
(2018) 09 CAL CK 0023
In the Calcutta High Court
Case No : Civil Order No. 2563 Of 2018

Gopala Conclave Private Limited And Another APPELLANT
Vs
Haji Nurul Huda Layek And Others RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Waqf Act, 1995 — Section 3(g), 5, 5(2), 6, 6(1), 6(5), 7, 33, 35, 37, 41, 43, 47, 48, 51, 52, 54, 61, 64, 67, 72, 73, 83, 83(1), 85
Code of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2018) 09 CAL CK 0023

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Saptangshu Basu, Aniruddha Chatterjee, Javed K. Sanwarwala, Sardar Amjad Ali, Amal Krishna Saha, Masum Ali Sardar, Sk. Md. Galib, Tanwishree Mukherjee Roy Chowdhury

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J.

1. Defendants no. 3 and 4 in a suit for declaration, injunction and recovery of khas possession have preferred the instant revisional application. By the impugned order, the Waqf Tribunal, West Bengal allowed on contest an application for temporary injunction filed by the plaintiff/opposite party no. 1, thereby directing the parties to maintain status quo over the suit property till disposal of the suit, and rejecting the application of the present petitioners for dismissal of the suit on the ground that the suit was not maintainable before the Tribunal and for rejection of the application for temporary injunction.

2. The petitioners argue that the Tribunal had no jurisdiction to entertain the suit in view of the suit property not being specified in the list of auqaf as

contemplated in Section 6 of the Waqf Act, 1995 (hereinafter referred to as the 1995 Act). It is submitted that although the suit was filed inter

alia for declaration that the suit property is a waqf property, the Civil Court has jurisdiction to hear such a suit in view of the same falling outside the

purview of Section 6 of the 1995 Act.

3. Learned senior counsel appearing for the petitioners places reliance on a resolution dated July 20, 2005 passed by the Board of Waqfs, West

Bengal (present opposite party no. 2), whereby the Board held that the suit property was a secular property and could not be enrolled as a waqf

property, as the waqif himself, in his Will, excluded the same from the schedule of the waqf property. The said order was passed, pursuant to an order

dated September 2, 2004 passed by this Court in W.P. No. 824 (W) of 2004, directing the Board to decide such question.

4. It is further argued, by placing reliance on paragraph no. 21 of the plaint of the said title suit, that the plaintiff/opposite party no. 1 admitted therein

that the Board of Waqf had arrived at the finding in its resolution dated July 20, 2005 that the suit property, situated at 51/1, Karaya Road, Kolkata

could not be a waqf property. The said paragraph is set out below:

21. That the plaintiff states that surprisingly that purporting to comply with the orders dated 2nd September, 2004 passed in W.P. No. 824 of 2004

and order 01.07.2004 passed in C.C. No. 51 of 2005, the Board of Wakfs, West Bengal, the custodian of Wakf properties over the State of West

Bengal has over ruled its own decision in a perverse manner on 20.07.2005 by taking or resolution and held that property situate at 51/1, Karaya Road,

Kolkata, cannot be a Wakf property. The said resolution dated 20.07.2005 was mechanically confirmed by the Board of Wakfs, West Bengal in its

meeting held on 30.08.2005.

5. In this context, it is also relevant to set out the reliefs claimed in the suit, which are as follows:

a) a decree for declaration that the property situate at Premises No. 51/1, Karaya Road, under Karaya Road, under Karaya Police Station,

Kolkata within Ward No. 69 of Kolkata Municipal Corporation along with one storied building thereon is a Wakf Property as described in

the registered Will & Testament dated 8.8.1914 executed by Md. Akbar Ali Khan, the Testator/Wakf.

b) A decree for declaration that the Schedule property of the plaintiff is a Wakf Property situate at Premises No. 51/1, Karaya Road, under

Karaya Police Station, Kolkata 700019 as described in Part-

1 of Schedule B of the registered Will and Testament dated 8.8.1914 executed by Md. Akbar Ali Khan, since deceased the Testator/Wakif.

