operative so as to give effect to the intention of the Legislature. It is discernible from reading Section 83 that the State Government can appoint a Tribunal for the determination of any dispute, question or any matter relating to wakf or wakf property under the Wakf Act and define the local limits, jurisdiction etc. There is no dispute that the Wakf Tribunal has been constituted with such vast powers as envisaged by Section 83. Thus, 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, if 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. Consideration or non-consideration of the application of the appellant for leasing out the wakf property is within the purview of the Wakf Board and any irregularity or illegality in its consideration is within the jurisdiction of the Tribunal.

7. It has been further brought to our notice that the lease was granted for 11 months and according to the Counsel for the appellant lease has not yet been granted. In either of the eventualities, within a reasonable period on the expiry of the lease, we have no doubt that the Wakf Board will consider the applications of all the persons who apply for lease and it being a public property, the same should be leased out in accordance with the principles settled by the Supreme Court to serve the best interest of the Wakf and not by shady deals.

16. From a reading of both the judgments of the co-ordinate Division Benches of this Court referred to 1 and 2 supra, it is clear that both were dealing with different set of facts and circumstances. The Division Bench in P. Rama Rao's case (1 supra) dealt with the situation where the suits relating to wakf property were instituted in the civil court earlier to the constitution of the Tribunal u/s 83 of the Act and held that the plaint need not be returned, nor the suit be transferred to the Wakf Tribunal and it can be dealt with by the Civil Court. In Bikshapathi's case (2 supra) the Co-ordinate Division Bench dealt with regard to the jurisdiction of the Tribunal u/s 6 of the Act and held that the Tribunal constituted u/s 83 has jurisdiction to determine all questions relating to the management of the wakf property, including its lease.

17. Therefore, we are of the considered view that there is no conflict or rather any overlapping on any issue.

18. Before this Full Bench, the main contention of the Counsel for the Wakf Board and the respondents is that literary meaning shall be given to the Section. There is no dispute with regard to this proposition. Hence, we would like to examine the section by giving literary interpretation. Section 85 of the Act is extracted as under:

85. Bar of jurisdiction of Civil Courts: No Suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by order under this Act to be determined by a Tribunal.

19. From a reading of the above provision it is clear that the Legislature has used the expression "No suit or other legal proceedings shall lie in any Civil Court" in respect of any dispute, which is required to be dealt with by the Tribunal. The words "shall lie" have to be carefully examined to give literal meaning to the

section. The dictionary meaning of "shall" in this regard needs to be considered:

20. The Chambers's Twentieth Century Dictionary defines "shall" as under:

Shall - Originally expressing debt or moral obligation, now used with the infinitive of a verb (without to) to form (in sense) a future tense, expressing in the first person mere futurity (as will in the second and third), in the second and third implying also promise, command, decree, or control on the part of the speaker: must, will have to, is to, &C. (2nd and 3rd persons, and interrogatively I): may be expected to, may chance to, may well (all persons) may in future contingency, may come to (all persons)....

21. The Oxford English Reference Dictionary gives meaning of "Shall" as under:

Shall - ...(1) (in the 1st person) expressing the future tense (I shall return soon) or (with shall stressed) emphatic intention (I shall have a party). 2. (in the 2nd and 3rd persons) expressing a strong assertion or command rather than a wish (you shall not catch me again; they shall go to the party).... 3. expressing a command or duty.... 4. (in 2nd person questions) expressing any enquiry, esp. to avoid the form of a request....

22. From a reading of the above dictionary meaning it is clear that "shall" is used for expressing future tense. Therefore, in the light of the dictionary meaning, if the section is read, it is clear that no suit or other legal proceedings shall lie i.e., admissible or sustainable, in future, in any civil court in respect of any dispute, which is required by or under the Act to be determined by a Tribunal. In other words, "no suit shall lie" would mean no fresh suit can be filed before the civil court i.e., it is having only prospective effect.

