

(2008) 12 MAD CK 0061

In the Madras High Court

Case No : C.R.P. (NPD) No. 3559 of 2008 and M.P. No. 1 of 2008

M. Ali Hussain

APPELLANT

Vs

The Tamil Nadu Wakf Board and Janab MES Ansari

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Section 5
Waqf Act, 1954 — Section 43(4A)
Waqf Act, 1995 — Section 6

Citation : (2009) 1 LW 753 : (2009) 2 MLJ 342

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Hema Sampath for Meenal, for the Appellant; Lakshmi Narayanan, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This Civil Revision Petition arises out of an order by which the Tamil Nadu Wakf Board removed the petitioner

from the post of Mutawalli u/s 64 of The Wakf Act, 1995.

2. I have heard Mrs. Hema Sampath, learned Senior Counsel appearing for the petitioner and Mr. V. Lakshmi Narayanan, learned Counsel

appearing for the first respondent-Wakf Board.

3. At the time when the revision petition came up for admission, I had a doubt about the maintainability of the revision petition, without first

exhausting the remedy before the Wakf Tribunal and hence I directed the learned Counsel on record for the petitioner to serve notice on the

Standing Counsel for the Wakf Board. Thereafter, I heard the counsel on both sides only on the question as to whether the petitioner has an

alternative remedy of approaching the Wakf Tribunal, against the order of the Wakf Board impugned in the revision petition. Therefore the present

order is confined only to this legal issue and I have not addressed myself to the merits of the controversy.

4. The doubt as to whether the petitioner could approach the Wakf Tribunal against the order impugned in the revision, has arisen on account of

the fact that Section 64(1) empowers the Board to remove a Mutawalli for various reasons enlisted in Clauses (a) to (k). Section 64(4) provides a

remedy of appeal against the order of removal passed u/s 64(1), only if such removal was for reasons contained in Clauses (c) to (j) of Sub-

section (1) of Section 64. In other words, the remedy of appeal available under Sub-section (4) of Section 64 is not available to a person who is

removed for reasons contained in Clause (a) or Clause (b) or Clause (k) of Sub-section (1). In the case on hand, the petitioner was removed on

the allegation of misappropriation and fraud, covered by Clause (k) of Section 64(1). Therefore the petitioner cannot avail the remedy of appeal

under Sub-section (4). The learned Senior Counsel for the petitioner and the learned Standing Counsel for the Wakf Board are in agreement on

this aspect namely that the petitioner cannot invoke Section 64(4) to file an appeal to the Tribunal, as he was removed in terms of Section 64(1)

(k).

5. But Section 83(2) of the Act, provides for a remedy of making an application to the Wakf Tribunal, to any Mutawalli or any person interested in

a Wakf or any other person aggrieved by an order made under the Act or the Rules. It is not clear whether a person who is debarred from filing an

appeal u/s 64(4), could indirectly go before the Tribunal by taking recourse to Section 83(2). This lack of clarity has led to the present discussion.

6. The Wakf Act, 1995, was enacted after a lot of deficiencies in the working of the Wakf Act, 1954 was brought to the fore and the attempt

made to set them right by the Amendment Act, 1984 failed on account of strong opposition. The present Act creates four power centres viz., (i)

the Chief Executive Officer, (ii) the Wakf Board, (iii) the Wakf Tribunal and (iv) the Government and clearly demarcates the area of operation of

these power centres. Some of the powers conferred are administrative in nature and some are quasi judicial or judicial in nature. As a

consequence, some of the powers are exerciseable in original and some are appellate or revisional. They can be presented in a tabular form as

follows:

Original powers Exerciseable by Appellate or revisional Exerciseable by
Dispute under Sections 6 The Tribunal by way of a The decision of the
and 7 whether a particular suit instituted by the Board Tribunal is final under
property specified as a or Mutawalli or any Sections 6(1) and 7(1).

