

(2017) 03 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 20868, 20869, 20870, 24462, 24463, 24461 of 2006, 8410 of 2007 and 23661 of 2010

Gosula Ramulu

APPELLANT

Vs

A.P. Wakf Board

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 24, Section 28

Waqf Act, 1954 — Section 4(4)

Waqf Act, 1995 — Section 112(2), Section 6, Section 7

Citation : (2017) 3 ALT 349

Hon'ble Judges : Sri M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : Sri Vedula Venkataramana learned Senior Counsel, Sri S. Niranjan Reddy, learned Senior, Sri B. Vijayasen Reddy and Sri Venkat Reddy Thipparthi appearing for Sri P. Sri Harsha Reddy, Advocates, for the Petitioner; Sri Namavarapu Rajeshwar Rao and the Learned Advocate General, (Telangana), Sri Mir Masood Khan, Sri Vemuru Venkateshwar Rao, Sri Gokula Rama Rao, Sri Mirza Nisar Ahmed Baig, Sri Pasham Krishna Reddy, Advocates and Standing Counsel, for the Respondent/GHMC

Final Decision : Disposed Off

Judgement

Sri M.S. Ramachandra Rao, J.—The subject matter of these Writ Petitions is an extent of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village, Saroornagar Mandal, Ranga Reddy District.

2. The petitioners in the Writ Petitions contend that one Gosula Muthaiah was the cultivator in respect of Acs.25.04 gts in the above Survey numbers, and one Sama Narasimham were cultivating the balance extent of Acs.25.04 gts; that the Inamdhar was one Late Mohd. Miskeen; that Mohd. Bikkan was one of his sons; was one Mohd. Bikkan; and that the rights of Gosula Muthaiah as protected tenant of the extent of Acs.25.04 guntas and Sama Yadi Reddy for the other

extent of Acs.25.04 guntas was recognised under the provisions of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950; and certificates were issued under that Act stating that they are Protected Tenants under Sec34 and 35 thereof.

3. Gosula Muthiah and Sama Narasimham died. Petitioners in these Writ petitions are claiming through them. They will be referred to as Legal heirs of Protected Tenants Gosula Muthiah and Sama Narasimham.

The Notification under the Wakf Act and challenge thereto :

4. However, on the basis of an enquiry under Section 4(4) of the Wakf Act, 1954 by the Commissioner of Wakfs resulting in an enquiry report dated 07.08.1965, the State Government published File No.S-38/R.R/2006 dated 04.07.2006 in the A.P. Gazette vide notification No.30 dated 27.07.2006 (for short, "Gazette No.30 dated 27.7.2006") purporting to declare the above property as Wakf property. The said notification does not mention whether it is issued under the Wakf Act, 1954 or under the Wakf Act, 1995 which repealed the Wakf Act, 1954.

5. This notification is challenged by persons claiming through the Protected tenants Gosula Muthiah and Sama Narasimham in WP.Nos.20868 of 2006, 20869 of 2006 and 20870 of 2006.

6. These Writ Petitions are opposed by the persons claiming through Mohd. Miskeen, the A.P. Wakf Board, and the State of Telangana, the successor to the erstwhile composite State of Andhra Pradesh. The former are represented by Sri Masood Khan and the latter two by the Special Government Pleader, Office of the Advocate General, State of Telangana.

The proceedings under the A.P. (Telangana Area) Abolition of Inams Act, 1955

7. The persons claiming through Gosula Muthiah and Sama Narasimham/ Protected tenants filed applications under Section 7 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 before the Revenue Divisional Officer, Ranga Reddy District. In proceedings in File No.J/4701/1987, J/4377/1995, J/4452/1995, J/4453/1995 and J/4454/1995, dated 08.05.1998 he held that they were not entitled to issuance of Occupancy Certificates under the said Act. He however observed that the classification of lands was changed from year to year without any valid orders; none of the parties have challenged the entries; legal heirs of protected tenants were in possession of the suit lands both on the date of vesting i.e., 20.07.1955 as well as the crucial date under the Act i.e., 01.11.1973 and also on the date of the enquiry by him; in view of the contradictions in the revenue records relating to the nature of the lands, the persons claiming through the protected tenants are not entitled to issue of Occupancy Certificates under the Act.

8. This was questioned by the legal heirs of the protected tenants Gosula Muthiah and Sama Narasimham before the Joint Collector - II, Ranga Reddy District under Section 24 of the said Act. The said appeals were numbered as

Case No.F1/4938/1998, F1/5148/1998.

9. Before him the above Gazette Notification No.30 dated 27.07.2006 was produced by the A.P. State Wakf Board as well as persons claiming through Mohd. Miskeen. Placing reliance on this, he passed orders dated 07.11.2006 holding that the lands of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village are Wakf properties and only an Institution can get Occupancy Rights certificate in view of proviso to Section 4 (1) of the Act and not individuals, though the said Gazette Notification was challenged in WP.No.20869 of 2006, since it was not suspended by this Court. He therefore directed issuance of Occupancy Rights certificate in the name of religious institution.

10. These orders of the Joint Collector - II, Ranga Reddy District under the A.P. (Telangana Area) Abolition of Inams Act, 1955 are questioned in WP.Nos.24461 of 2006, 24462 of 2006, 24463 of 2006 and in 8410 of 2007 by the persons claiming through the protected tenants.

11. The following Advocates were heard by this Court on 21.02.2017, 22.02.2017, 07.03.2017 and 08.03.2017 :

Sri Namavarapu Rajeshwar Rao for respondent nos.4 to 12 and respondent nos.27 to 34 in WP.No.24461 of 2006; for respondent nos.23 to 30 and respondent nos.35 to 38 in WP.No.24462 of 2006; for respondent nos.23 to 30 and respondent nos.35 to 38 in WP.No.24463 of 2006; for respondent nos.5 to 15 in WP.No.20868 of 2006; for respondent nos.32 to 36 in WP.No.20869 of 2006; for respondent nos.4 to 14 in WP.No.20870 of 2006; Learned Senior Counsel Sri Vedula Venkataramana, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners; learned Advocate-General (Telangana) for respondent nos.1 to 4 in WP.No.20868 of 2006; Sri M.A. Mujeed, learned Standing Counsel for respondent no.1 in WP.No.20868 of 2006; Sri Masood Khan for respondent nos.5 to 15 in WP.No.20868 of 2006; Sri Vemuri Venkateshwar Rao for respondent no.16 in WP.No.20868 of 2006;

Learned Senior Counsel, Sri S. Niranjan Reddy, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners in WP. No.20869 of 2006; learned Advocate General (Telangana) for respondent nos.1 to 4 in WP.No.20869 of 2006 and Sri M.A. Mujeeb, learned Standing Counsel for 1st respondent in WP.No.20869 of 2006; Sri Masood Khan for respondent nos.5 to 15; Sri Vemuru Venkateshwar Rao for respondent no.16; Sri Gokula Rama Rao for respondent nos.17 to 28; and Sri Namavarapu Rajeshwar Rao for respondent nos.29 to 32; In WP.No.20870 of 2006 - Sri B. Vijayasen Reddy, counsel for petitioners; learned Advocate General (Telangana) for respondent nos.1 to 3 and Sri M.A. Mujeeb, learned Standing Counsel for 3rd respondent; and Sri Namavarapu Rajeshwar Rao for respondent nos.4 to 14;

In W.P. No. 24461 of 2006 - learned Senior Counsel Sri Vedula Venkataramana, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners; learned Advocate General (Telangana) for respondent nos.1 to 3 and Sri M.A. Mujeeb, learned

Standing Counsel for 3rd respondent; Sri Gokula Rama Rao for respondent nos.4 to 11; Sri Namavarapu Rajeshwar Rao for respondent nos.12 to 22; Sri Mirza Nisar Ahmed Baig for respondent nos.23 to 36;

In W.P. No. 24462 of 2006 - learned Senior Counsel Sri S. Niranjan Reddy, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners; learned Advocate General (Telangana) for respondent nos.1 to 4 and Sri M.A. Mujeeb, learned Standing Counsel for 4th respondent; Sri Mir Masood Khan for respondent nos.5 to 15; Sri Namavarapur Rajeshwar Rao for respondent nos.16 to 21; 22nd respondent died as per L.Rs. 31-34; Sri Gokula Rama Rao, learned counsel for respondent Nos.23 to 38;