23. The expression "shall lie" has fallen for consideration before the Apex Court. In *Mithilesh Kumar and Another Vs. Prem Behari Khare*, the facts reveal that a suit was filed by the real owner against the benamidar for declaration of his title in respect of a house. The said suit was decreed and the same was also confirmed in the appeal before the Additional District Judge and the High Court. The defendant carried the matter to the Apex Court by way of special leave. During the pendency of the proceedings before the Apex Court, the Benami Transaction (Prohibition) Act, 1988 came into force. Section 4(1) of the said Act provides that "no suit to enforce any right in respect of any property held benami shall lie by or on behalf of a person claiming to be the real owner". The Apex Court took notice of this fact and dismissed the suit. This judgment was followed in another judgment of the Apex Court in *Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others*, wherein also the case was pending before the Apex Court when the Act came into force. However, the Apex Court in the subsequent judgment in *R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs.*, held that the law laid down in the above two cases (8 and 9 supra), is no longer good law on the point that the pending suits and appeals were affected by Section 4 of the Act and accordingly the law laid down in these two judgments has been substantially overruled. In

this judgment, considering various judgments of the Apex Court and also Section 6 of the General Clauses Act, it was held that in the absence of anything indicating that Section 4 (1) and (2) operates retrospectively, it cannot be applied to pending proceedings. The relevant facts and the conclusions at paragraphs Nos. 4 and 17, are extracted as under for ready reference:

4. In order to appreciate the nature of the controversy posed for our consideration, we may note a few relevant facts leading to these proceedings. In most of the proceedings various suits were filed years back before coming into operation of Section 4(1) of the Act. These proceedings were pending either at the First Appeal stage or Second Appeal stage or in revision before the High Court or in civil appeals before this Court when Section 4(1) came into operation. The question is whether these pending proceedings at various stages in the hierarchy can get encompassed by the sweep of Section 4(1) and such suits would be liable to be dismissed as laid down by that section.

17. We have already discussed earlier that there is nothing in the Act to show that Section 4(1) and 4(2) have to apply retrospectively to all pending proceedings wherein such a right is sought to be exercised by the plaintiff or such a defence has already got allowed to the concerned defendant. As a result of the aforesaid discussion, it must be held that reasons Nos. 1 and 2 which weighed with the Division Bench are not well sustained.

24. For reaching the above conclusion the Apex Court (10 supra) relied on the earlier judgment of the Apex Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, wherein it was observed as under:

25. ...The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

25. In another judgment reported in Rafiquennessa Vs. Lal Bahadur Chettri (Dead) through his Representatives and Others, similar view was expressed. The relevant portion is extracted as under:

9. Mr. Chatterjee contends That the Assam High Court was in error in coming to the conclusion that the proceedings which were pending between the parties at the appellate stage on 6th July, 1955 when the Act came into force, fell to be governed by the provisions of Section 5. He argues that at the relevant date when the suit was filed by the appellant, he had acquired a right to eject the tenant under the terms of the tenancy, and he contends that where vested rights are affected by any statutory provision the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which over-ride and materially affect the terms of contracts between

the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them. Mr. Chatterjee has relied upon the well known observations made by Wright J. in *re Athlumney*; *Ex parte Wilson* 1898 2 QB 547 when the learned Judge said that it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action its enactments, unless in express terms they apply to pending actions, do not affect them. He added that there was one exception to that rule, namely, that, where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing right. In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur.

26. Therefore, from the above judgments it is clear that in the absence of any clear indication that the enactment has retrospective effect, it has to be taken that it has only prospective effect.

27. It is to be noticed conspicuously that Section 85 envisages that no suit or other legal proceeding shall lie in any civil court in respect of matters, which have to be dealt with under the Act by the Tribunal. If the intention of the Legislature is to effect that the bar u/s 85 applies even to pending cases or that it shall have a retrospective effect, the language ought to have been couched in the manner like no civil court shall dispose of or settle the dispute or exercise the jurisdiction in respect of wakf property. Then obviously even the pending suits also will come under the sweep of bar contained u/s 85. But there is no such indication. In the decision reported in *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*, it was held as under:

21. In some statutes the legislature no doubt says that no suit shall be "entertained" or "instituted" in regard to a particular subject matter. It has been held by this Court that such a law will not affect pending actions and the law is only prospective. But, the position is different if the law states that after its commencement, no suit shall be "disposed of" or "no decree shall be passed" or "no court shall exercise power or jurisdiction". In this class of cases, the Act applies even to pending proceedings and has to taken judicial notice of by the civil Courts.

28. In view of the above judgment and in view of the clear language employed in Section 85 of the Act, the bar operates only to fresh suits and it will not effect

the pending suits.

