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**(2003) 07 MP CK 0027**

**In the Madhya Pradesh High Court**

**Case No : Civil Revision No. 954 of 2000**

Madhya Pradesh Wakf Board

APPELLANT

Vs

Abdul Rais and Others

RESPONDENT

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**Date of Decision : 04-07-2003**

**Acts Referred:**

Waqf Act, 1954 — Section 5, 6  
Waqf Act, 1995 — Section 6, 7

**Citation : (2003) 4 MPHT 370**

**Hon'ble Judges : A.M. Sapre, J**

**Bench : Single Bench**

**Advocate : None, for the Appellant; S.M. Jain, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

A.M. Sapre, J.—This is a revision filed by Madhya Pradesh Wakf Board u/s 83(9) proviso of the Wakf Act, 1995 against the order dated 16-4-2000 passed by Wakf Tribunal, Bhopal in Case No. 1417 of 1996. Facts in brief are these.

2. In exercise of powers conferred by Section 5(1)(2) of Wakf Act of 1954, the Board on 13-9-1985 published in the official Gazette declaring that the property specified in the Gazette (suit property) is a Wakf Property situated in District Ujjain.

3. On 27-12-1996, the respondents filed an application before the Tribunal constituted under the Wakf Act u/s 6/7 of the Act of 1995 seeking a declaration that the suit property specified in the official Gazette (Wakf List), dated 13-9-1985 referred supra, is not in fact a Wakf Property but the said property exclusively belongs to respondents (applicants before the Tribunal). In other words, the respondents sought a declaration that applicants are the Bhumiswami of the suit properties (agricultural lands) and hence, the declaration contained in the official Gazette (Wakf List) published on 13-9-1985 that it is a Wakf property is bad in law and not binding on the applicants. The defence of the Wakf Board

was denial of applicants title on merits and assertion of the Wakf Property on the strength of the notification issued on 13-9-1985. It was also alleged that the application is hopelessly barred by time because the suit was not filed within one year from the date of publication of the Gazette as contemplated u/s 6 of the Act of 1954 as it then was in force. The Tribunal by impugned order allowed the application made by the respondents and while overruling the objection raised by the petitioner held that the application is within time and secondly, the respondents are able to prove their title on facts and hence, are entitled to seek a declaration in their favour. As a consequence, it was held that declaration made in Gazette that suit property is a Wakf Property is bad and that applicants (respondents) are the Bhumiswami of the suit land. It is against this order, the non-applicants, i. e., Wakf Board has filed this revision u/s 83(9) proviso of the Wakf Act, 1995.

4. None for the petitioner. Shri S.M. Jain, learned Counsel for respondent Nos. 1 to 3. Record perused and submissions of learned Counsel for the respondents heard.

5. Having perused record of the case and having heard submission of learned Counsel for the respondents, I am inclined to allow the revision and set aside the impugned order resulting in dismissal of the application made by the respondents before the Tribunal.

6. In my considered opinion, the application made by the respondents u/s 6 read with Section 7 of the Act of 1995 was hopelessly barred by time and hence, it merits dismissal on this short ground. Section 6 (1) of the repealed Act, 1954 which has its application to the facts of this case in clear terms provides that in the case of the list of Wakf relating to any part of the State and published after the commencement of this Act, no such suit shall be entertained after the expiry of one year from the date of publication of the list of Wakfs u/s 5 (2) *ibid*. In other words, limitation to file suit to seek a declaration as to whether a particular property is a Wakf property or not, is one year and it begins from the date of publication of the list of Wakf. So cause of action to file suit u/s 6(1) of the Act arose the moment, list of Wakf has published. The applicant, i.e., any person interested in the property or claiming to have an interest in the property should have filed a suit within one year from the date of publication. Indeed, there is no room for any other interpretation than the one placed by this Court on this issue because neither there is any ambiguity in the wordings of Section 6 of the Act, nor there is any other legislative intent than the one which is taken note of *supra*.

7. It is not in dispute that in the present case, the list of Wakf as contemplated u/s 5 of the Act in respect of the suit property declaring the same to be the Wakf property was published on 13-9-1985. In view of this, the cause of action to file suit u/s 6 of the Act arose on 13-9-1985 and hence, the suit could validly be filed by the respondents on or before 13-9-1986, i.e., one year from 13-9-1985.

8. Instead it was filed on 27-12-1996, i.e., after almost ten years from the date

on which the limitation to file suit expired. Indeed, when the suit itself was barred by limitation, the respondent had no power to file an application u/s 6/7 of the amended Wakf Act, 1995 before the Tribunal. It was thus, not maintainable and equally hopelessly barred by time and hence, had to be dismissed on the ground of it being barred by limitation and not maintainable.

9. In my view, the aforesaid aspect was not looked into by the Tribunal while considering the objection raised by the petitioner and thus, committed an error of law. Once, this Court uphold the objection of the petitioner thereby holding that the application filed by the respondents u/s 6/7 of the Act before the Tribunal on 27-12-1996 was not maintainable apart from it being hopelessly barred by time, it is not necessary to consider other issue on merits.

10. Accordingly and in view of aforesaid discussion, the revision succeeds and is allowed. Impugned order is set aside and the application filed by the respondents, stand rejected.

No costs.