In W.P. No. 24463 of 2006 - Sri B.Vijaya Sen Reddy, learned counsel for petitioner; learned Advocate General (Telangana) for respondent nos.1 to 4 and Sri M.A. Mujeeb, learned Standing Counsel for 4th respondent; Sri Mir Masood Khan for respondent nos.5 to 15; Sri Namavarapu Rajeshwar Rao for respondent nos.16 to 21; 22nd respondent died as per L.Rs. 31-34; Sri Gokula Rama Rao, learned counsel for respondent Nos.23 to 38;

In W.P. No. 8410 of 2007 - Sri T.Venkata Reddy, learned counsel for petitioner; learned Advocate General (Telangana) for respondent nos.1 to 3 and Sri M.A. Mujeeb, learned Standing Counsel for 3rd respondent; and Sri B.Vijaya Sen Reddy, learned counsel for respondent Nos.4 to 9; and

In W.P. No. 23661 of 2010 - Sri Namavarapu Rajeshwar Rao, learned counsel for petitioner; learned Advocate General (Telangana) for respondent Nos.1, 3 and 4; Sri Pasham Krishna Reddy, learned Standing Counsel for 2nd respondent; and Sri S. Niranjan Reddy, learned Senior Counsel appearing for Sri P. Sri Harsha Reddy, counsel for respondent Nos.5 to 9.

Some more facts :

12. It is not in dispute that an extent of Acs.8.13 guntas in Survey No.115 of Karmanghat Village was requisitioned under Section 3 of the Requisitioning and Acquisition of Immoveable Property Act, 1952 for utilization by the Defence Metallurgical Research Labs, Hyderabad Vide Gazette No.202 dated 03-03-1987.

13. Since there were conflicting claims for compensation being made for the said land, the State Government issued G.O.Ms. No.1117 Revenue Department dated 13.08.1982 appointing Sri V. Neeladri Rao (who was then Presiding Officer, Labour Court, Hyderabad and who later became a Judge of this Court) as an Arbitrator to adjudicate the claims. The said case was numbered as Arbitration Case No.2/1982.

14. There were three sets of claims before him :

(a) Gosula Muthaiah and Sama Narasimham, and later on their death, persons claiming through them i.e Gosula Ramulu and others, Sama Yadiiah and others claiming that they were protected tenants by virtue of certificates issued under

the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 on the basis of entries in khasra pahani for 1954-55 and pahani for 1973-74;

(b) Mohd. Miskeen claiming to be Muthawali of Dargah Hazrath Shah Inayat stating that the land was Mushrut-ul-Khidmat (Service Inam) and therefore constituted Wakf land. The Wakf Board also appeared and made a claim before the Arbitrator that the land is Wakf land and it is entitled to compensation;

(c) Mohd. Miskeen, Inamdar and later his legal representatives also made a claim for compensation;

15. On 25.03.1985, the Arbitrator Sri V. Neeladri Rao rendered the Award in Arbitration Case No.2/1982. He held that the lands of extent Ac.50.08 gts in Survey No.113 to 120 are not Wakf properties attached to the Dargah Hazrath Shah Inayat, that the report of the Commissioner of Wakfs relied upon by the A.P. Wakf Board is not conclusive and final in the absence of Notification issued under the Wakf Act, 1954 and the lands are not service inam lands. He directed payment of compensation for the requisitioned land for the first five faslis at Rs.950/- per acre per annum, with solatium at 15% and interest on the undeposited recurring compensation at 6% p.a. from the date of the Award and mentioned the ratio in which various other claimants before him were entitled to compensation.

16. The A.P. Wakf Board did not challenge this Award.

17. However, Mohd. Miskeen and others challenged it in A.S.No.1603 of 1985. The persons claiming through the protected tenants filed cross-objections. The said Appeal was allowed on 06.07.1999 holding that the property in Survey Nos.113 to 120 of Karmanghat Village is Wakf property attached to the Dargah Hazrath Shah Inayat. The cross-objections were dismissed.

18. This judgment and decree were questioned in L.P.A. Nos.76 and 78 of 2000 by the legal representatives of the protected tenants Gosula Ramulu and Sama Yadi Reddy and others. These Letters Patent Appeals were heard with WP.Nos.5653, 6090, 7557, 13782 of 2000 and WP.no.3635 and 11695 of 2003 where entries in the Record of Rights as well as Revenue Records in respect of the land in question were assailed.

19. By judgment and decree dated 24.10.2005, the L.P.A. Nos.76 and 78 of 2000 were allowed and the Writ Petitions were dismissed.

20. Mohd. Miskeen's legal representatives (respondent nos.2 to 11 in L.P.A. No.76 of 2000 respondent nos.1 to 11 in L.P.A. No.78 of 2000) again raised a contention that the land is not an inam land but a service inam land and a Wakf property and that the Muthawali is entitled to payment of compensation.

21. Before the Division Bench the counsel for the Wakf Board raised elaborate contentions on facts and law including the contention that the land is Wakf land.

22. The Bench held that the Award of the Arbitrator was not challenged by the

Wakf Board; persons claiming through Mohd. Miskeen, Muthawali were not recognised as his successors by any competent authority and muchless by the Wakf Board, and they have no locus to claim any compensation; that the land is not service inam land; in the absence of a notification under the Wakf Act, 1954 notifying the subject land as Wakf land, it cannot also be treated as Wakf property since the report of the Commissioner of Wakfs is not final and conclusive and it is only a preliminary report.

23. The Bench also noted that in WP.No.4684 of 1987, the notification under the Requisition and Acquisition of Immoveable Property Act, 1952 was set aside on 10.07.1987 directing issuance of notification under the Land Acquisition Act, 1894 for the Acs.8.13 guntas in Survey No.115; that a notification under the Land Acquisition Act, 1894 was issued and an Award was also passed under the said Act on 19.05.1994, but a reference under Section 30 of the said Act was pending in O.P.No.69 of 1995 before the I Additional Senior Civil Judge, Ranga Reddy District.

24. It however held that its order shall cause no prejudice to any of the claims of any of the claimants in O.P.No.69 of 1995 and that it should be disposed of on its merits.

25. This order was questioned in Special Leave to Appeal (Civil) Petition Nos.32076 - 32079 of 2009 before the Supreme Court of India by the legal heirs of Mohd. Miskeen. The said Appeals were dismissed on 16.3.2012.

26. Thus, the findings of the Arbitrator in Arbitration Case No.2 of 1982 dated 25.03.1985 that the property of Acs.50.08 gts in Survey Nos.113 to 120 of Karmanghat Village, Saroornagar Mandal, Ranga Reddy District is not service inam land, that it is not Wakf land attached to the Dargah Hazrath Shah Inayat became final. Be it noted that the A.P. Wakf Board was a party to the decision in L.P.A.No.76 and 78 of 2000 and its contentions that the said land is Wakf land attached to the said Dargah were rejected and it had not questioned the same in the Supreme Court.

Contentions of the counsel for Writ Petitioners:

27. The counsel for the petitioners contended that the impugned Gazette notification No.30 dated 27.07.2006 notifying the subject land of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village is Wakf property vide File No.S-38/R.R./2006 on the basis of report dated 07.08.1965 of the Commissioner of Wakfs in File No.547/CWIII/ 63 is illegal, arbitrary and unconstitutional; for the said Gazette to be valid there must be a survey report prepared after the coming into force of the Wakf Act, 1995; the findings of the Division Bench of this Court in its judgment and decree dated 24.10.2005 that the property is not Wakf property operate as res judicata. He contended that the Division Bench thus fore-closed all options available to the Wakf Board; that the contents of the Gazette published by the State Government are not in conformity with the Annexure mentioned in Rule 5 of the A.P. Wakf Rules, 2000 and such

publication therefore cannot confer any right on the Wakf Board. They therefore contended that the notification No.30 dated 27.07.2006 notifying the subject land as Wakf property be struck down and the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District denying Occupancy Right certificates to the petitioners on the ground that the property is Wakf property, be set aside and the matter be remitted back for considering the rival claims of the protected tenants" and Inamdar"s legal representatives.

The contentions of the A.P. State Wakf Board and the legal heirs of Mohd. Miskeen, Muthawali.

