

(2011) 02 KAR CK 0182
In the Karnataka High Court
Case No : Writ Petition No. 6049 of 2005

ITC Limited and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 254 (2)

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 2 (e) (v)

Waqf Act, 1954 — Section 5 (2)

Citation : (2011) 2 KCCR 1585

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : K.G. Raghavan for Dua Associates, for the Appellant; A.S.G., for Respondent No. 1, Ashok Haranahalli, General for Respondent No. 2, Udaya Holla for Prabhuling K. Navadgi, for Respondent Nos. 3 and 4 and Kamal and Bhanu for Respondent Nos. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the Petitioners have prayed for a writ to declare Section 2(e)(v) of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 (for short "the Public Premises Act") as substituted by Amending Act 22 of 1999 as null and void, to quash the order dated 12.8.2002 passed by the fifth Respondent as per Annexure-U, to quash the notice dated 19.11.2001 as per Annexure-Q and to declare the entire proceedings before the fifth Respondent as without jurisdiction and for other reliefs.

2. The subject matter of this writ petition is property bearing No. 25, Sankey Road, Bangalore (hereinafter called as "schedule property"). The schedule property originally belongs to one Aga Ali Askar and he executed a Will on 29.10.1880 and Codicil on 22.6.1887 bequeathing the schedule property for the benefit of Muslim community and the same had become a Wakf property. On

coming into force of the Wakf Act, 1954 the schedule property was included in the list of Wakfs notified by the Karnataka State Board of Wakfs u/s 5(2) of the Wakf Act. The Mutavallis of the Wakf in question submitted a draft scheme on 28.10.1971 to the Wakf Board to lease the schedule property in favour of M/s. Monarch Corporation subject to certain terms and conditions. After following the procedure the Wakf Board sanctioned the scheme as per notification dated 9.8.1972 published in the Karnataka Gazette dated 17.8.1972. In furtherance of the sanctioned scheme, the Mutavallis of the Wakf in question executed a registered lease deed on 15.10.1973 in favour of M/s. Monarch Corporation leasing the schedule property for a period of 30 years subject to certain terms and conditions. It is seen from the record that the Managing Committee of the Wakfs in question submitted second scheme to the Wakf Board for extending the lease for a further period of 50 years in favour of M/s. Monarch Corporation. Even without sanctioning of the second scheme by the Wakf Board, the Mutawallis of the Wakf executed another lease deed dated 13.9.1977 extending the period of lease.

3. Aggrieved by the two lease deeds in favour of M/s. Monarch Corporation a civil suit was filed in O.S. No. 8041/1980 on the file of City Civil Court, Bangalore by Anjuman Imamia and Ors. being representatives on behalf of shia muslims to declare the lease deeds in favour of M/s. Monarch Corporation as null and void. In this O.S. 8041/1980 the Trial Court granted an exparte interim order on 26.11.1981 restraining M/s. Monarch Corporation from serving wine and pork in the premises situated on the schedule property.

4. In the meanwhile M/s. Monarch Corporation assigned its lease hold rights in favour of M/s. Viswaram Hotels Limited and they filed an appeal before this Court in MFA No. 2445/1981 against the interim order granted by the Trial Court in O.S. 8041/1980. This Court vide order dated 28.1.1982 (reported in 1981(2) KLJ 264) set aside the order of Trial Court. Further the SLP No. 2253/1982 filed against the order of this Court came to be dismissed on 28.5.1982 by the Supreme Court confirming the order of this Court.

5. In the meanwhile, the Wakf. Board issued a notice on 23.9.1980 to the Petitioner to show cause as to why the lease deed and the assignment deed be not declared as null and void and inoperative against the Wakf Board. Subsequently, the Wakf Board in its meeting held on 3rd, 4th and 5th of June, 1981 passed a resolution cancelling/revoking the lease in favour of original lessee M/s. Monarch Corporation. Petitioner being aggrieved by this resolution and notice questioned the same before this Court in W.P. No. 13379/1981 and the same came to be allowed vide order dated 7.8.1990 by quashing the notice and resolutions; Feeling aggrieved by the order of learned single Judge of this Court, the Wakf Board filed an appeal in W.A. No. 2163/1990. The Division Bench of this Court by order dated 21.11.1990 dismissed the writ appeal with an observations as under:

After some argument all that the learned Counsel for the Appellant wants is to

observe that the rights of the parties will stand settled as per the final outcome of O.S. 8041/1980 pending on the file of the City Civil Judge, Bangalore it shall be so. We may also add should the suit be dismissed, the impugned order passed by the Wakf Board Annexure-I dated 3rd, 4th and 5th June 1981 will stand revived. Thereupon, it will be open to the writ Petitioner - Viswaram Hotels to raise all defences available to it to attack the order. Dismissed, subject to above observation.