c) For a declaration that defendant nos. 3 and 4 or any one claiming under them have no right, title and interest as described in Schedule

property of the plaintiff;

d) For recovery of khas possession of Schedule property of the plaintiff be passed in favour of the plaintiff and against the defendant nos. 3 and

4 upon eviction of the said defendants nos. 3 and 4 therefrom;

e) For an order of temporary injunction restraining the defendants nos. 3 and 4 or anybody claiming under them including their men, agents, servants,

relatives and associates from making any construction of any nature and transferring, alienating, dealing with and/or parting with possession or

occupation to any third party and/or parties, in respect of any part or portion of the wakf property under Schedule of the plaintiff or in any

manner whatsoever till the disposal of the aforesaid suit.

f) For an order directing the defendant no. 1 to register the Schedule property of the plaintiff situate at Premises No. 51/1, Karaya Road, under

Karaya Police Station, Kolkata 700019 as Wakf property in terms of the Will and Testament dated 08.08.1994;

g) For Recovery of possession of the Schedule property;

h) For Costs;

i) Leave under Order 2 Rule 2 of the Civil Procedure;

j) For any other relief or reliefs be passed by Learned Wakf Tribunal as it may think fit and proper.

6. The Tribunal, despite taking note of the aforesaid decision of the Waqf Board, held that even if the dispute, as to the suit property being a waqf

property, still persisted, the Waqf Tribunal had jurisdiction to decide such dispute in the suit on the basis of evidence to be received in course of trial.

Thus the question of jurisdiction was relegated to trial.

7. Learned senior counsel for the petitioners submits that the said approach of the Tribunal was contrary to law, and the Tribunal had to consider the

question of jurisdiction while deciding upon prima facie case before passing an order of injunction, although in the form of status quo. In support of

such proposition, learned senior counsel cites a Division Bench judgment of this Court, reported at 2004 (1) CHN 498 [Calcutta Cosmopolitan Club

Ltd. v. Bhanwarlal Bhandari & Ors.].

8. This apart, the Tribunal found that upon a previous suit being instituted by the present plaintiff / opposite party no. 1, bearing Title Suit No. 25 of

2006, challenging the order of the Waqf Board, in the Second Court of Civil Judge (Senior Division) at Alipore, the plaint of the said suit was rejected

under Order VII Rule 11 of the Code of Civil Procedure on the ground that the jurisdiction of the civil court was barred under Section 85 of the 1995

Act, and it was the Waqf Tribunal which had jurisdiction to decide the dispute. As a consequence, it was held, the present suit was rightly instituted by

the plaintiff before the Tribunal.

9. On this, learned senior counsel for the petitioners submitted that the scope of challenge in the previous suit might have been different from the

present suit, resulting in rejection of plaint. Moreover, rejection of plaint does not ipso facto debar the plaintiff from filing the current suit again before

a civil court. As such, it is argued, the order of rejection of plaint in the previous suit by a civil court is, by itself, not binding on the Waqf Tribunal and

is not a valid ground for holding that the current suit is maintainable before the Tribunal.

10. Learned senior counsel for the petitioners lastly submits that the impugned order, granting status quo, was not backed by reasons. Even the legal

tests for grant of injunction, such as balance of convenience and inconvenience and irreparable injury, were not applied by the Tribunal while passing

the impugned order of status quo.

11. As such, the petitioners submit that the impugned order ought to be set aside.

12. While controverting the petitioners' submissions, learned senior counsel appearing for the plaintiff/opposite party no. 1 argues that, in

paragraph no. 17 of the plaint, the opposite party no. 1 categorically stated that the suit property, at 51/1, Karaya Road along with one-storied building

standing thereon, was enrolled as waqf property under E.C. No. 7268 with the Board of Waqf, West Bengal. The Board had also appointed one

Mobinuddin Ansari as president and the plaintiff/opposite party no. 1 as vice president thereof.