28. The Special Government Pleader, attached to the Office of the Advocate General, appearing for the A.P. Wakf Board, contended that though the impugned notification did not indicate under which Act it was issued, it was obviously issued under the Wakf Act, 1995 on the basis of enquiry report dated 07.08.1965 of the Commissioner of Wakfs conducted under Section 4(4) of the Wakf Act, 1954 in F.No.547/CW-III/63; that the said enquiry report, being a thing done / action taken under the Wakf Act, 1954 will continue to be valid since it is saved by Sub Section (2) of Section 112 of the Wakf Act, 1995.

29. He contended the provisions of Section 6 and 24 of the General Clauses Act, 1897 would have to be looked into and these provisions validate all actions taken under the Wakf Act, 1954 such as the Wakf Commissioner"s report dated 07.08.1965.

30. He also contended that the notification issued on 21.01.1982 under the Requisitioning and Acquisition of Immoveable Property Act, 1952 was set aside in W.P.No.4684 of 1987, that the said order was also confirmed on 10.11.1988 in W.A.No.1768 of 1987, and therefore the Award dated 25.03.1985 of the Arbitrator in Arbitration Case No.2 / 1982, which was subject matter of the L.P.A. Nos.76 and 78 of 2000 were set at naught; and any finding therein cannot operate as res judicata.

31. He also contended that in L.P.A. Nos.76 and 78 of 2000, the appellants themselves had not pressed the appeals against the Wakf Board and on this ground also the judgment therein does not bind the Wakf Board.

32. He contended that the Wakf Board is entitled to take benefit of the judgment in A.S.No.1603 of 1985 dated 06.07.1999 even though the said judgment was set aside in the L.P.A. Nos.76 and 78 of 2000.

33. According to him, a Writ Petition challenging a notification published by the State Government under the Wakf Act, 1995 cannot be maintained; and that the remedy of the petitioners is to approach the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 for appropriate relief.

34. Sri Masood Khan, appearing for the legal representatives of Mohd. Miskeen, the Muthawali of the Dargah Hazrath Shah Inayat contended that the judgment in LPA.Nos.76 and 78 of 2000 of this Court is without jurisdiction since the lands

are service inam lands and patta can only be given in the name of Muthawali for the Wakf Institution under the A.P. (Telangana Area) Abolition of Inams Act, 1955 and the Civil Court has no jurisdiction to decide this.

35. He contended that though under the Wakf Act, 1954, jurisdiction was conferred on the Civil Court to decide whether the property is Wakf property or not, under the Wakf Act, 1995, only the Wakf Tribunal constituted under Section 83 of the said Act can decide it and its decision is final and binding. In view of this, he contended that jurisdiction under Article 226 of the Constitution of India to entertain a Writ Petition regarding the question whether the property is Wakf property or not, is ousted.

36. According to him, since Section 112 of the Wakf Act, 1995 in Sub Section (2) uses the words "anything done or any action taken" and since the word "or" is disjunctive, survey done during the pendency of the Wakf Act, 1954 would be valid even though no Gazette publication is made during the period the said Act was in force. He contended that if instead of the word "or", the word "and" had been used between the words "anything done" and "any action taken", only in that case, the survey would not be valid.

37. According to him, the list published in the impugned Gazette is conclusive unless modified by a Civil Court and only if the Wakf Commissioner's action is without jurisdiction, then only a Writ Petition would lie. He contended that a Gazette is only a public notice and it can only be challenged in the Wakf Tribunal and cannot be challenged under Article 226 of the Constitution of India.

38. Relying on a Division Bench order of this Court in K. Chandra Sekhara Rao and others v. District Collector, Hyderabad and others 2016 (6) ALT 360 (D.B.)=2016 ALT (Rev.) 422(D.B), he contended that the order dated 07.11.2006 passed by the Joint Collector - II, Ranga Reddy District under Section 24 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 can be questioned only in a Revision filed under Section 28 of the Act and since this is an effective remedy, the Writ Petition Nos.24461, 24462 and 24463 of 2006 should be dismissed.

39. He further contended that since the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 does not apply to service inam lands in view of Section 102 (c) and (d) thereof, there cannot be any protected tenancy certificate given to Gosula Muthaiah or Sama Narasimham, that such certificates are null and void; and so the Writ Petitioners in WP.Nos.20868, 20869 and 20870 of 2006 cannot be granted any relief.

40. He further contended that under Section 8(f) of the Requisitioning and Acquisition of Immoveable Property Act, 1952, the Arbitrator cannot decide title to property.

41. According to him, to establish a plea of res judicata, pleadings in the earlier case have to be filed and since that has not been done by the Writ Petitioners, by filing the pleadings in the claim petition before the Arbitrator in the Arbitration

Case No.2 of 1982, the Writ Petitioners cannot say that the finding in L.P.A. Nos.76 and 78 of 2000 is res judicata. He stated that arbitrator cannot decide whether property is Wakf property or not and any finding given by him, even if it is confirmed in LPA.nos.76 and 78 of 2000 is without jurisdiction.

42. Both the Special Government Pleader and Sri Masood Khan contended that all the Writ Petitions deserve to be dismissed.

43. Several judgments were cited by the Special Government Pleader as well as Sri Masood Khan in support of the above submissions and to the extent they are relevant, they will be discussed.

Reply submissions of Writ Petitioners :

44. The counsel for Writ Petitioners contended that the challenge in the Writ Petitions Nos.20868, 20869 and 20870 of 2006 is to the Gazette No.30 dated 27.07.2006 issued by the then State Government of Andhra Pradesh and not to the contents of the Gazette , that if land details are disputed, then possibly the respondents can contend that petitioners should go before Wakf Tribunal; and since the Gazette is challenged on the ground that the State Government could not have published it, it is a question of jurisdiction of the State Government to publish it; and that such a Gazette would be valid only if there is a survey report submitted after the Wakf Act, 1995 came into operation. They contended that since such survey report prepared after the Wakf Act, 1995 does not exist, the very issuance of the A.P. Gazette No.30 dated 27.07.2006 notifying the subject land as Wakf property, is without jurisdiction; and such actions without jurisdiction can be question under Article 226 of the Constitution of India. They contended that judicial review cannot be excluded merely on the ground that there is a domestic tribunal under the Wakf Act, 1995 because judicial review forms the Basic Structure / Feature of the Constitution.

45. According to them, the Wakf Act, 1995 would apply only if the character of the property is Wakf i.e., after publication under Section 5 (2) of the Wakf Act, 1995 and so the Tribunal constituted under the said Act cannot decide the validity of the notification.

46. They contended that the Wakf Commissioner's report dated 07.08.1965 after enquiry under Section 4 (4) of the Wakf Act, 1954 cannot be termed as "anything done" or "any action taken" since prior to the repeal of the said Act, there was no Gazette notification issued /published under the said Act; such inchoate actions do not survive the repeal of the Wakf Act, 1954 by the Wakf Act, 1995 and sub-section (2) of Section 112 does not save any such list of Wakfs/ report of the Wakf Commissioner; and it cannot be the basis for issuing a Gazette notification under the Wakf Act, 1995.

47. They contended that the Division Bench which decided LPA.nos.76 and 78 of 2000 was aware that the notification issued under the Requisitioning and Acquisition of Immoveable Property Act, 1952 was set aside by the High Court in

WP.No.4864 of 1987, but still the Division Bench went into the question whether the property was Wakf property or not, notwithstanding that the appellants therein did not press the appeals against the Wakf Board; therefore the findings therein operate as res judicata and bind the A.P. State Wakf Board and the legal heirs of Mohd. Miskeen.

48. They contended that the decision in the LPA.Nos.76 and 78 of 2000 by this Court cannot be overridden by merely issuing impugned Gazette notification under the Wakf Act, 1995 on the basis of the Wakf Commissioner's enquiry report dated 07.08.1965 and it would amount to overriding of a judicial verdict by an Executive act, which violates the doctrine of separation of powers, and is impermissible in law. They relied upon judgment dated 22.09.2016 in WP.No.33133 of 2014 rendered by this Court.

49. Counsel for the petitioners also cited several decisions which will be discussed as per their relevancy.

The points for consideration :

50. From the rival contentions, the following points arise for consideration:

(a) Whether the petitioners have locus to file the present Writ Petitions ?