6. Thereafter the Petitioner filed an application for modification of the above order in W.A. 2163/1990 for deletion of the word "dismissal of the suit" and to substitute in its place the words "decree the suit" and the same came to be dismissed vide order dated 26.7.2002. Further the SLP in SLP 15807/2002 also came to be dismissed confirming the order of the Division Bench of this Court. Thereby it is made dear that on dismissal of O.S. No. 8041/1980 the resolution passed by the Wakf board on 3rd, 4th and 5th June 1981 stands revived.

7. It is seen from the record that on 6.9.2000 the civil suit in O.S. No. 8041/1980 came to be dismissed for non-prosecution. In view of the dismissal of O.S. No. 8041/1980 the resolution passed by the Wakf Board on 3rd, 4th and 5th June 1981 came to be revived and became operative and effective as per the order in W.A. No. 2163/1990. In view of this revival of the resolution passed by the Wakf Board the Commissioner of Wakfs issued a notice and filed a petition on 12.11.2001 before the competent Officer constituted under the Public Premises Act. The competent officer issued the impugned notice dated 19.11.2001 as per Annexure-Q u/s 4 of the Public Premises Act. Aggrieved by this notice at Annexure-Q, the Petitioner filed W.P. No. 5169/2002 on the file of this Court. This Court by its order dated 4.6.2002 disposed the writ petition with a direction to the Competent Authority to consider the preliminary objections filed by the Petitioner in so far as the jurisdiction of the authority in initiating the proceedings under the provisions of the Public Premises Act as a preliminary issue and to pass appropriate orders in accordance with law. The Competent Authority after hearing the arguments on both the side passed the impugned order dated 12.8.2002 as per Annexure-U and held that he is having the jurisdiction to proceed against the Petitioners under the provisions of the Public Premises Act. Hence this writ petition.

8. Sri K.G. Raghavan, learned senior Counsel for the Petitioner contend that Section 2(e)(v) of the Public Premises Act as amended by Amending Act 22 of 1999 is repugnant under Article 254(2) of the Constitution. The impugned Amending Act 22 of 1999 is discriminatory and violative of Article 14 of the Constitution. Petitioner is in lawful possession of the schedule property having acquired the same under two registered lease deeds dated 15.10.1973 and 13.9.1977 and as such they are not unauthorised occupants and therefore, the competent authority has no jurisdiction to initiate the proceedings under the provisions of the Public Premises Act. This Court in MFA 2445/1981 and W.P. 13379/1981 held that the lease in favour of the Petitioner as valid and the same

issue cannot be reagitated by the Wakf Board and as such the proceedings before the competent authority are hit by principles of res judicata. Though the schedule land belongs to the Wakf in question, the buildings on it are constructed by the Petitioners and the same cannot be the subject matter of eviction and the Petitioners cannot be considered as unauthorised occupants. The notice issued by the competent authority under Section; 4(1) of the Public Premises Act do not contain any reasons or grounds and as such the same is bad in law. The observation made by the Division" Bench of this Court in W.A. 2163/1990 to the effect that the resolution passed by the Wakf Board dated 3rd, 4th and 5th June 1981 will come into effect after disposal of the suit in O.S. No. 8041/1980 cannot be given effect to since by the time the suit came to be dismissed on 6.9.2000 the Wakf Act of 1954 was repealed. Further there is no corresponding provision under the present Wakf Act 1995 and the resolution passed by the Wakf Board is not revived and consequently the entire proceedings before the competent authority are without jurisdiction. Reliance is placed on several decisions.