Wakf property in the list person interested therein.

of Wakfs is a Wakf

property or not? Or

whether it is a Shia or

Sunni Wakf?

Removal of chairperson or State Government

member of the Board u/s

20

Power to give directions The Board The scheme of The Tribunal

for administration of management settled by the

Wakfs and settle schemes Board under clause (d) or

for the management of a any direction issued under

Wakf, to appoint and to clause (e) of Section 32(2)

remove Mutawallis, to can be challenged by way

recover lost properties, of a suit in a Tribunal u/s

etc., u/s 32(2) 33(3).

Note:-This is by way of a

suit and not by way of

appeal or revision.

The power to take over The Board

Wakf property for

undertaking development

works, u/s 32(5).

An order u/s 33(3) The Chief Executive Appealable u/s 33(4). To the Tribunal within 30

directing a Mutawalli or Officer. days and upon deposit of

any Officer or other the entire amount ordered

employee of a Wakf to by the CEO (the proviso

make payment of any to Section 33(4) makes it

amount misappropriated, clear that the Tribunal has

misapplied or fraudulently no power to grant stay).

retained or the amount of The Tribunal's order is

improper expenditure final u/s 33(5).

incurred by him.

To pass conditional order On the application of the

of attachment of any CEO to the Tribunal u/s

property of a person 35(3).

against whom an order

had been passed u/s

33(5).

To recover properties On an application to the

which have been ceased Tribunal by the Board u/s

to be used for religious 39(3).

purpose or instruction or

charity, u/s 39(3).

Power u/s 40(1) to decideBy the Board u/s 40(1). Subject to the decision of The Tribunal.

whether a particular the Tribunal u/s 40(2).

property is a Wakf

property or not or whether

a Wakf is a Shia or Sunni

Wakf?

Power u/s 48(1) to The Board. Questionable u/s 48(2) by The Tribunal (whose

examine the auditor's the Mutawalli or any other decision is final u/s 48(4).
report in relation to a person aggrieved by the
Wakf and to pass orders order of the Board, within
for the recovery of the 30 days.
amount certified by the
auditor u/s 47(2).

Sale of Wakf properties The Board. Questionable before the The Tribunal.
with the sanction of the Tribunal under the second
Board u/s 51(2). proviso to Section 51(2).

Power of approval for the The Board. Appealable to the TribunalThe Tribunal.
utilisation or investment of within 90 days u/s 51(5).
the amount realised by the
sale or exchange of any
Wakf property u/s 51(3).

The power u/s 52(2) to The Collector at the Appealable u/s 52(4) The Tribunal.
direct a person in request of the Board. within 30 days.
possession of a property
transferred to him without
the previous sanction of
the Board.

Power u/s 54(3) to The Chief Executive A person aggrieved by theThe Tribunal.
remove encroachment Officer. order u/s 54(3) may
from Wakf property. institute a suit not
necessarily against such
order, but to establish that
he has a right, title or
interest in the property.
But Lessees, Licensees
and Mortgagees cannot
institute a suit u/s 54(4).

Direction to the The Sub Divisional
encroacher u/s 55 to Magistrate on an
remove the encroachment.application by the Chief
Executive Officer, after an
order is passed u/s 54 (3).

Power to impose fine by Metropolitan Magistrate
way of penalty u/s 61(1) or Judicial Magistrate of
or imprisonment u/s 61(2).First Class.

Power to remove The Board. Appealable u/s 64(4) The Tribunal. While
Mutawalli u/s 64(1). within one month providedhearing an appeal, the
the removal is for the Tribunal has powers to
reasons enlisted in clauses appoint a Receiver to
(c) to (j) of Sub-section manage the Wakf, pending
(1) of Section 64. a decision on the appeal.

Power to assume direct By the Board. Revisable suomotu or on The State
Government.

management in the Wakf an application by a person
u/s 65(1). interested in the Wakf, u/s
65(2).

Power to appoint and to The State Government.
remove Mutawalli, under
special circumstances, u/s
66.