(b) Whether the Writ Petition Nos.20868, 20869 and 20870 of 2006 challenging the Gazette notification No.30 dated 27.07.2006 are maintainable ?

(c) Whether the Wakf Commissioner's enquiry report dated 07.08.1965 prepared under Section 4(4) of the Wakf Act, 1954 in F.No.547 / CW-III / 63 can be the basis for the Gazette Notification No.30 dated 27.07.2006 vide F.No.S-38/R.R./2006 notifying Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village as Wakf properties and whether the said Gazette notification is valid?

(d) Whether the common judgment in LPA.Nos.76 and 78 of 2000 of this Court operates as res judicata and binds the A.P. Wakf Board and the legal heirs of Mohd. Miskeen / Mohd. Bikkan ?

(e) Whether the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District refusing Occupancy Rights Certificates to the petitioners and holding that the land of Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village is Wakf property and only the Institution is entitled to the said certificate, is valid ?

(f) Whether Writ Petition No.s 24461, 24462, 24463/2006 and W.P.8410/2007 challenging the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District are maintainable in view of the judgment in K. Chandra Sekhara Rao and others (1 supra) ?

(g) To what relief ?

Point (a) :

51. Under this point, I will consider whether the petitioners have locus to file the

Writ Petitions.

52. Petitioners contend that they are aggrieved by the A.P. Gazette No.30 dated 27.07.2006 issued under the Wakf Act, 1995 as well as the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District under the A.P. (Telangana Area) Abolition of Inams Act, 1955. They claim that they are entitled to Occupancy Rights Certificates under the A.P. (Telangana Area) Abolition of Inams Act, 1955, that the property was held to be not Wakf property by a Division Bench of this Court in L.P.A. Nos.76 and 78 of 2000; and to overcome the said judicial verdict which has also been confirmed by the Supreme Court of India in Special Leave to Appeal (Civil) Nos.32076 - 32079/2009 on 16.03.2012, the impugned Gazette has been issued; that a judicial verdict cannot be overturned by an Executive act of issuing a notification under the Wakf Act, 1995 and by notifying the subject land as Wakf property; that this violates the Basic Structure doctrine; and such a Gazette notification cannot be the basis for the Joint Collector - II, Ranga Reddy District to hold, in his order dated 07.11.2006 that Occupancy Rights Certificate should be given to the Dargah Hazrath Shah Inayat.

53. In my opinion, a person aggrieved has locus to question not only the A.P. Gazette No.30 dated 27.07.2006 as well as the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District by filing Writ Petitions.

54. Accordingly, point (a) is answered against the respondents and in favour of the petitioners.

Point (b) :

55. Under this point, I will consider the question whether the Writ Petition Nos.20868, 20869 and 20870 of 2006 filed by the Writ Petitioners challenging A.P. Gazette No.30 dated 27.07.2006 issued under the Wakf Act, 1995 are maintainable.

56. The respondents contend that the petitioners should approach the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and challenge the said Gazette notification and they cannot file Writ Petitions under Article 226 of the Constitution of India.

57. The petitioners contend that what is in challenge in the Writ Petitions is the very power of the State Government to issue the A.P. Gazette No.30 dated 27.07.2006 notifying the subject property as Wakf property on the basis of a Wakf Commissioner's report dated 07.08.1965 prepared under the Wakf Act, 1954; that too, overriding a judicial verdict dated 19.09.2008 in LPA. Nos.76 / 2000 and 78 / 2000; that only if a valid Gazette notification is issued under sub-Section (2) of Section 5 of the Wakf Act, 1995 after a survey conducted under the said Act, the property becomes Wakf property and its character can be questioned before the Wakf Tribunal; but the Tribunal is not competent under the Wakf Act, 1995 to decide the validity of the Gazette notification, and its

jurisdiction is confined under Section 6 only to decide whether a particular property specified as Wakf property in the list of Auqaf published in the Gazette is Wakf property or not; and therefore, the Writ Petitions are maintainable.

58. As per the scheme of the Wakf Act, 1995, the State Government is empowered under Section 4 to appoint a Survey Commissioner of Auqaf to make a survey of Auqaf in the State and the said Commissioner has to submit a report after enquiry. This report of the Survey Commissioner is forwarded by the State Government to the Wakf Board under Section 5 (1) of the said Act; the Wakf Board will then examine the report under sub-Section (2) of Section 5 and forward it back to the Government for publication in the Gazette of list of Auqaf.

59. Under Section 6 (1) of the Wakf Act, 1995, if any question arises whether a particular property specified as Wakf property in the list of Auqaf is Wakf property or not, the Board or the Muthawali of the Wakf or any person interested therein [this was substituted by words "any person aggrieved" by Wakf (Amendment) Act, 2013 w.e.f. 01.11.2013, with which we are not concerned] may institute a suit in Wakf Tribunal for the decision of the question and the decision of the Tribunal is made final.

60. Section 7 also empowers the Wakf Tribunal to decide any question as to whether a particular property specified as Wakf property in a list of Auqaf, is Wakf property or not.

61. Section 83(1) provides for constitution of Wakf Tribunals to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act.

62. Section 85 bars jurisdiction of Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under the Act to be determined by the Wakf Tribunal.

63. But the Tribunal has not been conferred jurisdiction under the Act to decide the validity of the action of the State Government in publishing in the Gazette under Section 5(2) of the Act. No provision of the Act is brought to the notice of the Court by the respondents other than the above referred provisions regarding power of the Wakf Tribunal to decide the validity of the Gazette publication by Counsel for respondents.

Principle laid down in *Anis Fatma Begum* (2010) that all disputes relating to Wakf property have to be agitated only in Wakf Tribunal not approved in later cases :

64. In *W.B. Wakf Board v. Anis Fatma Begum* 2010 (14) SCC 588, cited by Special Government Pleader and Sri Masood Khan, learned counsel for respondents, the subject-matter of the dispute related to the demarcation of the wakf property in two distinctive parts, one for wakf-al-al-aulad and the remaining portion for pious and religious purposes. The demarcation was challenged on the ground that it was not in consonance with the provisions of the wakf deed. The Supreme Court held that it is the Tribunal constituted under Section 83 of the Act

which will have exclusive jurisdiction to deal with these questions inasmuch as these questions pertained to determination of disputes relating to wakf property and the jurisdiction of the civil court or High Court under Article 226 was ousted. In the present case, the issues raised do not deal with demarcation of wakf property. Therefore the said decision cannot assist the respondents.

65. That apart in *Ramesh Gobindram (Dead) Through L.Rs. v. Sugra Humayun Mirza Wakf* 2010 (5) ALT 36 (SC), the Supreme Court explained that exclusion of jurisdiction of the civil courts is dealt with by Section 6(5) and Section 85 of the Wakf Act, 1995 and it is not Section 83 which excludes jurisdiction of civil courts. It explained that Section 83(1) and Section 85 both use the words "for the determination of any dispute, question or other matters relating to a wakf or wakf property" and these words do not 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. It held that 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 under the Act is required by the Act or the Rules 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. It held that a suit seeking eviction of tenants from what is admittedly wakf property could therefore be filed only before the civil court and not before the Wakf Tribunal. The view expressed by this Court in *T.Shivalingam v. A.P. Wakf Tribuna* 1999 (3) ALT 602, *P.Rama Rao v. High Court of A.P.* 2000 (1) ALT 210, *Jai Bharat Cooperative Housing Society Limited v. A.P. State Wakf Board* 2000 (5) ALT 389 and *Syed Muneer v. Chief Executive Officer* 2002 (1) ALT 386 (D.B) that the Tribunal established under Section 83 of the Wakf Act is competent to entertain and adjudicate upon all kinds of disputes so long as the same relate to any wakf property, was specifically over ruled.

66. This was reiterated in *Bhanwar Lal v. Rajasthan Board of Muslim Wakf* 2014 (16) SCC 51. The Court held that a suit for cancellation of a sale deed in relation to wakf property can be maintained in the civil court and declared:

22. The Court in *Ramesh Gobindram* case exhaustively dealt with the provisions of Sections 6 and 7 of the Act in order to determine the scope of jurisdiction of the Tribunal. It noted that the plain reading of sub-section (5) of Section 6 (supra) would show that the civil court's jurisdiction to entertain any suit or other proceedings stands specifically excluded in relation to any question referred to in subsection (1). The exclusion, it is evident from the language employed, is not absolute or all pervasive. It is limited to the adjudication of the questions: (a) whether a particular property specified as wakf property in the list of wakfs is or is not a wakf property, and (b) whether a wakf specified in such list is a Shia wakf or Sunni wakf. It was also expressed that from a conjoint reading of the provisions of Sections 6 and 7 of the Act, it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other

proceeding can be instituted or commenced in a civil court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 of the Act, the institution of a suit in the civil court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property.