9. Per contra, Sri Udaya Holla, learned senior Counsel for the Respondents contend that Article 254(2) of the Constitution is applicable only when there is repugnancy between the State legislation and Central legislation on the same subject. It is contended that in the Central legislation the Wakf Act, 1995 there is no provision to evict the lessee of Wakf property. The impugned Amending Act 22 of 1999 providing for eviction of a lessee of wakf property in the State legislation is not repugnant to the central legislation. The wakf created by the original owner Aga Ali Askar was a public Wakf wherein the usufructs of the corpus was to go for muslim community in general. This Court in MFA 2445/1981 while upsetting the order of the Trial Court made an observation that the opinion expressed in the order on question of fact should not be taken to have been expressed finally and the same shall not have any effect on final decision in the suit. Further the order of learned single Judge of this Court in W.P. 13379/ 1981 came to be merged in the order of Division Bench in W.A. 2163/1990. Therefore the observations made by this Court in MFA 2445/1981 and W.P. 13379/1981 will not operate as res judicata. Further it is contended that the notice issued u/s 4(1) of the Public Premises Act is preliminary stage and in the event of the Petitioner showing the authority that there is no merit in the claim of Respondent, then the proceedings will be dropped against them. Even otherwise, the impugned notice issued u/s 4(1) of the Public Premises Act contain the grounds on which the Petitioners are sought to be evicted. The impugned order passed by the competent authority holding that he is having the jurisdiction is in accordance with law. It is contended the termination of lease under the provisions of Wakf Act, 1954 get revived on dismissal of O.S. No. 8041/1980. Further u/s 32(2)(j) of the Wakf Act, 1995 the termination made under the old Act is saved. Reliance is placed on number of decisions.

10. Sri Ashok Haranahalli, learned Advocate General for the Respondent - State contends that the Wakf Act, 1995 deals with the better administration of wakfs and on the other hand the Public Premises Act, deals with summary eviction of

unauthorised occupants. Therefore the two Acts operate in different fields and as such there is no repugnancy. It is contended that the Doctrine of pith and substance is to be applied and the Court has to make every attempt to reconcile the provisions and endeavour is to be made for a harmonious construction. Reliance is placed on number of decisions.

11. Heard arguments on both the side and perused the entire writ papers. On the basis of pleadings and arguments on both the side, the following points will arise for my consideration:

i) Whether Section 2(e)(v) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 as substituted by the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, as per Amending Act 22 of 1999 is repugnant to the provisions of the Wakf Act, 1995 and violative of Article 14 of the Constitution?

ii) Whether the fifth Respondent - the competent authority has no jurisdiction to initiate proceedings against the Petitioner under the provisions of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974?

iii) Whether the notice issued u/s 4(1) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 is bad in law?

On Point No. 1

12. At this stage it is necessary to notice Article 254 of the Constitution and the law laid down by the Supreme Court on repugnancy. Article 254 reads as under:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.--(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State [***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

PROVIDED that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

The Supreme Court in the case of Deep Chand Vs. The State of Uttar Pradesh

and Others, held that repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

- i. Whether there is direct conflict between the two provisions;
- ii. Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
- iii. Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

The Supreme Court in the case of *State of Orissa Vs. M.A. Tulloch and Co.*, held:

Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of two statutes but by the mere existence of the two pieces of legislation.

The Supreme Court in the case of *M. Karunanidhi Vs. Union of India and Another*, held as under:

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

- i. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together operate in the same field.
- ii. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
- iii. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other. no repugnancy results.
- iv. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

The Supreme Court in the case of *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, held as under:

69. xxx xxx xxx The question of repugnancy under Article 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Article 254(1) has no application to the cases of repugnancy due to overlapping found between List II on the one hand and Lists I and III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non obstante clause in Article 246(1) read with the opening words "subject to" in Article 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that the expression "a law made by Parliament which Parliament is competent to enact" in Article 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as "List 1". But if Article 254(1) is read as a whole, it will be seen that it is expressly made subject to Clause (2) which makes reference to repugnancy in the field of Concurrent List - in other words, if Clause (2) is to be the guide in the determination of scope of Clause (1), the repugnancy between Union and State Law must be taken to refer only to the Concurrent field. Article 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters enumerated in the Concurrent List" govern both (a) and (b) or (b) alone. It is now settled that the words "with respect to" qualify both the clauses in Article 254(1) viz. a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The underlying principle is that the question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Article 254(1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field.

The Supreme Court in the case of State of Maharashtra Vs. Bharat Shanti Lal Shah and Others, held asunder:

48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by the State Legislature occupies the same field with respect to one of the matters enumerated in the Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in the Concurrent List. In such situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union law. Once it is proved and established that the State law is repugnant to the Union law, the

State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to the Union law.