Power to supersede the The Board. Appealable under the The Tribunal.
Committee of proviso to Sub-section (4)
Management, u/s 67(2). of Section 67, within 60
days.

Power to remove a The Board. Appealable within 30 daysThe Tribunal.
member of the Committee under the second proviso
(instead of superceding the to Sub-section (6) of

entire Committee) u/s Section 67.

67(6).

Power u/s 68(2) to order A Magistrate of First Sub-section (6) of Section a removed Mutawalli or Class. 68 clarifies that there is no member to deliver bar for the institution of a possession of records, civil suit by a person accounts and properties of aggrieved by an order the Wakf to their passed under this Section, successors. to establish his right, title and interest in the properties specified in the order of the Magistrate.

Power u/s 69(1) either The Board. Appealable within 60 daysThe Tribunal. suomotu or on an under the first proviso to application by not less Sub-section (3) of Section than 5 persons to frame a 69.

scheme for the administration of a Wakf.

To hold an enquiry under The Board.

Sections 70 and 71 into the administration of the Wakf.

Assessment of the net Chief Executive Officer. Appealable within 30 daysThe Board.

annual income of a Wakf, u/s 72(7).

u/s 72(6) to the best of

judgment of the Chief

Executive Officer, for the

purpose of determining the

annual contribution

payable to the Board.

To direct u/s 73(1), BanksChief Executive Officer. Appealable by the Bank The Tribunal.

or other persons with or other person, within 30

whom Wakf monies are days u/s 73(3).

lying, to pay the

contribution leviable u/s

72, out of the monies in

their custody. (like a

Garnishee order)

Application for the The Tribunal. No appeal lies against a High Court.

determination of any decision of the Tribunal u/s

dispute, question or other 83(7). But the order of the

matter relating to the Tribunal is revisable both

Wakf, u/s 83(2), by any suomotu and on an

Mutawalli, person application of the Board

interested in a Wakf or or any person aggrieved,

any other person by virtue of the proviso to

aggrieved by an order Sub-section (9) of Section

made under the Act or the 83.

Rules.

Power u/s 94 to direct the The power exerciseable

Mutawalli to pay an on an application by the

amount necessary for the Board to the Tribunal, if

performance of any act the obligation is of pious,

which such Mutawalli has religious or charitable

failed to perform. nature. The power is also

exerciseable on an

application by any person

interested in the Wakf, if

the failure of the Mutawalli
is to discharge any other
duties imposed upon him
under the Wakf.

Power to supersede the State Government.

Board u/s 99(1).

7. Apart from conferring original, appellate and revisional powers upon the Chief Executive Officer, the Board, the Tribunal and the State

Government, the Wakf Act, 1995, (i) imposes certain bars in relation to jurisdiction of Civil Courts and (ii) also prescribes certain preconditions

for the exercise of jurisdiction by Civil Courts. They are as follows:

(i) Section 85 bars any suit or other legal proceedings being laid in any Civil Court in respect of any dispute, question or other matter relating to

any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

(ii) Section 87 bars the institution, commencement or continuation of any suit, appeal or other legal proceedings, for the enforcement of any right on

behalf of an unregistered Wakf.

(iii) Section 88 bars the jurisdiction of the Civil Court from entertaining a challenge to a notification or order or decision made by the Central

Government or the State Government under the Act, except as expressly provided by the Act.

(iv) Section 89 which is similar to Section 80 CPC, provides for the service of a notice of a duration of 2 months upon the Board, before a suit is

instituted against the Board.

(v) Section 90 provides for the service of notice upon the Board in every suit or other proceedings instituted in a Court or Tribunal, relating to title

to or possession of a Wakf property. If Board is not served with such a notice contemplated u/s 90(1), the Board has the right to seek a

declaration that the decree or order passed in the suit or other proceedings to be void.

(vi) Section 92 enables the Board to appear and plead as a party to every suit or proceedings in respect of a Wakf or Wakf property.