29. Further, as already noted above, there is no specific provision under the Act for transferring the pending suits to the Tribunal, unlike the provisions in other enactments viz., Railway Act, A.P. Land Grabbing (Prohibition) Act, The Armed Forces Tribunal Act, 2007 etc., For example, Section 33 of the Armed Forces Tribunal Act, 2007 deals with exclusion of the jurisdiction of the civil courts and Section 34 deals with transfer of pending cases to the special Tribunal. The said provisions for the purpose of illustration, are extracted as under:

33. Exclusion of jurisdiction of civil courts- On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.

34 Transfer of pending cases- (1) Every suit, or other proceedings pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal stand transferred on that date to such Tribunal.

(2). ...

30. In the present statute, as already noted above, there is no specific provision dealing with transfer of the pending proceedings after the constitution of Tribunal, unlike the above extracted provision, which clearly indicated that the matters stand transferred from the date of establishment of Tribunal. The Division Bench in P. Rama Rao's case (1 supra) has rightly considered the aspect relating to transferring of pending proceedings, by referring to Section 29 of the Administrative Tribunals Act, Section 8 of the Family Courts Act, Section 31 of the Recovery of Debts due to the Banks and Financial Institutions Act, etc. Generally such transfer provisions will be inserted in a new enactment, when the jurisdiction of one forum is taken away and is conferred on the other.

31. In the decision reported in Mohd. Idris and Others Vs. Sat Narain, the facts reveal that suit filed by the agriculturists under the U.P. Agriculturists Relief Act was pending. Under the said Act, certain benefits were conferred on the agriculturists. Subsequently, during the pendency of the suit, while amending the U.P. Zamindari Abolition and Land Reforms Act, 1950, the U.P. Agriculturists Relief Act, was repealed and owing to the repeal, certain kinds of suits were to go u/s 339 of the Abolition Act read with Schedule 3, List I, before certain Revenue Officers. In such circumstances, the question which has come up for consideration before the Apex Court was "whether after the repeal, the suits filed under U.P. Agriculturist Relief Act, could continue before the Munsif". Considering these set of facts and circumstances and also considering Section 6 of the U.P. General Clauses Act, the Apex Court held as under:

7. ...The question is whether a different intention appears in either the Abolition Act or the amending Act XVI of 1953, for otherwise the old proceeding could continue before the Munsif. There is nothing in the Abolition Act which takes away the right of suit in respect of a pending action. If there be any doubt, it is removed when we consider that the U.P. Agriculturists Relief Act was repealed retrospectively from July 1, 1952 only and it is not, therefore, possible to give the repeal further retrospectively so as to affect a suit pending from before that date. The jurisdiction of the Assistant Collector was itself created from July 1, 1952 and there is no provision in the Abolition Act that pending cases were to stand transferred to the Assistant Collector for disposal. Such provisions are commonly found in a statute which takes away the jurisdiction of one court and confers it on another. From these two circumstances it is to be inferred that if there is at all any expression of intention, it is to keep Section 6 of the General Clauses Act applicable to pending litigation....

32. Therefore, the quintessence of the above judgments is that if there is any special enactment creating a new forum or Tribunal to deal with matters under that special enactment and which bars the jurisdiction of the civil court, in the absence of any clear indication that such enactment is retrospective and in the absence of any provision for transferring of the pending proceedings on the file of Civil Court to such new forum or Tribunal, the pending cases need not be transferred and they shall have to be dealt with by the civil court. In case if the new law bringing a change in the forum intends to effect even the pending matters, the statute must enact an express provision to that effect.

33. The other contingency in the present set of facts, as already noted above, is that the Act came into force with effect from 1.1.1996 and for about a period of one and half year, no Tribunal as envisaged u/s 83 of the Act, was constituted and the Tribunal was constituted only on 1.1.1997. Therefore, even if the provisions of the Act is taken to have prospective effect, after the commencement of the Act also, no forum as envisaged under the Act is created. It is well settled that where statutory enactments only create right or liability without providing forum for remedy, any person having a grievance that he has been wronged, or his right is being affected, can approach a civil court on the principle that "wherever there is right, there is remedy" (*ubi jus ibi remedium*). Therefore, we are of the considered view that in the intervening period i.e., after the commencement of the Act and before the Constitution of Tribunal, the civil court will definitely have jurisdiction, since the aggrieved party in the absence of forum, will be rendered remediless and this is not object of the Act. It is to be noticed that when all the litigants under common law and also under special enactments are having forums to ventilate their grievances and only the litigants of wakf property are left with no forum, it amounts to violation of their fundamental rights and Section 85, which bars the jurisdiction of Civil courts, will be vulnerable to attack. The Division Bench of this Court (1 *supra*), has rightly considered this aspect and the relevant portion, is quoted as under, once again with approval:

6. ...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. What should be remedy of the aggrieved party or Institutions or Wakf during the intervening period? Should they indefinitely wait in order to pursue their remedy till the State Government issues a notification constituting the Tribunal? In the instant case, the Tribunal was constituted 1 1/2 years after the Act came into force which is fairly a long period. If the aggrieved persons or institutions are left without any remedy to move the Court or a judicial body during this period, absurd and unintended results would follow. Such consequences are manifestly contrary to the legislative intention. Not only that, even the provision i.e., Section 85 would be vulnerable to attack on the ground of infringement of Article 14 inasmuch as a particular class of litigants would be left without remedy to prevent invasion of their rights recognized by law on account of sheer delay in constituting the Tribunal. Obviously, such construction should be avoided. Literal interpretation should yield to purposive construction and a construction which preserves the Constitutionality of the provision....

34. In view of the above discussion, we are of the view that even by literary interpretation of 85 of the Act, the Tribunal will get jurisdiction on and from 1.7.1997, the date on which it is constituted and no matter pertaining to wakf and wakf property shall be filed before civil court on and from that date. There is no provision under the Act regarding transfer of wakf matters pending before the civil courts to the special Tribunal. Till the Tribunal is constituted, the civil court necessarily has to exercise the jurisdiction and the civil court's jurisdiction cannot easily be presumed to have been ousted, in the absence of any clear language to that effect. The matters filed and pending before the competent civil court, which has jurisdiction to entertain the same, in the absence of the Tribunal, need not be transferred. However, such matters, which are filed on and from 1.7.1997 requires to be transferred to the Tribunal, as the special Tribunal was constituted for the specific purpose and, therefore, the civil court cannot exercise a parallel jurisdiction from that date. Accordingly, the circular issued by the High Court directing transfer of pending matters filed subsequent to 1.7.1997, is valid and is in accordance with the provisions of the Act and the Division Bench (1 supra), has rightly considered the same.

35. For the foregoing reasons, we are of the considered view that the view expressed by the Division Bench in P. Rama Rao's case (1 supra) requires no reconsideration as the Division Bench has minutely read the intention of the legislature and gave the interpretation subserving the object of the Act and as already noted above, there is no conflict in the two coordinate Division Benches of this Court cited 1 and 2 supra. Further, as both the judgments are operating in different areas, they need not be reconsidered.

36. The other question that is referred to the Full Bench is with regard to the scope of Sections 6, 7, 83 and 85 of the Wakf Act, 1995. With regard to Sections 85, bar of jurisdiction of the civil court, is dealt with above and Section 83 deals with constitution of the Tribunal and Section 7 deals with the power of the Tribunal to determine disputes regarding Wakfs. It is to be noticed that the reference has come up because of the return of the plaint by the trial court, which has been filed on 23.12.1996 i.e., before constitution of the Tribunal on 1.1.1997 and in these set of facts, the question that had arisen is whether the Civil Court has got jurisdiction or not and the same was answered by us in the affirmative. The present set of facts and circumstances does not warrant consideration of scope of Sections 6 and 7 and they would be academic and needs to be considered as and when they arise for consideration and we are of the view that this is not the case, where the scope can be considered.

37. Coming to the merits of the case, there is no serious dispute with regard to the nature of the property and the suit was filed on 23.12.1996 in O.S. No. 18/1999 on the file of Principal Senior Civil Judge, Eluru i.e., prior to the constitution of Tribunal on 1.1.1997 and the impugned order, without noticing the circular of the High Court dated 13.7.1999 and also the Division Bench judgment of this Court in P. Rama rao's case (1 supra), was passed on 13.12.2002. As per the above discussion, the matter is squarely covered by the Division Bench of this Court in P. Rama Rao's case (1 supra). The C.M.A. is of the year 2002. In the usual course we would have directed the matter to be placed before the learned single Judge for disposal. But, in view of the above facts and circumstances and keeping in view the long pendency of the matter, we feel it appropriate to dispose of the matter.

38. Accordingly, we set aside the impugned order and allow the C.M.A. In the circumstances of the case, there shall be no order as to costs.

39. It is made clear that the court below shall dispose of the suit in accordance with law, on its own merits uninfluenced by any observation made in this order, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.