23. Ramesh Gobindram case further noted that under Section 85 of the Act, the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.

24. The Court in Ramesh Gobindram case thus, concluded that the jurisdiction of civil courts to try eviction cases was not excluded. Rather, the aforesaid provisions of the Act did not include such disputes to fall within the jurisdiction of the Wakf Tribunal, and therefore the Wakf Tribunal did not have the jurisdiction to deal with eviction matters.

67. In Faseela M. v. Munnerul Islam Madrasa Committee 2014 (16) SCC 38 also the Supreme Court reiterated that a suit for eviction from wakf property can be filed in the civil court and such a suit cannot be filed before the Wakf Tribunal. It approved the judgment in Ramesh Gobindram (3 supra).

68. The decision in Anis Fatma Begum (2 supra) was considered both in Bhanwar Lal (8 supra) and in Faseela M (9 supra) and the broad proposition laid down in Anis Fatma Begum (2 supra) to the effect that all matters pertaining to wakfs should be filed before the Wakf Tribunal only and should not be entertained by the civil court or by the High Court under Article 226 of the Constitution of India was not approved. The said decision in so far as it holds that all matters pertaining to wakfs should be only filed before the Wakf Tribunal, is therefore no longer good law.

69. The decisions of this High Court in Pilli Anjaneyulu Yadav v. The Government of Andhra Pradesh Order dated 04-09-2012 in W.A.No.466 of 2012, Mir Qamar Hasan Razvi v. A.P. State Wakf Board, Hyderabad 2011 (5) ALD 407, B.Shanker v. A.P. State Wakf Board Order dated 25-04-2012 in W.P.No.11788 of 2012 and D.Suneela v. Government of Andhra Pradesh and others Order dated 23-02-2012 in W.P.No. 33738 of 2011, cited by Sri Masood Khan, wherein Writ Petitions were held to be not maintainable in relation to Wakf properties on the basis of the decision in Anis Fatma Begum (2 supra), are thus not good law.

70. The decision of the Division Bench in Allauddin Charities and Zakath Wakf v. Hameed Ali and others 2002 (2) ALT 534 (D.B), is also not good law since it has taken the view that an order passed by the C.E.O. of the Wakf Board directing eviction of a person from premises in his occupation has to be challenged only before the Wakf Tribunal and not by way of Writ Petition. This view is contrary to

the view expressed by the Supreme Court in Ramesh Gobindram (3 supra), Bhanwar Lal (8 supra) and in Faseela M (9 supra). Also it relied upon the decision in Jai Bharat Cooperative Housing Society Ltd (6 supra) which was specifically over ruled in Ramesh Gobindram (3 supra).

71. The decision in Mahabub Khan v. A.P. State Wakf Board Order dated 29-03-2010 in W.P.No.6968 of 2010, followed the decisions in Syed Muneer (7 supra) which was specifically over ruled in Ramesh Gobindram (3 supra). Also, it followed the decision in Salam Khan v. T.N. Wakf Board, Chennai AIR 2005 Madcar 241, which took the view that any dispute, question or other matter whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided only by the Wakf Tribunal. This view has been held in Ramesh Gobindram (3 supra), Bhanwar Lal (8 supra) and in Faseela M (9 supra) to be not good law by the Supreme Court. Therefore the decision of this Court in Mahabub Khan (15 supra) is also not good law.

72. If Civil Court's jurisdiction in relation to every matter relating to Wakf or Wakf property is not ousted, then neither can the High Court's jurisdiction be ousted.

73. I have already held that the Wakf Tribunal has not been conferred jurisdiction under Section 6 and 7 of the Wakf Act, 1995 to decide the validity of the action of the State Government in publishing in the Gazette the notification notifying list of Wakf properties. Therefore the Writ Petition nos.20468, 20469 and 20470 of 2006 challenging such a Gazette notification are maintainable.

74. I also agree with the contention of the counsel for the Writ Petitioners that the Writ Petitions are maintainable since they assail the jurisdiction of the State Government to issue such publication. Issues of lack of jurisdiction of State or Statutory Bodies are undoubtedly amenable to Judicial review under Article 226 of the Constitution of India.

75. In Whirlpool Corpn. v. Registrar of Trade Marks 1998 (8) SCC 1 :

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

(Emphasis supplied)

76. Moreover, the power of judicial review has been held to form the Basic Structure of the Constitution of India in several decisions of 17 (1998) 8 SCC 1,

at page 9 the Supreme Court. Such power cannot be controlled or excluded by any provision of any statute.

77. The existence of a remedy under the Wakf Act, 1995 even if such remedy covers the challenge to the Gazette Notification (which is not there), will not preclude this Court from entertaining and deciding the above Writ Petitions.

78. Point (b) is answered accordingly in favour of the petitioners and against the respondents.

Point (c):

79. I will now consider the point whether the Wakf Commissioner's enquiry report dated 07.08.1965 prepared under Section 4(4) of the Wakf Act, 1954 in F.No.547 / CW-III / 63 can be the basis for the Gazette Notification No.30 dated 27.07.2006 vide F.No.S- 38/R.R./2006 notifying Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village as Wakf properties and whether the said Gazette notification is valid.

80. In the judgment dated 24-10-2004 in L.P.A. No.76 and 78 of 2000, a Division Bench of this Court held that the lands in question are not service inam lands and they are also not Wakf property. After the said decision was rendered the impugned gazette notification was issued on 27-07-2006.

81. Therefore obviously the Gazette Notification No.30 dated 27-07- 2006 was issued to overcome this judicial verdict by an executive action.

82. In my considered opinion, this practically amounts to overruling a judicial verdict by an executing act. When even the legislature cannot over turn a judgment (it can only take away the basis of a judgment.....Virender Singh Hooda v. State of Haryana 2004 (12) S.C.C. 588), it is not open to the A.P. Wakf Board or to the State Government to claim such a power. Similar view has been taken by this Court in Syed Ameen v. A.P. State Wakf Board 2014 (5) ALT 386, and in Hazarath Ameer Sha Vali Dargah Association v. State of Andhra Pradesh and others 2016 (6) ALT 664,. So I hold that the impugned Gazette notification cannot be sustained on this ground alone apart from the other grounds discussed below.

83. Section 112 of the Wakf Act, 1995 in so far as it is relevant states:

112. Repeal and savings:- (1) The Wakf Act, 1954 and the Wakf (Amendment) Act, 1984 are hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

84. The question is whether the Wakf Commissioner's report dated 07-08-1965 prepared under Section 4(4) of the Wakf Act, 1954 can be said to be "anything done" or "action taken" under the Wakf Act, 1954.

85. To decide this, it is necessary to consider whether the conduct of survey by

the Wakf Commissioner during the time when the Wakf Act, 1954 was in force, without publication of the same in the Gazette under sub-section (2) of Section 5 of the said Act, conferred any rights on the A.P. Wakf Board or the Muthawalli or the Dargah Hazrath Sha Inayat. If the answer is "yes", then such right is saved under sub-section (2) of Section 112 and not otherwise.