13. In order to substantiate such averment in the plaint, the opposite party no. 1 also places reliance on the photocopy of a communication dated

March 30, 2004 from the then Board of Wakfs to the officer-in-charge, Karaya police station. The reference number of the said communication was

â??E.C. No. 7268â??. The Board apparently informed the said officer- in-charge by the said communication that the present suit premises was a

Wakf property as per a Wakf deed dated 08-08-1914 executed by Akbar Ali. The said property, amongst others, was enrolled/registered under the

Board of Wakfs, West Bengal under Enrolment Case No. 7268. It was further informed that the Board had approved a committee consisting of seven

persons in that regard.

14. It is submitted that even after such admitted enrolment/registration as a waqf property, the Board back-tracked and subsequently, by the resolution

dated July 20, 2005, held that the suit property was an absolutely secular property and could not be enrolled as a waqf property as the Waqif himself in

his Will excluded the same from the schedule of the waqf property. Even in paragraph no. 21 of the plaint, which is relied on by the petitioners, the

plaintiff challenged the resolution dated July 20, 2005. Therefore, after the suit property was enrolled as a waqf, the said subsequent resolution could

not operate to cancel or set aside the same. The Board had power to amend the register of auqaf under Section 41 of the 1995 Act alone. Since the

resolution dated July 20, 2005 was not passed in a proceeding under the said provision, the same could not purport to amend or cancel the

enrolment/registration of the suit property as a waqf property.

15. Learned senior counsel for the opposite party no. 1 submits that a resolution of the Board of Waqf was amenable to challenge before the Waqf

Tribunal; as such, the present suit, which also encompasses a challenge to the Board resolution dated July 20, 2005, was correctly presented before

the Tribunal. A civil court had no jurisdiction to entertain the matter in view of the bar provided under Section 85 of the 1995 Act.

16. Learned senior counsel for the opposite party no. 1 then cites a judgment reported at (2016) 2 CHN 457 [Syed Mahamudul Muswi vs. Brajobashi

Das]. Placing particular reliance on paragraph no. 12 of the said judgment,

learned senior counsel submits that the Wakf Tribunal is authorized to decide all questions related to a wakf or wakf property. Paragraph no. 12 of the said judgment is quoted below:

12. Accordingly, the Wakf Tribunal is authorized to decide all question related to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are words of very wide connotation. Therefore, any dispute, question or other matters whatsoever and in whatever manner, which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. Hence, once a property is found be a wakf property under the definition of section 3(r) of the said Act, then the dispute relating to the wakf property should be agitated before the Wakf Tribunal. It is needless to mention that the provision under section 85 of the said Act creates a bar for maintaining any civil suit. According to the provision under section 83(5) of the said Act, the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rule 1, 2 and 2-A of the CPC, 1908 to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

17. Learned counsel for the Board of Wakf (opposite party no. 2) thereafter submits, by placing reliance on a judgment reported at AIR 1998 SC 972

[Sayyed Ali and others vs. Andhra Pradesh Wakf Board, Hyderabad and others] that for a property to be a wakf property, registration as per the 1995 Act is immaterial. It is submitted that, for a property to be wakf, it is not necessary that the dedication should be in favour of a dargah, but it is sufficient if the dedication is made for a purpose recognized by Muslim law as pious, religious and charitable.

18. It is further submitted that the Wakf Tribunal was empowered to adjudicate all issues relating to a wakf property and the civil court was debarred from taking up such questions for adjudication, by virtue of Section 85 of the 1995 Act.

19. It is next submitted on behalf of the Board of Wakf that the first proviso to Section 6(1) of the 1995 Act stipulated that no suit, as described therein, shall be entertained by the Tribunal after the expiry of one year from the date of publication of the list of auqaf. It is submitted that if, for the

purpose of Section 6, a "list of auqaf" is equated with the Registrar of auqaf under Section 3(g) of the 1995 Act, particularly for properties

which were registered much prior to enactment of the 1995 Act, an absurdity would result inasmuch as no suit could be filed within one year from the

property being registered as wakf, since the registration would have taken place much prior to enactment of the 1995 Act itself. It is submitted that

Section 3(g) of the 1995 Act as such covered only the wakf properties registered under Section 37 of the 1995 Act after enactment of the 1995 Act.