(vii) Section 93 imposes a bar upon the parties to compromise any suit or

proceedings in any Court by or against a Mutawalli relating to a Wakf property, except with the sanction of the Board.

(viii) Section 95, similar to Section 5 of the Limitation Act, empowers the Appellate Authority prescribed under the Act, to entertain any appeal beyond the period of limitation.

8. The above scheme of the Act suggests that the law makers intended to have Special Tribunals constituted by the State Government for the

determination of any dispute and to confer wide powers upon those Tribunals, so that the role of the Civil Court is kept to the minimum, though the

Act did not impose an absolute bar upon the jurisdiction of Civil Courts. This can be appreciated by a combined reading of Sections 83, 84 and

85 of the Act, which read as follows:

83. Constitution of Tribunals, etc. -- (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may

think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local

limits and jurisdiction under this Act of each of such Tribunals.

(2) Any Mutawalli, a person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may

make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the

Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

(3) Where any application made under Sub-section (1) relates to any Wakf property which falls within the territorial limits of the jurisdiction of two

or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the Mutawalli or any one of the

Mutawallis of the Wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made

to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute,

question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Wakf or any other person interested in the Wakf

or the Wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other

matter relating to such Wakf or Wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the

Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which

the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the

application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District,

Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil

Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil

Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with

the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records

relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness,

legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.--Whenever an application is made to a Tribunal

for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as

possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such

decision to each of the parties to the dispute.

85. Bar of jurisdiction of Civil Courts.--No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other

matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

9. In *Intazamiya Committee Id Gah, Morar Vs. M.P. Wakf Board, Bhopal*, a question arose before a single Judge of the Madhya Pradesh High

Court (Gwalior Bench) as to whether the Civil Court's jurisdiction was barred against an order removing a Mutawalli. The case arose under the

M.P. Wakf Act, 1954. The provision for removal of Mutawalli u/s 43 of the 1954 Act, was similar to the provisions of Section 64 of the present

1995 Act. Section 43 (4A) of the 1954 Act provided for a remedy of appeal to the Tribunal as against the order of removal passed under any of

the Clauses (d) to (l) of Sub-section (1) of Section 43. The case of the petitioner before the Madhya Pradesh High Court fell under one of those

clauses and hence was appealable. Therefore the Madhya Pradesh High Court held that the Civil Court had no jurisdiction over a dispute or

question over which the Tribunal had jurisdiction. In other words, the Civil Court had only residuary jurisdiction over matters which did not fall

within the jurisdiction of the Tribunal. If this principle is accepted and applied to the case on hand, the petitioner will be entitled to file a civil suit,

since his case falls u/s 64(1)(k) and hence not appealable to the Tribunal u/s 64(4). But such a conclusion may be disastrous for the reason that the

deprivation of the right of appeal to the Tribunal u/s 64(4) to persons removed u/s 64(1) (a) or (b) or (k) was not with an intention to confer upon

them a much better right in the form of a civil suit. Section 64(1) (a), (b) and (k) cover cases of serious nature than those covered by Clauses (c) to

(j). This cannot be lost sight of, before deciding the forum of choice available to the petitioner.

10. In *A.M. Ali Akbar v. Keelakarai South Street Jamath Masjid Paripalana Committee* AIR 2001 Mad 431, Justice D. Murugesan took a view

that the words ""any dispute"" appearing in Section 83(1) cannot mean ""every and whatever dispute"" relating to the Wakf and that one group of

members of a Wakf are not entitled to approach the Tribunal for an injunction restraining the other group from interfering in their management.