86. This issue was considered in *Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by L.Rs. etc.*, AIR 2002 SC 402. In that case also a survey was made by the Survey Commissioner constituted under the Wakf Act, 1954 determining that a particular property is Wakf property, but no Gazette Notification had been issued under sub Section (2) of Section 5 of the Act. Suits were filed by the appellant before the Supreme Court for recovery of properties, future mesne profits and costs. The trial Court held that though the property in question is a public Wakf, the notification dated 24.12.1958 issued under Section 5(2) of the Act did not include it and so the appellant cannot recover possession of the property. This was affirmed in First Appeal. The First Appellate Court held that in the absence of proper notification under sub Section (2) of Section 5 of the Act that the suit properties are Wakf properties, the appellant cannot succeed in the suit for recovery of possession. The High Court affirmed the same in the Second Appeal. The Supreme Court held that if any property is not published as Wakf property as required under Section 5 (2) of the Act, the Wakf Board cannot file a suit for declaration and possession. It observed that if any property has been omitted from a notification, the Wakf Board may itself collect information regarding any property as provided under Section 27 of the Wakf Act, 1954 and decide whether particular property is Wakf property or not and that decision is final unless it is revoked or modified by a Civil Court, but this course of action had also not been adopted by the Wakf Board in that case. It held that before filing the suit for recovery of possession as provided in law, the Wakf Board should have followed the procedure as required under Sections 4, 5 and 6 or 27 of the Wakf Act, 1954. If the suit properties are not included in the notification published under sub Section (2) of Section 5 of the Act, steps should have been taken as provided under Section 27 of the Act and only thereafter a suit for possession could have been filed and not otherwise. It therefore affirmed the decisions of the Courts below.

87. The ratio of this decision is that in the absence of proper notification under sub Section (2) of Section 5 of the Wakf Act, 1954 that the properties in question are Wakf properties, even if there is any survey report of a Survey Commissioner, the said report is of no avail and does not impress the property with the character of a Wakf property. It confers no rights on the Wakf Board or the Muthawali to claim it as Wakf property.

88. In view of this decision, I reject the contention of the Special Government Pleader as well as Sri Masood Khan, learned counsel for respondents that the survey report of the Survey Commissioner prepared in 1963 under the Wakf Act, 1954 is a completed action which is deemed to have been saved under the

deeming clause in sub Section (2) of Section 112 of the Wakf Act, 1995. It is clearly an inchoate act and not a complete act and cannot be treated as "thing done" or "action taken" under the Wakf Act, 1954. It would have been complete only or treated as a "thing done" or "action taken", only if there had been a Gazette Notification under sub Section (2) of Section 5 of the Wakf Act, 1954.

89. This view has been taken by this Court in it's order in M/s. Solithro Private Limited v. The Telangana Wakf Board and others W.P.No. 33133 of 2014 dated 22-09-2016. Though Writ Appeal No.1432 of 2016 was filed against this order by the Telangana State Wakf Board, this order has not been suspended and the said appeal is pending before this Court.

90. Though Special Government Pleader as well as Sri Masood Khan, learned counsel sought to rely on Section 6 of General Clauses Act, 1897 which deals with "effect of repeal" and Section 24 thereof which deals with "continuation of orders, etc. issued under enactments repealed and re-enacted" of the General Clauses Act, 1897, and also cited several decisions in that regard, I am not inclined to go into the same since Section 112 of the Wakf Act, 1995 itself deals with what was repealed and what was saved and when such specific provision is there, there is no need to consider the general law contained in the General Clauses Act, 1897. This is because the special law over rides the general law.

91. It is not the case of the respondents that there was any survey conducted under Section 4 of the Wakf Act, 1995 by a Survey Commissioner appointed under the said Act preceding the issuance of the impugned Gazette Notification No.30 dated 27-07-2006. Therefore the very action of the State Government in publishing the said Gazette notification is without jurisdiction and is null and void. No rights therefore can be claimed by the Wakf Board or by the private respondents under the said Notification.

92. Also, Rule 5 of the A.P. Wakf Rules, 2000 states that the list of wakfs published under sub-Section (2) of Section 5 of the Wakf Act, 1995 should be as in the Annexure. A comparison of the said Annexure with the impugned Gazette notification shows that details such as:

- (i) name of wakif, father's name, residence and occupation;
- (ii) class of wakf;
- (iii) conditions of wakf;
- (iv) monthly or yearly income;
- (v) rules of succession to the office of Muthawali under Wakf Deed by custom or usage;
- (vi) particulars of the scheme of administration, its expenditure at the time of registration are not even mentioned in the Gazette notification, though they are mentioned in the Annexure. Thus, the impugned Gazette does not conform to the Annexure at all and several details which are required to be mentioned as per the

Annexure are not mentioned in the Gazette.

93. It is settled law that when a statute prescribes a thing to be done in a particular manner, it should be done in that manner and in no other manner. In *State of U.P. v. Singhara Singh* AIR 1964 SC 358, the Supreme Court declared:

The rule adopted in *Taylor v. Taylor* 1875 (1) Ch D 475, 477, is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.

94. Since such is not the case here, the impugned Gazette cannot be said to have any legal validity.

95. Sri Masood Khan classifies the Wakf Commissioner's survey of 1965 as a "thing done" and publication of list of Auqaf in Gazette as "action taken". According to him since sub Section (2) of Section 112 of the Wakf Act, 1995 uses the words "anything done or any action taken" and since the word "or" is disjunctive, survey done during the pendency of the Wakf Act, 1954 would be valid even though no Gazette publication is made during the period the said Act was in force. He contended that if instead of the word "or", the word "and" had been used between the words "anything done" and "any action taken", only in that case, the survey would not be valid.

96. This contention is without any merit since the use of the word "or" in sub Section (2) of Section 112 is only to cover all actions/things. The said word does not in any way deal with which thing or which action will be saved notwithstanding repeal of Wakf Act, 1954. The interpretation suggested by the counsel therefore cannot be accepted.

97. Point (c) is answered accordingly that the Wakf Commissioner's enquiry report dated 07.08.1965 prepared under Section 4(4) of the Wakf Act, 1954 in F.No.547 / CW-III / 63 cannot be the basis for the Gazette Notification No.30 dated 27.07.2006 vide F.No.S- 38/R.R./2006 notifying Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village as Wakf properties and that the said Gazette notification is unsustainable. Accordingly the proceedings F.No.547 / CW-III / 63 published in the A.P.Gazette No.30 dated 27.07.2006 is set aside.

Point (d):

98. Now I will deal with the point whether the common judgment in LPA. Nos.76 and 78 of 2000 of this Court operates as *res judicata* and binds the A.P. Wakf Board and the legal heirs of Mohd. Miskeen/Mohd. Bikkani.

99. It is not in dispute that an extent of Acs.8.13 guntas in Survey No.115 of Karmanghat Village was requisitioned under Section 3 of the Requisition and Acquisition of Immoveable Property Act, 1952 for utilization by the Defence

Metallurgical Research Labs, Hyderabad Vide Gazette No.202 dated 03-03-1987.

100. Since there were conflicting claims for compensation being made for the said land, the State Government issued G.O.Ms. No.1117 Revenue Department dated 13.08.1982 appointing Sri V. Neeladri Rao (who was Presiding Officer, Labour Court, Hyderabad and who later became a Judge of this Court) as an Arbitrator to adjudicate the claims. The said case was numbered as Arbitration Case No.2/1982.

101. Section 8 (1) (f) of the said Act states:

Section 8 - Principles and method of determining compensation:

(1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,--

(a) to (e).....

(f) Where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons.

102. Thus the arbitrator appointed under the said Act is empowered under the Act to decide rival claims for compensation made by parties in respect of the requisitioned lands. The Parliament cannot be presumed to be ignorant of the existence of the Requisitioning and Acquisition of Immovable Property Act, 1952 when it enacted the Wakf Act, 1954 or the Wakf Act, 1995. Though this statute is enacted in 1952, notwithstanding the fact that Wakf Act, 1954 and the Wakf Act, 1995 came into existence subsequently, the said Act has not been amended taking away jurisdiction conferred on the arbitrator appointed under the said Act to decide issues of title to property alleged by persons to be non-Wakf property and by others to be Wakf property.

103. Therefore it is futile for the respondents to contend that the arbitrator appointed under clause (b) of sub Section (1) of Section 8 cannot go into the issue whether the property is Wakf property or not.

104. As already stated, on 25.03.1985, the Arbitrator Sri V. Neeladri Rao rendered the Award in Arbitration Case No.2/1982. He held that the lands in Survey No.113 to 120 are not Wakf properties attached to the Dargah Hazrath Shah Inayat, that the report of the Commissioner of Wakfs relied upon by the A.P. Wakf Board is not conclusive and final in the absence of Notification issued under the Wakf Act, 1954 and the lands are not service inam lands. He directed payment of compensation for the requisitioned land for the first five faslis at Rs.950/- per acre per annum, with solatium at 15% and interest on the undeposited recurring compensation at 6% p.a. from the date of the Award and mentioned the ratio in which various claimants before him were entitled to

compensation.