13. Keeping the law laid down in the decisions referred to above, it is necessary to examine the fact situation in the present case. It is not in dispute that the schedule property is a Wakf property. Entry 28 in Concurrent List No. III of the Seventh Schedule of the Constitution specifies the charities and charitable institutions, charitable and religious endowments and religious institutions. The Central Government enacted the Wakfs Act, 1995. Section 51 of the Wakfs Act specifies the alienation/ transfer of Wakf property without sanction of Wakf Board as void. This section contemplates the transfer of Wakf property by way of sale, exchange, mortgage and gift. Section 52 contemplates recovery of Wakf property made by the Board in contravention of Section 51. Therefore a combined reading of Section 51 and 52 do not provide for recovery of properties leased by the Wakf Board. Further Section 54 of the Wakf Act specifies the removal of encroachment from Wakf property, A lessee is a person who is lawfully let in on a Wakf property. In the event of lessee committing breach of terms of lease or continuing in possession of Wakf property on the expiry of lease period will become an unlawful occupant. Thereby Section 51 to 54 of the Wakf Act do not empower the Wakf Board to evict a lessee who becomes unlawful occupant of Wakf property under the provision of Wakf Act.

14. Section 2(e)(v) of the Public Premises Act specifies the eviction of unlawful occupant of a registered Wakf. Thus there is no direct conflict between the Wakfs Act, 1995 and Section 2(e)(v) of the Public Premises Act. Though these two legislations are in relation to Entry 28 of Concurrent List they do not collide. As such there is no repugnancy between these two legislations.

15. The contention of learned Counsel for the Petitioner that the provisions of Public Premises Act, are repugnant to the provisions in Specific Relief Act, Transfer of Property Act and CPC is unacceptable to me. The recovery of immovable property either under Specific Relief Act or under Transfer of Property Act has to be done in accordance with the Code of Civil Procedure. Section 9 of CPC states that the Civil Court has jurisdiction to try all suits unless expressly or impliedly barred. The Supreme Court in *M. Karunanidhi Vs. Union of India and Another*, held that where the paramount legislation itself recognizes a restriction being introduced by another Law, the question of repugnancy does not arise. Section 16 of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act takes away the jurisdiction of the civil Courts to try matters relating to recovery of registered wakf property. Therefore, there is no question of repugnancy. Further, the Code of Civil Procedure, the Transfer of Property Act and the Specific Relief Act are general acts. On the other hand, the Public Premises Act is a special Act. The Supreme Court in *Jabbar Baig v. Darga H.A. Ulla Sha & N. Sha N. Sha* in Civil Appeal No. 3095/2005 disposed on 29.3.2006

held that the Wakf Act 1995 is a general Act and the Public Premises Act is a special Act and therefore the general Act cannot override the special Act and as such there is no repugnancy between the two Acts. Accordingly Point No. 1 is answered in negative.

On Point No. 2

16. Learned Counsel for the Petitioner contends that under the lease deed Annexure-A the Petitioner had the right to construct a hotel on the schedule property and the Petitioner has constructed the building after securing necessary permission from the concerned authorities. Therefore the hotel building constructed by the Petitioner on the schedule property with the permission of the Wakf is not a public premises u/s 2(e) of the Public Premises Act. Therefore the Respondent authority has no jurisdiction to entertain a petition under the provisions of the Public Premises Act. In support of this contention reliance is placed on a judgment of the Supreme Court in the case of Express Newspapers Limited v. Union of India 1986 (1) SCC 133. I decline to accept this contention of the learned Counsel for the Petitioner. The Supreme Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, considered the law declared in Express Newspapers Limited's case and held as under:

32. Shri Ganguli has placed reliance on the decision of A.P. Sen, J. in Express Newspapers Pvt. Ltd. v. Union of India and has submitted that in that case the learned Judge has held that cases involving relationship between the lessor and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case A.P. Sen, J. has observed that the new building had been constructed by the Express Newspapers Pvt. Ltd. after the grant of permission by the lessor, and, therefore, the Express Newspapers Pvt. Ltd. was not in unauthorised occupation of the same within the meaning of Section 2 (g) of the Public Premises Act. It was also held by the learned Judge that the Express Building constructed by the Express Newspapers Ltd. with the sanction of lessor on plots Nos. 9 and 10 demised on perpetual lease can, by no process of reasoning, be regarded as public premises belonging to the Central Government u/s 2(e) of the Public Premises Act, and therefore, there was no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under the provisions of the Public Premises Act. The aforesaid observations indicate that the learned Judge did not proceed on the basis that cases involving relationship of lessor and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case.