11. But in Aliyathamada Beethathabiyyapura Pookoya Haji Vs. Pattakkal Cheriyaakoya and Others, , a Division Bench of the Kerala High Court

held that the words ""any dispute, question or other matters relating to Wakf or Wakf property"" appearing in Section 83(1) are wide enough to

cover not only matters which are specifically conferred on the Tribunal, but also would take within its sweep, ""any dispute, question or any other

matter relating to Wakf or Wakf property"". Overruling a decision of a single Judge of the same Court, the Division Bench of the Kerala High Court

held that the intention of the Legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is the Wakf Tribunal

and not by the Civil Court. In paragraph-14 of its decision, the Division Bench held that the powers of the Wakf Tribunal are all pervasive and that

the Tribunal could entertain appeals and applications and resolve all disputes, questions or other matters relating to Wakf, Wakf property.

12. In I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others, , a Division Bench of this Court comprising of Hon''ble Judges Markandey

Katju, C.J., and D. Murugesan, J held that the words ""any dispute, question or other matters relating to a Wakf or Wakf property"" are words of

very wide connotation and that since the Tribunal has all the powers of the Civil Court u/s 83(5), the Tribunal would also have the power to grant

injunctions under Order XXXIX, Rules 1 and 2. The Division Bench went to the extent of holding in paragraph-10 that a party can approach the

Wakf Tribunal even if no order has been passed under the Act.

13. In M.P. Wakf Board Vs. Subhan Shah (D) By LRs. and Others, , the Supreme Court held that the power to frame a scheme for the

management of the affairs of a Trust vested only in the Wakf Board and not on the Tribunal. While taking the said view, the Supreme Court held

that the Wakf Act is a self contained Code and that the Tribunal is an adjudicatory body whose decision is declared final and binding.

14. In Thorayil Juma Masjid M. Committee v. Wakf Board 2007 (2) KLT 231, a Division Bench of the Kerala High Court held that an order

passed by the Wakf Board in exercise of its appellate jurisdiction u/s 72(7) of the Act, cannot be challenged before the Wakf Tribunal u/s 83. The

reason given by the Division Bench was that the Act affixed a seal of finality on the order passed by the Wakf Board as an Appellate Authority u/s

72(7) and that therefore Section 83 cannot be invoked against such an order which has attained finality.

15. But interestingly, in another decision in *Madeena Masjid v. Kerala Jamaath Islami Hind* 2007 (3) KLT 800, another Division Bench of the

Kerala High Court (to which one of the learned Judges who was a party to the decision in *Thorayil Juma Masjid* case was also a party) held that

the law on the point of jurisdiction of the Wakf Tribunals was well settled by the Division Bench decision in *Pookoya Haji Vs. Cheriya Koya*, . In

other words, the latter Division Bench quoted with approval the view taken by the earlier Division Bench that the words ""any dispute, question or

other matters"" appearing in Section 83 are wide enough to include within its sweep not only the matters specifically conferred on the Tribunal, but

also any other dispute, question or matter.

16. Thus, in effect, we have on hand two Division Bench judgments of the Kerala High Court and one Division Bench judgment of this Court

taking the view that the jurisdiction of the Wakf Tribunals is very wide. But Mr. V.Lakshminarayanan, learned Counsel for the Tamil Nadu Wakf

Board, contended that there is a small hitch in accepting the contention that as against an order of removal of a Mutawalli on the ground of

misappropriation, he would be entitled to file an application before the Tribunal u/s 83(1). As we have seen earlier, Section 64(4) provides for an

appeal to the Tribunal against an order of removal passed under any of the Clauses (c) to (j) under Sub-section (1) of Section 64. Section 64(4)

does not provide for a remedy of appeal to a person who is removed from the post of Mutawalli for the reasons stated in Clauses (a), (b) and (k).