105. The A.P. Wakf Board did not challenge this Award. However, Mohd. Miskeen and others challenged it in A.S.No.1603 of 1985. The legal representatives of the protected tenants filed cross-objections. The said Appeal was allowed on 06.07.1999 holding that the property in Survey Nos.113 to 120 of Karmanghat Village is Wakf property attached to the Dargah Hazrath Shah Inayat. The cross-objections were dismissed.

106. This judgment and decree were questioned in L.P.A. Nos.76 and 78 of 2000 by the legal representatives of the protected tenants. These Letters Patent Appeals were heard with WP.Nos.5653, 6090, 7557, 13782 of 2000 and WP.No.3635 and 11695 of 2003 where entries in the Record of Rights as well as Revenue Records in respect of the land in question were assailed.

107. By judgment and decree dated 24.10.2005, the L.P.A. Nos.76 and 78 of 2000 were allowed and the Writ Petitions were dismissed.

108. Mohd. Miskeen's legal representatives (respondent nos.2 to 11 in L.P.A. No.76 of 2000 / respondent nos.1 to 11 in L.P.A No.78 of 2000) again raised a contention that the land is not an inam land but a service inam land and a Wakf property and that the Muthawali is entitled to payment of compensation.

109. Before the Division Bench the counsel for the Wakf Board raised elaborate contentions on facts and law including the contention that the land is Wakf land.

110. The Bench held that the Award of the Arbitrator was not challenged by the Wakf Board; persons claiming through Mohd. Miskeen, Muthawali were not recognised as his successors by any competent authority and muchless by the Wakf Board and they have no locus to claim any compensation; that the land is not service inam land; in the absence of a notification under the Wakf Act, 1954 notifying the subject land as Wakf land, it cannot also be treated as Wakf property since the report of the Commissioner of Wakfs is not final and conclusive and it is only a preliminary report.

111. The Bench also noted that in WP.No.4684 of 1987, the notification under the Requisition and Acquisition of Immoveable Property Act, 1952 was set aside on 10.07.1987 directing issuance of notification under the Land Acquisition Act, 1894 for the Acs.8.13 guntas in Survey No.115; that a notification under the Land Acquisition Act, 1894 was issued and an Award was also passed under the said Act on 19.05.1994, but a reference under Section 30 of the said Act was pending in O.P.No.69 of 1995 before the I Additional Senior Civil Judge, Ranga Reddy District.

112. It however held that its order shall cause no prejudice to any of the claims of any of the claimants in O.P. No.69 of 1995 and that it should be disposed of on its merits.

113. This order was questioned in Special Leave to Appeal (Civil) Petition

Nos.32076 - 32079 of 2009 before the Supreme Court of India by the legal heirs of Mohd. Miskeen. The said Appeals were dismissed on 16.3.2012 in view of its judgment in S.L.P.(C). Nos.22154-22157 of 2007 dated 26-10-2007.

114. Thus the questions whether the property was service inam land or whether it was Wakf property were directly and substantially in issue before the arbitrator as well as in L.P.A. Nos.76 and 78 of 2000. Findings were given against the A.P. Wakf Board as well as the legal heirs of Muthawalli, Mohd. Miskeen. As stated above, the Supreme Court also did not interfere with the said findings in view of its judgment in S.L.P.(C). Nos.22154-22157 of 2007 dated 26-10-2007.

115. The Special Government Pleader sought to contend that the notification under the Requisitioning and Acquisition under the Property Act, 1952 was struck down by the High Court in W.P. No.4684 of 1987 on 10-07-1987 and the State was directed to initiate proceedings under the Land Acquisition Act, 1894; that it was also confirmed in order dated 10-11-1988 in W.A. No.1768 of 1987 by a Division Bench of this Court; and so the proceedings under the Requisitioning and Acquisition under the Property Act, 1952, including the judgment in L.P.A. Nos.76 and 78 of 2000 are null and void. I do not agree with the said submission for the following reasons.

116. That the notification under the Requisitioning and Acquisition under the Property Act, 1952 was struck down by the High Court in W.P. No.4684 of 1987 on 10-07-1987 was noticed by the Division Bench which decided L.P.A. Nos.76 and 78 of 2000 on 24-10-2005. Yet the Division Bench went ahead and decided the L.P.As. and giving a finding that the properties are not Wakf properties or service inam lands and confirmed the findings in that regard by the arbitrator in his Award dated 25-03-1985 in Arbitration Case No.2 of 1982. It only directed that its findings shall cause no prejudice to any of the claims of any of the claimant in O.P.No.69 of 1985 pending adjudication before the I Additional Senior Civil Judge, Ranga Reddy District. Thus no remedy was left open by the Bench to reopen its findings regarding the nature of the land in any forum.

117. Even though the judgment in W.P.No.4684 of 1987 was brought to the notice of the Division Bench which decided L.P.A. Nos.76 and 78 of 2000, no contention was advanced either by the A.P. Wakf Board or by the private respondents therein that the Division Bench had no jurisdiction to decide the matter in view of the striking down of the notification issued under the Requisitioning and Acquisition of Immovable Property Act, 1952.

118. In National Sewing Thread Co. Ltd. v. James Chadwick and Bros, Ltd. AIR 1953 S.C. 357, the Supreme Court held that when an appeal had reached the High Court, it has to be determined according to the rules of Practise and procedure of the High Court. Therefore, even when the High Court is exercising Letters Patent Appeal jurisdiction, it continues to be a Court of Record.

119. In Naresh v. State of Maharashtra AIR 1967 S.C.1, the Supreme Court held that a High Court is a superior Court of Record and under Article 215 of the

Constitution, it shall have all the powers of such a Court of Record including the power to punish contempt of itself, and that the distinguishing characteristic of such Superior Court is that they are entitled to consider questions of their jurisdiction raised before them. It quoted its own decision in Special Reference No.1 of 1964, to say that in the case of a Superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not; and unlike a Court of limited jurisdiction, the Superior Court is entitled to determine for itself questions about its own jurisdiction. It rejected the contention that the High Court had no jurisdiction to grant an order of interim bail and that such order is void. It quoted the passage from Halsbury's Laws of England wherein it was observed:

Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court.

If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court.

(emphasis supplied)

120. Thus from the above decision, it is clear that no party can say that an order passed by the High Court is without jurisdiction and seek to ignore it. The only remedy is to question it in a Superior Court i.e. the Supreme Court by way of appeal and try to get it set aside.

121. In the instant cases, the heirs of the Muthawalli Mohd. Miskeen challenged the judgment in L.P.A.No.76 and 78 of 2000 in the Supreme Court and failed, while the A.P. Wakf Board did not challenge it in the Supreme Court at all. Therefore both of them are precluded from contending that the judgment in L.P.A.Nos.76 and 78 of 2000 does not operate as res judicata or that the judgment of the High Court therein is without jurisdiction and so null and void.

122. Thus, the findings of the Arbitrator in Arbitration Case No.2 of 1982 dated 25.03.1985 that the property of Acs.54.08 guntas in Survey Nos.113 to 120 of Karmanghat Village, Saroornagar Mandal, Ranga Reddy District is not service inam land, that it is not Wakf land attached to the Dargah Hazrath Shah Inayat were confirmed by the Division Bench in its order dated 19-09-2008 in L.P.A.Nos.76 and 78 of 2000 and have become final. Therefore the said findings operate as res judicata and bind the A.P. Wakf Board as well as the legal heirs of Mohd. Miskeen.

123. The A.P. Wakf Board cannot take shelter under the judgment dated 06-07-1999 in A.S. No.1603 of 1985 of the learned Single Judge reversing the

decision of the arbitrator, because the said judgment of the learned Single Judge was set aside in L.P.A. No.76 and 78 of 2000. It thus got merged in judgment in the L.P.As.

124. The contention of the Special Government Pleader that since the appellants did not wish to press the L.P.As. against the A.P. Wakf Board, the findings in the judgment in the L.P.As. cannot bind the A.P. Wakf Board, is not tenable. It is true that though the appellants in the L.P.As. did not wish to press the appeals against the Wakf Board. But, the counsel for the Wakf Board Sri A.M. Qureshi insisted on making submissions and invited the decision in the L.P.As. Also the Division Bench did not dismiss the L.P.As as against the Wakf Board on the ground that the appellants therein stated that they do not wish to press the L.P.As. against it. It allowed the L.P.As. and gave findings against the A.P. Wakf Board by rejecting its contention that the property is service inam land and that it is wakf property.