Properties previously registered as wakf fell within the purview of Section 43 of the 1995 Act, which provides that whether any wakf was registered

before commencement of the Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of the

1995 Act and any such registration made before such commencement shall be deemed to be a registration made under the said Act. Hence, it is

argued that the present suit property must be deemed to be registered under Section 43, and not under Section 37 of the 1995 Act.

20. Learned counsel for the Board next cites a judgment reported at (2017) 14 SCC 561 [Rajasthan Wakf Board vs. Devki Nandan Pathak and

others], wherein it was held that the issue, as to whether a suit land was wakf property or not, would be decided by the Wakf Tribunal and not the

Civil Court. It was further held in such judgment that matters falling under Sections 51 and 52 of the 1995 Act were also required to be decided by the

Tribunal and jurisdiction of Civil Courts in such matters was barred in terms of Section 85 of the said Act. However, as rightly pointed out on behalf of

the petitioners in reply, the said judgment was rendered by the Supreme Court in the context of a property which had been registered as wakf in the

list of wakf published under Section 5 of the 1995 Act. As such, the said judgment is not relevant for the purpose of the present adjudication.

21. Learned counsel for the Board of Wakf further submits that it is now settled that even if one member of the Wakf Tribunal is available, the

Tribunal, and not the Civil Court, will decide issues relating to wakf properties. Accordingly, it is submitted on behalf of the Board of Wakf that the

present suit was rightly instituted before the Wakf Tribunal and it was the Tribunal, and not the Civil Court, which had jurisdiction to grant injunction.

22. The question which thus falls for consideration in the present case is, as to whether the Tribunal or the Civil Court has jurisdiction to decide a

dispute relating to the question as to whether a property is a waqf property or not, even if such property is not enlisted or registered under the 1995

Act.

23. Upon hearing all concerned and perusing the materials on record, it is clear that there cannot be any two views about the scope of the suit. The

first two reliefs in the plaint, being reliefs (a) and (b), relate to a declaration that the suit property is a wakf property. Relief (f) seeks a direction on

defendant no. 1, that is, the Board of Waqf, to register the " schedule property of the plaint as waqf property in terms of a Will and Testament

dated August 8, 1994.

24. It is thus clear, as is evident from relief (f), that the suit property is admittedly not registered as a waqf property. Even paragraph no. 21 of the

plaint contains an averment that the Board of Waqf took a resolution on July 20, 2005, holding that the suit property cannot be a waqf property, which

was admittedly confirmed by the Board in its meeting held on August 30, 2005, although such resolution was alleged to be absurd and beyond the

jurisdiction of the Board.

25. Moreover, there is no averment anywhere in the plaint as to the suit property having been enlisted in the list of auqaf.

26. It would be relevant to set out certain provisions of the Waqf Act, 1995 in the present context:

"3(g) " list of auqaf" means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained

under section 37."

"6. Disputes regarding auqaf. " (1) If any question arises whether a particular property specified as wakf property in the list of auqaf is wakf

property or not or whether a wakf specified in such list is a Shia waqf or Sunni waqf, 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 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 auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to

the provisions contained in sub- section (6) of 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 auqaf shall, unless it is modified in pursuance of a decision or 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 auqaf. (1) If, after the commencement of this Act, any question or dispute arises,

whether a particular property specified as waqf property in a list of auqaf 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 aggrieved by the publication of the list of auqaf under section 5 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 auqaf 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 auqaf; and

(b) in the case of the list of auqaf 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 auqaf 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 this 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.

(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.â??

â??83. Constitution of Tribunals, etc.â??"(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Court and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli or 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 â?

(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 shall 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.â??

â??85. Bar of jurisdiction of civil courts.â??No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority 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.â??

27. The Trial Court proceeded on the premise that the dispute, as to whether the suit property is a waqf property, still persisted and the Waqf Tribunal

had the jurisdiction to decide such dispute. As such, the defendantsâ?? application challenging the maintainability of the suit was rejected and status

quo was granted in respect of the suit property, allowing the temporary injunction application of the plaintiff.

