

(1996) 02 MP CK 0029

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1010 of 1995

Subhan Shah through Lrs. Ramjan Khan and Others

APPELLANT

Vs

Madhya Pradesh Wakf Board and Others

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Waqf Act, 1954 — Section 27, 55(2), 55(5), 55C, 55G

Citation : AIR 1997 MP 8

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : B.K. Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—This order shall govern disposal of C. R. No. 847/95 (Ramjan Shah and others v. M. P. Wakf Board and others), C. R. No. 893/95 (Siraj and another v. Chandmal) C. R. No. 894/95 (Siraj and others v. Suresh Chandra) and C. R. No. 910/95 (Hussain Shah v. M. P. Wakf Board) as in all these revision petitions common question of law falls for determination.

2. C. R. No. 847/95 and C. R. No. 1010/95.

In C. R. No. 847/95, plaintiff-petitioners impugn the order dated 26-7-95 passed by 13th Additional District Judge, Indore, passed in Civil Misc. Case No. 15/93 whereby he directed for transfer of the aforesaid Miscellaneous Case to the Tribunal. In C. R. No. 1010/95 plaintiffs-petitioners impugn the order dated 2-8-1995 passed by the Fourth Civil Judge Class I, Indore, in Civil Suit No. 15-A/93 whereby the aforesaid suit has been transferred to the Tribunal, as constituted under the Wakf Act, 1954. Both the orders arise from the same suit. Facts giving rise to both the petitions are that the plaintiff filed the, suit praying relief inter alia for declaration that "Majar Hajrat Naharsa Wali" at village Khajrana is not a Wakf property and consequently orders dated 24-4-68 and

13-4-69 passed by the M. P. Wakf Board, Bhopal, is illegal and inoperative. According to plaintiffs, their ancestors were "Mutwalli" of the Majar. According to the plaintiffs dispute arose, as widow of Mehub Shah, defendant No. 3, tried to intervene in the management of the Majar, which according to the plaintiff was not permissible according to Muslim Law. Defendant No. 3, filed an application before the Tahsildar, Indore, in which the plaintiff filed objections and the same was dismissed by order dated 9-4-67. Thereafter, aforesaid Munnibai, defendant No. 3, filed an application before defendant No. 1, M. P. Wakf Board, making a request to take under its control the Majar. This was done without the consent of the plaintiffs. Defendant No. 1 included the aforesaid property in the Register at Serial No. 25 on 18-3-68. When plaintiffs came to know about the same they filed an objection on 5-4-1968. After several reminders, defendant No. 1 ultimately by its communication dated 24-4-1968 held that inclusion of "Majar" in the register of Wakf Property is correct. Consequently, on the basis of the aforesaid basic pleading, plaintiffs sought the relief as stated above.

3. Civil Revision No. 893/95 Defendants-petitioners have preferred this revision petition against the order" dated 25-5-95 passed by the Civil Judge Class II, Thandla, District Jhabua in Civil Suit No. 12-A/94 whereby prayer made by them to transfer the case to the Tribunal constituted under the Wakf Act has been declined. Further order dated 3-8-95 passed by the Additional District Judge, Jhabua, in Misc. Civil Appeal No. 3/95, whereby the appeal preferred by the defendant against the grant of ad interim injunction in favour of the plaintiff has been dismissed.

Short facts giving rise to the present revision-petition are that the plaintiff filed suit for permanent injunction restraining the defendants or their agents from dismantling the roof of the shop or cause any damage to it. According to the plaintiff defendant No. 1 Daodi Bohara Jamat Committee is the owner of the suit property, which is a shop adjacent to the Mosque. The plaintiff is the tenant and doing his business in the suit premises. The defendants demolished the rooms of the first floor and disconnected the plaintiffs electric connection. In the suit, prayer for ad interim injunction was also sought and the same was granted by the Civil Judge by its order dated 27-6-95 and affirmed by the Appellate Court by order dated 2-8-95. Defendants moved an application for transfer of the case to the Tribunal and by the impugned order dated 2-5-95 the same was rejected,

4. Civil Revision No. 894/95 :

Defendants-petitioners are aggrieved by order dated 26-5-95 passed by Civil Judge Class II Thandla, District Jhabua, in Civil Suit No. 23-A/94 whereby the suit in question has been declined to be transferred to the Tribunal constituted under the Wakf Act.