These three clauses deal with (i) persons who are convicted more than once for an offence u/s 61(ii) persons who are convicted for an offence of

criminal breach of trust or any other offence involving moral turpitude and (iii) persons guilty of misappropriation or fraudulently dealing with the

property of the Wakf. Clauses (c) to (j) list out either disqualifications or disabilities or violations of certain prescriptions. The scheme of Section

64(1) and Section 64(4) shows that the remedy of appeal is provided to persons who suffer from disqualifications or disabilities and the violators of certain prescriptions. Thus the intention to deprive a statutory remedy of appeal, to perpetrators of serious offences or violations, is writ large on the face of Section 64(4). Therefore, if a remedy of approaching the Tribunal u/s 83 is held available to such persons, it would, according to the learned Counsel for the respondent, confer a wider or larger remedy to such persons. In other words, what is specifically excluded u/s 64(4) would become available u/s 83. It would cease to be a deprivation of a statutory remedy of appeal to those persons, but would amount to conferment of a better statutory remedy. Therefore the learned Counsel for the respondent submitted that an interpretation to Section 83 should not lead to such a disastrous result.

17. The fear or apprehension expressed by the learned Counsel for the Wakf Board cannot be brushed aside lightly. The powers of the Tribunal u/s 64(4) are appellate in nature, while the powers u/s 83(2) are original in nature. A period of limitation of one month is prescribed u/s 64(4) for filing an appeal. But u/s 83(2), the prescription of a period of limitation is left to the rule making power of the Government and it appears that no rules have been framed stipulating the period of limitation for filing an application u/s 83. Therefore the remedy u/s 83(2) appears to be a larger and better remedy than the one prescribed u/s 64(4). It could not certainly have been the intention of the law makers to confer a better remedy for those removed from the post of Mutawalli for misappropriation and fraud and to confer a less effective remedy upon those removed on account of disqualifications and disabilities.

18. But unfortunately, the above contention, though justified fairly, cannot be accepted. If the above contention is accepted and it is held that a person who is removed from Mutawalliship for the reasons contained in Section 64(1) (a), (b) or (k) has neither a remedy of appeal u/s 64(4) nor a remedy of making an application u/s 83(2), such a person would automatically have the benefit of approaching the Civil Court, by way of suit. As we have seen from the provisions of Section 85, the jurisdiction of Civil Court to entertain any suit or other legal proceeding is barred only in respect of any dispute, question or other matter relating to any Wakf, Wakf

property or other matter which is required by or under this Act to be determined by a Tribunal. In other words, the jurisdiction of the Civil Court stands ousted only in respect of matters which fall within the purview of the Tribunal. As a corollary, a dispute which cannot go before the Tribunal either by way of an appeal u/s 64(4) or by way of an application u/s 83(2), can certainly be raised before a Civil Court. If it could not have been the intention of the Parliament to make the remedy u/s 83(2) available to a particular category of persons on account of the seriousness of the allegations against them, equally, it could not also have been their intention to leave it to the jurisdiction of the Civil Court. After all, the logic in the argument of the learned Counsel for the respondent cuts at both sides. The original remedy u/s 83(2) is certainly wider than the appellate remedy u/s 64(4). But the remedy before a Civil Court is still wider since the powers of a Civil Court are larger than that of a Tribunal. This is very clear from Sub-sections (5) to (7) and (9) of Section 83 itself. Though Sub-section (5) makes the Tribunal a Civil Court by a deeming provision and confers all the powers under the CPC upon the Tribunals, Sub-section (6) makes it clear that notwithstanding anything contained in CPC, the Tribunal shall follow such procedure as may be prescribed. Sub-section (7) makes every decision of the Tribunal final, having the force of a decree of a Civil Court. Such a decision is also made executable, under Sub-section (8), like a decree of a Civil Court, in accordance with the provision of CPC. Sub-section (9) makes it clear that no appeal would lie against a decision of the Tribunal, though the proviso under Sub-section (9) makes the decision of a Tribunal, revisable by this Court. Therefore if a person is held not entitled either to a remedy of appeal or to a remedy of filing a original proceeding before the Wakf Tribunal, there would be no bar for him to approach the Civil Court. Before a Civil Court, a person has unlimited choices, both by way of procedures and by way of remedies. In simple terms, shutting the small door of a Tribunal to a person, which results in opening a much bigger door in the Civil Court for him, is more disastrous than the consequence that the learned Counsel for the respondent fears. Therefore the Court has to adopt such an interpretation to Section 83(2) on the scope of the jurisdiction of the Tribunal, that would subserve the purpose for which the Tribunal was constituted under the Act. Though the

Act did not completely take away the jurisdiction of the Civil Court, the scheme of the Act is aimed at keeping the role of the Civil Court to the

barest minimum. Therefore unless the words "any dispute, question or other matter" appearing in Section 83(2) are construed to have a wider

connotation, the purpose of creation of a Special Tribunal under the Act would be defeated.