125. The respondent Nos.5 to 16 in W.P.No.20868 of 2006 were respondent Nos.3 to 14 in L.P.A. Nos.76 of 2000 and respondent Nos.2 to 13 in L.P.A. No.78 of 2000. So they, as well as the A.P. Wakf Board, are thus clearly bound by the said judgment.

126. Point (d) is thus answered in favour of the petitioners and against the respondents.

Points (e) and (f):-

127. I will now consider points (e) and (f) which are set out below:

(e) Whether the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District refusing Occupancy Rights Certificates to the petitioners and holding that the land of Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village is Wakf property and only the Institution is entitled to the said certificate, is valid ?

(f) Whether Writ Petition No.s 24461,24462,24463/2006 and W.P.8410/2007 challenging the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District are maintainable in view of the judgment in K. Chandra Sekhara Rao and others (1 supra)?

128. Firstly it was contended by the respondents that the lands are service inam lands and are exempted from the purview of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and that the petitioners could not have been given protected tenancy certificates under the said Act. This contention cannot be accepted in view of the finding in L.P.A. Nos.76 and 78 of 2000 that the lands are not service inam lands, which binds the Wakf Board as well as persons claiming through Mohd. Miskeen.

129. Secondly it is contended that respondents that a Writ Petition under Article 226 of the Constitution of India is not maintainable challenging the order dated 07-11-2006 passed by the Joint Collector-II, Ranga Reddy District in Case

No.F1/4938/1998 and Case No. F1/5148/1998. Reliance is placed on the judgment in K. Chandra Sekhara Rao and others (1 supra).

130. That case came to be decided on 11-08-2016 resolving a conflict between decisions of this Court in G.V. Narasimha Reddy v. Syed Aktar Ali 1988 (2) ALT 136, and Maltan Sangaiah v. Patel Eswarappa 1997 (4) ALT 724. While the former judgment held that a Revision under Section 28 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 would lie against an order passed under Section 24 (1) of the said Act by the Appellate Authority thereunder, the latter judgment took a contrary view. A third view was taken in A.P. Punjabi Sabha, Hyderabad v. Joint Collector, Hyderabad 2004 (2) An w.r. 806 (A.P) that this Court can exercise power under Article 227 of the Constitution of India and consider to correctness of an order passed under Section 24 (1) of the Act, thus steering clear of the controversy regarding the maintainability of the Revision under Section 28 of the Act against such orders.

131. The Division Bench in K.Chandra Sekhara Rao (1 supra) held that the appellate order passed under Section 24 (1) of the Act is revisable by the High Court under Section 28 of the Act on the limited grounds mentioned thereunder. It also held that the Court can always consider whether it should exercise its plenary power and permit conversion of the statutory Revision into one under Article 227 of the Constitution of India.

132. The Division Bench did not say that Writ Petitions under Article 226 of the Constitution of India cannot be maintained challenging appellate orders passed under Section 24 (1) of the Act. It in fact recognised that plenary power of the High Court is not in any way curtailed and that the High Court can even exercise such power and convert a statutory Revision into one under Article 227 of the Constitution of India.

133. In the instant cases, the Writ Petitions had been filed and entertained in the year 2006. At that time, the legal position as to maintainability of Revision under Section 28 of the Act was still unsettled. In these circumstances, it cannot be said that the Writ Petitions filed by the petitioners questioning the order dated 07-11-2006 in Case No.F1/4938/1998 and Case No.F1/5148/1998 of the Joint Collector-II, Ranga Reddy District are not maintainable.

134. In any event even if the petitioners had filed Revisions they would have been clubbed with W.P.No.20868 of 2006 and batch. So no great prejudice is caused to respondents if W.P.No.s 24461 of 2006 and batch are entertained and decided.

135. That apart, it is settled law that remedy of Revision is not an effective alternative remedy because it is a discretionary remedy unlike the remedy of appeal, which is the right of a party. (See Collector of Customs Excise v. A.S.Bava AIR 1968 SC 13). So existence of such a remedy is not a bar to entertain the Writ petitions. (C.I.T. v. Chhabil Dass Agarwal 2014 (1) SCC 603). Also the rule of exhaustion of alternative remedy is a self imposed restriction and

is not a bar to entertaining Writ petitions under Article 226 of the Constitution of India.

136. Since the only basis for the Joint Collector-II, Ranga Reddy District to refuse Occupancy Right Certificates to the Writ petitioners on 07-11-2006 in Case No.F1/4938/1998 and Case No.F1/5148/1998 is the notification in File No.S-38/RR/2006 dated 04-07-2006 which was published in the Gazette No.30 dated 27-07-2006 notifying the lands of extent Ac.50.08 gts in Sy.Nos.113-120 of Karmanghat Village as wakf property, and since the said Gazette notification has been held to be invalid and unsustainable, the order dated 07-11-2006 is also unsustainable and is accordingly set aside.

137. Accordingly I hold on point (e) that the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District refusing Occupancy Rights Certificates to the petitioners and holding that the land of Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village is Wakf property and only the Institution is entitled to the said certificate, is not valid; and on point (f) that Writ Petition Nos. 24461, 24462, 24463 of 2006 and W.P.8410 of 2007 challenging the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District are maintainable notwithstanding the judgment in K. Chandra Sekhara Rao and others (1 supra).

Point (g):

138. For the foregoing reasons, I hold:

- (i) on point (a) that the petitioners have locus to file the present Writ Petitions;
- (ii) On point (b) that the Writ Petition Nos.20868, 20869 and 20870 of 2006 challenging the Gazette notification No.30 dated 27.07.2006 are maintainable;
- (iii) on point (c) that the Wakf Commissioner's enquiry report dated 07.08.1965 prepared under Section 4(4) of the Wakf Act, 1954 in F.No.547 / CW-III / 63 cannot be the basis for the Gazette Notification No.30 dated 27.07.2006 notifying Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village as Wakf properties and that Proceedings F.No.S-38/R.R./2006 notifying Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village as Wakf properties which was published in the A.P.Gazette No.30 dated 27.7.2006 is not valid and is set aside;
- (iv) on point (d) that the common judgment in LPA.Nos.76 and 78 of 2000 of this Court operates as res judicata and binds the A.P. Wakf Board and the legal heirs of Mohd. Miskeen / Mohd. Bikkan;
- (v) on point (e) that the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District refusing Occupancy Rights Certificates to the petitioners and holding that the land of Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village is Wakf property and only the Institution is entitled to the said certificate, is not valid and is set aside.
- (vi) on point (f) that Writ Petition Nos.24461, 24462, 24463 of 2006 and W.P.8410 of 2007 challenging the order dated 07.11.2006 of the Joint Collector -

II, Ranga Reddy District are maintainable in view of the judgment in K. Chandra Sekhara Rao and others (1 supra);

For the foregoing reasons,

(A) W.P.Nos.20868, 20869 and 20870 of 2006 are allowed and the proceedings in File No.S-38/R.R/2006 dated 04.07.2006 published by the then State Government of A.P. in the A.P. Gazette vide notification No.30 dated 27.07.2006 (for short, "Gazette no.30 dated 27.7.2006") declaring the land of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village as Wakf property, is set aside; and

(B) Writ Petition Nos.24461, 24462, 24463 of 2006 and W.P.8410 of 2007 challenging the order dated 07.11.2006 of the Joint Collector - II, Ranga Reddy District are allowed and the said order is set aside; the matter is remitted to the Revenue Divisional Officer, Ranga Reddy District to consider who among the petitioners in these Writ petitions are entitled to Occupancy Right Certificates under the A.P. (Telangana Area) Abolition of Inams Act, 1955 for the above land. Neither the A.P.Wakf Board nor the legal heirs of Mohd.Miskeen shall be allowed to participate in these proceedings. This exercise shall be completed in 3 months by him.

The A.P. Wakf Board and the private respondents in these Writ Petitions claiming though Mohd.Miskeen shall each pay costs of Rs.2000/- to the petitioners in each of the above referred Writ Petitions.

139. As a sequel, all miscellaneous petitions pending if any, in these Writ Petitions, shall stand closed.