28. As discussed earlier, the property-in-suit, at the juncture when the suit was filed and till the present date, is/was not reflected in the relevant list of

auqaf and/or the Register kept for the said purpose. A plain reading of the language of Section 6(1) of the 1995 Act shows that only disputes as to

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

waqf or Sunni waqf. In case of such a question having arisen, the Board of Waqf

or the mutawalli of the waqf or any person aggrieved may institute a suit in the Waqf Tribunal.

29. Section 7 of the 1995 Act empowers the Waqf Tribunal to determine such disputes as indicated in Section 6 and includes a person who is aggrieved by the publication of the list of auqaf under Section 5 of the 1995 Act, within the array of persons entitled to approach the Tribunal.

30. The list of auqaf, as defined in Section 3(g) of the 1995 Act, means the list of auqaf published under Section 5(2), or contained in register of auqaf maintained under Section 37 of the said Act.

31. However, since admittedly, in the present case, the suit property was/is not enlisted as a waqf property as contemplated in the 1995 Act since the inception of the suit, on the face of it the dispute does not attract the provisions of Sections 6 and 7 of the 1995 Act. The bar stipulated in Section 85 of the 1995 Act is restricted to disputes, questions or other matters relating to any waqf or waqf property or any other matter which is required by or under the 1995 Act to be determined by a Tribunal. Hence, the jurisdiction of Civil Courts is obviously not barred when the adjudication falls outside the jurisdiction of the Tribunal as envisaged in the 1995 Act.

32. Section 83(1) of the 1995 Act might be argued to be ex facie wider in import than Sections 6 and 7 of the Act. As per the said sub-section, the State Government has been empowered to constitute as many Tribunals as it may think fit, by notification in the Official Gazette, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligation of the lessor and/or lessee of such property, under the 1995 Act and defines the local limits and jurisdiction of such Tribunals.

33. It is to be noted that, although at the first blush the disputes are not correlated with the list of auqaf, as in Sections 6 and 7 of the Act, the disputes contemplated in Section 83 have been circumscribed in Sub-Section (1) of Section 83 itself by the phrase "under this Act". As such, Section 83, however, wide it may appear, has to be channelized through the focal point of Sections 6 and 7 as far as a suit is concerned. There are several provisions of the 1995 Act which provide for a challenge before the Tribunal, but the scope of a suit is primarily tied to Sections 6 and 7 of the said Act.

34. In this context, it would be relevant to discuss the judgment of Rajasthan Wakf Board (supra) cited on behalf of the Board of Waqf. The said judgment, rendered on May 4, 2017, held that the Tribunal, and not the Civil Court, would decide questions as to whether a suit property is a waqf property or not. While deciding the said case, the two-Judge Bench of the Honâ??ble Supreme Court considered several judgments. However, a previous two-Judge Bench decision of the Supreme Court itself, delivered on March 31, 2014, reported at (2014)16 SC 38 [Faseela M. vs. Munnerul Islam Madrasa Committee and another], was not considered in Rajasthan Wakf Board (supra). The two judgments primarily discussed in Rajasthan Wakf Board (supra) were both considered in Faseela M. (supra), apart from certain other judgments of the Supreme Court. In the Faseela M. judgment, the Honâ??ble Supreme Court elaborately dealt with the scope of adjudication by the Tribunal. It was held therein, inter alia, that Ramesh Gobindram â?? (2010) 8 SCC 726 covered the field. Among many other things, it was held that Sections 6 and 7 of the Act confer exclusive jurisdiction upon the Waqf Tribunal for determination of certain disputes regarding auqaf and also take away the jurisdiction of the Civil Court in respect of such disputes. By relying on Ramesh Gobindram (supra) and Bhamawar Lal- (2014) 16 SCC 51, the Honâ??ble Supreme Court, in Faseela M. (supra) reiterated such views.