Therefore the law laid down by the Supreme Court in Express Newspapers Limited's case will not be of any assistance in support of the contention of the learned Counsel for the Petitioner. Further the Respondent Wakf Board contends that the Petitioner violated the conditions of terms of first lease deed and second lease deed was without prior sanction of the Wakf Board and as such the

occupation of the Petitioner is unlawful. Therefore I decline to accept the contention of the learned Counsel for thePetitioner.

17. It is contended that this Court in M.F.A. No. 2445/1981 and W.P. No. 13379/1980 held that the lease in favour of the Petitioner and the subsequent extension of lease as valid and the same is binding on both the parties. Therefore it is not open for the Respondents to re-agitate the validity of lease in favour of the Petitioner again under the provisions of the Public Premises Act. Therefore it is contended that the Respondent authority has no jurisdiction to proceed with the matter under the provisions of the Public Premises Act. I decline to accept this contention of the learned Counsel for thePetitioner.

18. This Court in M.F.A. No. 2445/1981 considered the interim order on temporary injunction passed in O.S. No. 8041/1980. This Court in the course of order made an observation as under:

However it is made clear that the opinion expressed in this order on questions of fact would not be taken to have been expressed finally and the same shall not have any effect on the final decision in the suit.

In view of this observation made by this Court in M.F.A No. 2445/ 1981 it is not possible to accept the contention of the learned Counsel for the Petitioner. Further the interim order in MFA No. 2445/1981 merges with the final order in O.S. No. 8041/1980.

19. It is further contended that the learned Single Judge of this Court in W.P. No. 13379/1981 held that the lease in favour of the Petitioner as valid and therefore it is now not open to re-agitate the very same issue. I decline to accept this contention. Against the order of learned Single Judge in W.P. No. 13379/1981Respondents filed a writ appeal in W.A. No. 2163/ 1990 and the same came to be dismissed with an observation as under:

After some arguments all that the learned Counsel for the Appellant wants is to observe that the rights of the parties will stand settled as per the final outcome of O.S. 8041/1980 pending on the file of the City Civil Judge, Bangalore it shall be so. We may also add should the suit be dismissed, the impugned order passed by the Wakf Board Annexure-I dated 3rd, 4th and 5th June 1981 will stand revived. Thereupon, it will be open to the writ Petitioner - Viswaram Hotels to raise all defences available to it to attack the order. Dismissed, subject to above observation.

Therefore the order of the learned Single Judge in W.P. No. 13379/ 1981 has merged with the order of the Division Bench in W.A. No. 2163/ 1990. Hence it is not open for the? Petitioner to contend that the finding of learned Single Judge in W.P. No. 13379/1981 is binding on the parties and that the same is not open for registration.

20. It is not in dispute that the Respondent - Wakf Board passed a resolution on 3rd/4th/5th June 1981 revoking the lease in favour of the original lessee under

the provisions of the then Wakf Act, 1954. Subsequently the Wakf Act, 1954 came to be repealed with effect from 01.01.1996 by enacting the Wakf Act, 1995. It is contended that the Wakf Board passed a resolution u/s 13(vi)(b) of the Wakf Act, 1954. The resolution passed under the Old Act could" be saved only if there is a corresponding section in the Wakf Act, 1995. Since there is no corresponding section in the new Wakf Act, 1995, the resolution passed by the Wakf Board in the year 1981 cannot be revived. I decline to accept this contention of the learned Counsel for the Petitioner. Section 15 of the old Wakf Act, 1954 corresponds with Section 32 of the new Wakf Act, 1995. Therefore the resolution passed by the Wakf Board under the provisions of Wakf Act, 1954 is saved and survives in the new Wakf Act, 1995.

21. Section 112 of the Wakf Act, 1995 specifies, notwithstanding the repeal of the Wakf Act, 1954 anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act. The Supreme Court in the case of Bansidhar and Others Vs. State of Rajasthan and Others, held as under:

13. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in I.T. Commr. U.P. v. Shot Sadiq and Sons AIR 1987 SC 1221:

...In other words whatever rights are expressly saved by the savings" provision stand saved. But, that does not mean that rights which are not saved by the "savings" provisions are extinguished or stand ipso facto terminated by the mere fact that new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897....