19. In Maxwell on The Interpretation of Statutes, Twelfth Edition by P.St.J.Langan, the learned Author states as follows:

Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system

which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the

working of the system *Shannon Realities, Ltd. v. Ville de St. Michel* (1924) A.C. 185, per Lord Shaw at pp. 192, 193. And See *Engineering*

Industry Training Board v. Samuel Talbot (Engineers) Ltd (1969) 2 W.L.R. 464

20. In *Modern School Vs. Union of India (UOI) and Others*, , the Supreme Court quoted from G.P.Singh's *Principles of Statutory Interpretation*,

Ninth Edition, 2004, the following passage:

4. Regard to Consequences:

If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences

resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly

or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference

should be given to that construction which avoid such results. This rule has no application when the words are susceptible to only one meaning and

no alternative construction is reasonably open.

21. To the above list, in my considered view, one more rule of construction has to be included viz., that when there are two alternative

interpretations available, both of which result in undesirable consequences, the Court would prefer that interpretation which would result in the least

undesirable consequence rather than the one which would result in the most undesirable consequence. In this case, if the petitioner is held not

entitled to a remedy u/s 83(2), he would be entitled to move the Civil Court,

which could not have been the intention of the legislature.

22. Moreover, it may be seen from the Tabular Form, given in paragraph-6 above, that wherever there was a dispute with regard to property, the

Act prescribed original proceedings before the Tribunal as the remedy. Sections 6 and 7 conferred powers upon the Tribunal to try such disputes

by way of a suit. Similarly, the power to issue directions for the administration of Wakf and to settle Schemes for the Management of the Wakf,

though conferred u/s 32 upon the Board, the Tribunal was conferred powers u/s 35(3) to decide a challenge to the Scheme so settled by the

Board. Likewise, the question as to whether a property is a Wakf property or not, decided u/s 40(1) by the Board was made subject to the

decision of the Tribunal u/s 40(2). In short, the Tribunal is conferred even with original powers, wherever the disputes related to Wakf properties.

Therefore when a Mutawalli is removed on a charge of misappropriation, the same would naturally relate to a property of the Wakf. Consequently,

the interpretation entitling such a person to invoke the jurisdiction of the Tribunal u/s 83(2) would be consistent with the other provisions and the

entire Scheme of the Act.

23. The fear that in an original application u/s 83(2), a person will have more scope and more space, is to some extent, allayed by Sub-section (6)

of Section 83. As stated earlier, Sub-section (6) contains a non obstante clause and says that the Tribunal can follow such procedure as may be

prescribed. It is upto the State Government to frame rules in exercise of the power conferred by Section 109(2)(xxiii) of the Act, prescribing a

procedure that is summary in nature, for the Tribunal to follow. While the procedure to be followed by a Civil Court cannot be curtailed by the

State Government (except by way of amendments to CPC), the procedure to be followed by a Tribunal constituted u/s 83(1), can always be

restricted by issuing rules u/s 109.

24. In the light of the above discussion, I hold that a person who is removed from the Office of Mutawalli, under Clauses (a), (b) or (k) of Sub-

section (1) of Section 64, though not entitled to file an appeal u/s 64(4), will be entitled to file an application before the Tribunal, u/s 83(2). Hence

this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. It is open to the petitioner to

approach the Tribunal u/s 83(2). The Registry is directed to return the original order impugned in the Civil Revision Petition, to the learned Counsel for the petitioner to enable her to approach the Tribunal.