The relevant paragraphs of Faseela M. (supra) are set out below:

â?? 8. The question, for determination in these appeals, is as to whether the suit for eviction by the landlord against the tenant relating to wakf property is triable by the civil court or the suit lies within the exclusive jurisdiction of the Wakf Tribunal.

â??10. In Ramesh Gobindram v. Sugra Humayun Mirza Wakf [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3

SCC (Civ) 553] this Court considered Sections 6(1), 6(5), 7(1), 7(5), 83, 85 and few other provisions of the Act and explained the jurisdiction of the

Wakf Tribunal vis-Ã -vis the civil court. As regards the suit for eviction against the tenant(s) of wakf property, the Court held that such suit is triable

by the civil court as it is not covered by Sections 6 and 7 of the Act.

11. The Court in Ramesh Gobindram case [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726: (2010) 3 SCC (Civ) 553] held as

follows: (SCC p. 738, para 35)

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction

of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the

tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

12. Mr Renjith Marar, learned counsel for Respondent 1, submits that in a subsequent decision in *Bhanwar Lal v. Rajasthan Board of Muslim Wakf*

[*Bhanwar Lal v. Rajasthan Board of Muslim Wakf*, (2014) 16 SCC 51] , this Court has taken a different view. According to him, Section 85 of the

Act leaves no manner of doubt that the Wakf Tribunal has jurisdiction to decide the suit for eviction. It is so because one of the questions for

determination is whether the suit property is wakf property or not.

13. The Court in *Bhanwar Lal* [*Bhanwar Lal v. Rajasthan Board of Muslim Wakf*, (2014) 16 SCC 51] considered the decision in *Ramesh Gobindram*

[*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] at quite some length. Besides *Ramesh Gobindram*

[*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] , the Court in *Bhanwar Lal* [*Bhanwar Lal v.*

Rajasthan Board of Muslim Wakf, (2014) 16 SCC 51] also considered two other decisions, one, *W.B. Wakf Board v. Anis Fatma Begum* [*W.B.*

Wakf Board v. Anis Fatma Begum, (2010) 14 SCC 588 : (2012) 1 SCC (Civ) 773] and two, *Sardar Khan v. Syed Nazmul Hasan* [*Sardar Khan v.*

Syed Nazmul Hasan, (2007) 10 SCC 727] . In *Anis Fatma Begum* [*W.B. Wakf Board v. Anis Fatma Begum*, (2010) 14 SCC 588 : (2012) 1 SCC

(Civ) 773] , this Court had held that the Wakf Tribunal constituted under Section 83 of the Act will have exclusive jurisdiction to deal with the

questions relating to demarcation of the wakf property.

14. Pertinently, the Court in *Bhanwar Lal* [*Bhanwar Lal v. Rajasthan Board of Muslim Wakf*, (2014) 16 SCC 51] held that the suit for cancellation of

sale deed was triable by the civil court.

15. *Bhanwar Lal* [*Bhanwar Lal v. Rajasthan Board of Muslim Wakf*, (2014) 16 SCC 51] follows the line of reasoning in *Ramesh Gobindram* [*Ramesh*

Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC

(Civ) 553] . The decision of this Court in Bhanwar Lal [Bhanwar Lal v. Rajasthan Board of Muslim Wakf, (2014) 16 SCC 51] is not in any manner inconsistent or contrary to the view taken by this Court in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] . We fully concur with the view of this Court in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] , particularly with regard to construction put by it upon Sections 83 and 85 of the Act. In Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] the Court said: (SCC p. 738, paras 32-34)

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

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

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

16. The matter before us is wholly and squarely covered by Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC

726 : (2010) 3 SCC (Civ) 553] . The suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act. â??