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section 5(6-A) and Chapter III-B of "1955 Act" so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant?s contention (a) is, in our opinion, insubstantial.

Further, the Supreme Court in the case of Commissioner of Income Tax Vs. Shah Sadiq and Sons, head as under:

12. In Commissioner of Income Tax (Central) Vs. B.P. (India) Ltd., , the Calcutta High Court was concerned with Section 25(3) of the 1922 Act. It is not necessary to set out in extenso the facts of that case. It suffices to say that the discontinuance of the Assessee's business in that case took place on 28th February. 1962. It could not be disputed that if the 1961 Act had not come into effect, the Assessee would have been entitled to get the relief as granted by virtue of Section 25(3) of the 1922 Act. It is observed that on a reading of Section 6 General Clauses Act, 1897, it was clear that unless a contrary intention appears, the repeal of an Act does not affect any existing right, privilege,

obligation or liability. It is, therefore, necessary to find out from the provisions of Section 297 of the 1961 Act which repeals the 1922 Act, whether the old rights and liabilities have been intended to be destroyed. There was no corresponding provisions under the 1961 Act dealing with the type of claims mentioned in Sub-section (3) or (4) of Section 25 of the 1922 Act. It was contended by the revenue that what was not said was destroyed and such intention would be apparent in that case from Section 297(2)(h) of the 1961 Act. The High Court referred to the 12th Report of the Law Commission, and speaking for the Court, one of us (Sabyasachi Mukharji, J.) said that it was not possible to accept the submission of for the revenue that whatever was not said was destroyed. The intention of Parliament to destroy a right or privilege under the old Act. There is no such provision in the new Act. In the instant case also, Section 75(2) dealt with a different scheme of carrying forward of loss but it did not speak of any accrued right. It did not destroy either by express words or by necessary implication the vested right given to an Assessee u/s 24(2) of the Act of 1922. Therefore, in law one finds that in Section 297 or within the four-corners of the General Clauses Act any intendment express or implied of destroying the rights created by Section 24(2) of carrying forward the losses to set off in subsequent years in case of speculation business that right cannot be said to be destroyed.

In view of the law declared by the Supreme Court in the decisions referred above, it is manifest that the legislatures have no intention to destroy the acts done by the Wakf Board under the old Wakf Act, 1954. In the absence of any such express intention the acts done under the old Act are saved under the new enactment. Therefore there is no substance in the contention of the learned Counsel for the Petitioner. Hence point No. 2 is answered in negative.

On point No. 3

22. On 23.9.1980 the Wakf Board issued a show cause notice to the Petitioner as per Annexure-G as to why legal steps should not be taken to declare the lease deed dated 15.10.1973 and the assignment deed dated 13.9.1974 as null and void. In this notice it is specifically stated that the Petitioners have committed breach of terms of lease and the Petitioners have become unauthorised occupants. On 14.05.1981 as per Annexure-G the Wakf Board issued a second show cause notice reiterating that the Petitioners are unauthorised occupants and that the Wakf Board will take steps to remove the unauthorised occupation. On 22.05.1981 as per Annexure-J Petitioners acknowledged the reset of show cause notice 14.05.1981 stating that they will send reply. Thereafter, the Wakf Board in their meeting held on 3rd, 4th and 5th of June 1981 passed a resolution as per Annexure-K declaring that the lease deed dated 15.10.1973 and the assignment deed dated 13.09.1974 as null and void and inoperative against the Wakf Board. Subsequently the Wakf Board gave a request to the fifth Respondent, competent officer to initiate proceeding against the Petitioners under the provisions of Public Premises Act. Accordingly fifth Respondent issued notice on 03.07.1981 to the Petitioners as per Annexure-L. The Petitioners being

aggrieved by the resolution passed by the Wakf Board and the notice issued by the fifth Respondent approached this Court in W.P. No. 1337/1981. This Court vide order dated 07.08.1990 allowed the W.P. No. 1337/1981 and quashed the resolution and the notice. The order of Learned Single Judge in W.P. No. 1337/1981 was questioned before a Division Bench of this Court in W.A. No. 2163/1990 and the same came to be dismissed with an observation that in the event of dismissal of O.S. No. 8041/1980 the resolution passed by the Wakf Board on 3rd, 4th and 5th of June 1981 stands revived. Thus, the order of learned single Judge in W.P. No. 1337/1981 came to be merged with the order of Division Bench in W.A. No. 2163/1990. These admitted facts establishes that the Petitioners are aware of the fact that the lease in their favour is declared null and void and the Respondent Wakf Board treated the Petitioners as unauthorised occupant and initiated proceedings for recovery of property under the provision of Public Premises Act.

23. After the disposal of WA. No. 2163/1990 the City Civil Court dismissed O.S. No. 8041/1980 on 06.09.2000 for default. After the dismissal of O.S. No. 8041/1980 the resolution passed by the Wakf board came to be revived and consequently the fifth Respondent issued a notice on 19.11.2009 as per Annexure-Q u/s 4(1) of Public Premises Act. In this notice it is specially stated that Petitioners are in unauthorised occupation of the schedule premises. Aggrieved by this notice at Annexure-Petitioners approached this Court in W.P. No. 5169/2002 for a writ certiorari to quash the notice Annexure-Q on the ground that the fifth Respondent has no jurisdiction. This Court vide order dated 04.06.2002 disposed W.P. No. 5169/ 2002 with a direction to the fifth Respondent to consider the preliminary objection filed by the Petitioner to the show cause notice in so far as jurisdiction of the authority in initiating proceeding and passed appropriate order in accordance in law. Consequently the fifth Respondent has now passed the impugned order holding that he has got the jurisdiction.

24. Learned Counsel for the Petitioner relying on a judgment of the supreme Court in New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, contend that an effective show cause can be filed when eviction is sought on a specified ground and the occupants must know the particulars in relation thereto. There is no dispute with regard to the law laid down by the Supreme Court in New India Assurance Company Ltd's case. As already stated the Wakf Board in their show cause notice dated 23.9.1980, second show cause notice dated 14.5.1981 and the resolution dated 3rd, 4th and 5th of June 1981 specifically stated that the Petitioners have committed breach of terms of lease and therefore they are in unauthorised occupation. It is on this basis, the eviction proceedings are initiated before the fifth Respondent competent authority. The competent authority in the show cause notice specifically stated that: he is of the opinion that the Petitioners are in unauthorised occupation and therefore on that ground he issued the show cause notice. Petitioners fought tooth and nail before this Court and the Apex Court with regard to the validity of the resolution and

the notice issued by the 5th Respondent. Thus the Petitioners are aware of the grounds on which their eviction is sought. Thus there is compliance of the mandatory requirement u/s 4(1) of the Public Premises Act as declared by the Supreme Court in New India Assurance Company Ltd's case.

25. A notice u/s 4(1) of the Public Premises Act is a preliminary stage. After issuance of the show cause notice the Petitioners are entitled to submit their reply opposing the grounds on which they are sought to be evicted. If the competent authority is satisfied with the reply submitted by the Petitioners then he may drop the proceedings. Learned single Judge of this Court in *The Headquarters Assistant, Mysore v. V.C. Hasthimal & Company* 1997 (5) Kar.L.J. 493 held that when specified officer "is of the opinion" that occupation of a person is unauthorised, he can issue show cause notice to that person, but he can pass order of eviction only when he satisfies after looking into the evidence and hearing the parties, that person is unauthorised occupant. Therefore, the issuance of show cause notice u/s 4(1) of the Act is a preliminary stage. The Petitioner is entitled for filing objection and the competent authority after hearing and considering the material on record and in the event of his satisfying that Petitioner is an unauthorised occupant then only there will be an order of eviction or otherwise the proceedings will be dropped. In the circumstances, the impugned notice issued by the fifth Respondent to the Petitioner is in accordance with law. Therefore, point No. 3 is answered in negative.

26. During the pendency of this writ petition this Court vide order dated 10.2.2005 passed an interim order directing the Petitioners to pay or deposit a sum of Rs. 6,00,000/- per month from January 2005. It is seen from the record that Petitioners have complied this direction issued by this Court up to date. In the facts and circumstances of this case, it is necessary to continue this order directing the Petitioners to continue to deposit Rs. 6,00,000/- per month till the termination of proceedings before the fifth Respondent - competent authority. In view of the fact that the litigation is pending for a long time, it is necessary to direct the fifth Respondent to dispose the matter pending before him as expeditiously as possible and in any event not later than three months from the date of receipt of copy of this order.

27. For the reasons stated above the Writ petition is hereby dismissed with no order as to costs.