35. A perusal of Ramesh Gobindram (supra) reveals that the Honâ??ble Supreme Court discussed the jurisdiction of the tribunal, vis-Ã -vis the Civil

Court, in great detail. Among other things, it was held that Sections 6 and 7 of the 1995 Act debars jurisdiction of the Civil Court only to the extent of

trial of suits regarding questions specifically enumerated therein. It was held that the provisions of Section 85, barring jurisdiction of Civil Courts,

although apparently wider in perspective than Sections 6 and 7, were not independent in operation, but were limited to matters required by the Act to

be determined by the Tribunal, such as matters falling under Sections 33, 35, 47, 48, 51, 54, 61, 64, 67, 72 and 73. Hence, it was held, the jurisdiction of

Civil Courts to entertain suits or proceedings in relation to any question not falling within the four corners of the tribunalâ??s power did not stand

barred. It was held in the said case that Section 83 did not extend the exclusion of Civil Courtsâ?? jurisdiction beyond that provided for in Section

6(5), 7 and 83 of the 1995 Act.

36. This apart, Rajasthan Wakf Board (supra), relied on in the present case, arose from a case where the property in question was registered as waqf

in the list of auqaf published under Section 5 of the 1995 Act. As such, the cardinal factor in the present lis was absent in the said case. The said

decision, thus, could not be treated to be a precedent for the purpose of the present adjudication.

37. As regards the judgment reported at 2016 (2) CHN 457, rendered by a co-ordinate Bench of this Court, the same did not consider the present

distinguishing feature, which is, as to whether the property which not in the list of auqaf, maintained under the 1995 Act, could be the subject-matter of

a dispute to be resolved by the Tribunal or would be decided before a Civil Court. Hence, the said judgment cannot be treated as a precedent for the

present purpose.

38. The judgment reported at AIR 1998 SC 972, relied on by the Board of Waqf, is not at all germane for the present adjudication. In the present case,

the question is not as to whether registration is necessary for a property to be a waqf property, since such a question could only fall for adjudication in

the suit itself, and not at the stage of deciding the question of jurisdiction of the Tribunal.

39. As to the other contention of the plaintiff/opposite party no. 1, that since plaint of a previous suit was rejected by a Civil Court on the ground of

lack of jurisdiction, there was no other option before the plaintiff but to institute the suit before the Tribunal, the said previous order of the civil court

could not ipso facto compel the parties to approach the Tribunal. Apart from the fact that at least all the parties to the said suit were not common with

the present litigation, the fact that the plaintiffs in the said previous suit chose not to challenge the said order could not be a deterrent for the Tribunal

or this Court to return the plaint on a contrary finding. Hence, the rejection of plaint in the earlier suit could not stand in the way of the Tribunal, in the

present case, returning/rejecting the plaint on the ground of lack of jurisdiction. This apart, the facts are not clear as to whether the averments in the

previous plaint and the present plaint are exactly identical. As such, the said ground, recorded by the Tribunal in the impugned order, cannot be

sustained.

40. In view of the aforesaid discussions, it is evident that the present dispute, although relating to the question as to whether the suit property is a waqf

property or not, does not pertain to a property which is in the list of auqaf. As such, the jurisdiction of the Civil Court is not barred under Section 85 of

the 1995 Act, for the simple reason that the Tribunal does not have jurisdiction, as contemplated in Sections 6 and 7 of the said Act, to decide a suit

relating to such question.

41. In such view of the matter, the impugned order suffers from jurisdictional error inasmuch as the Tribunal did not consider the maintainability of the

suit before the Tribunal in proper perspective and acted without jurisdiction in assuming jurisdiction and granting injunction, despite the suit being not

maintainable before the Tribunal at all.

42. Accordingly, C.O. No. 2563 of 2018 is allowed on contest, thereby setting aside the impugned order, granting injunction and holding that the suit is

maintainable before the Tribunal. It is hereby held that Title Suit No. 3 of 2018, pending before the Waqf Tribunal, West Bengal, is not maintainable

before the said forum, since the said Tribunal does not have the jurisdiction to entertain or decide the matter. Only a competent Civil Court has the

jurisdiction to entertain and decide the said suit. As such, the plaint of the said suit is directed to be returned to the plaintiff/opposite party no. 1, with

liberty to present the same before the appropriate forum, subject to the law of limitation and other relevant legal provisions.

43. There will be no order as to costs.

44. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.