Short facts giving rise to the present revision-petition are that the plaintiff filed suit for permanent injunction restraining the defendants, not to demolish the shop through themselves or their agents. According to the plaintiff in the year

1974 shop belonging to defendant No. 4 was given on monthly rent of Rs. 55/- and the plaintiff is in possession of the same as tenant, since then. It is alleged by the plaintiff that the defendants removed some bricks of the roof of the shop, and they are keen to demolish the shop. On the basis of the aforesaid pleading the plaintiff also sought for ad interim injunction which was granted by the Civil Judge by its order dated 7-6-95 and was confirmed by the appellate Court by its order dated 3-8-95. The defendants filed an application that the property being a wakf property, the suit may be transferred to the Tribunal. Prayer of the defendants was not accepted and aggrieved by the aforesaid order the defendants have preferred this revision-application.

5. Civil Revision No. 910/95 Plaintiff is aggrieved by order dated 31-8- 95 passed by the Seventh Civil Judge Class II, Indore, in Civil Suit No. 56-A/ 86 whereby the learned Judge has transferred the suit to the Tribunal under the Wakf Act.

Plaintiff filed the suit for declaration of his title and possession. Further declaration sought for was that the defendant Wakf Board has no authority to ask for the accounts of property. Further relief sought for was to issue an order of injunction restraining the defendants or their agents from dispossessing the plaintiff from the suit property. It was further prayed that the property, which has been entered at Serial No. 27 of the Wakf Register, be deleted.

According to the plaintiffs, property was given to his ancestor by Holkar Estate and dispute consists of Kabra, Mazar Dargah and Mosque, and the same belong to his ancestor and the usufructs of the same is utilised by the plaintiff. According to the plaintiff the Kabra in question is a personal Kabra and the same was never used by any member of the public. In a part of the suit land, a Mosque exists, which was open for worship to general public but the land appertaining to the Mosque is not a wakf property. According to the plaintiff defendants' demand for submission of accounts in relation to the suit property is illegal so is the entry of the property in the wakf register.

6. Before I advert to individual cases, it is apt to refer to the relevant law on the subject.

7. By the Wakf (Amendment) Act, 1984 (Central Act 69 of 1984) amendments were brought about in the Wakf Act, 1954. According Section 1(2) of the Act 69 of 1984, the same was to come into force on such date as the Central Government may by a notification in the official gazette appoint but such notification has not been issued and as such amendment brought about by Amending Act 69 of 1984 has not yet been enforced. It appears that thereafter the Wakf (Madhya Pradesh Amendment) Act, 1994 (Act 1 of 1995) was enacted. By "Section 5 of Wakf (Madhya Pradesh Amendment) Act, 1994 (Act No. 1 of 1995), Section 6A of the Principal Act was substituted which inter alia provides for determination of disputes regarding Wakf. By Section 6 of Act 1 of 1995, Section 55 of the Principal Act has been substituted which provides for appointment, power and jurisdiction of Tribunal. By Section 7 of M. P. Act 1 of

1995 Sections 55-A to 55-G in the Principal Act, were incorporated and in the present case, I am concerned with Section 55C of the Act, which provides for Bar of jurisdiction of Civil Courts in respect of matters required to be determined by Tribunal and Section 55-G which provides for transfer of pending cases.

8. It is relevant hereto state that the Registrar of the Court issued a memorandum dated 1-2-1995 addressed to all the District and Sessions Judges requiring them to transmit the records of pending cases u/s 6(1) of the Wakf Act, 1994 (as amended by the Wakf (M. P. Amendment Ordinance, 1994) to the Tribunal at Bhopal).

9. Learned Counsels representing the plaintiffs and the learned counsels representing the defendant Wakf Board have advanced their submission in respect of each of the cases., According to the plaintiffs, simply because the property is a Wakf property or included in the register of Wakf property, all suits in relation to such property are not required to be transferred to the Tribunal. According to them it is only those cases which are covered u/s 6A of the Act, as amended, that requires to be transferred. Whereas according to the Wakf Board all litigations, whatever be its nature" or the relief, in relation to Wakf property, are required to be transferred to the Tribunal. This, according to the learned counsel would be writ large from "statement of objects and reasons" of the Act.

10. Learned counsel representing the Wakf Board has brought to my notice the statement of objects and reasons incorporated with the bill, which reads as follows:--

"It is experienced that cases of eviction, recovery of arrears of rent, possession, compensation etc. in respect of Wakf property are not being settled. A large number of cases are pending in Civil Courts due to one reason or the other."

Relying heavily on the aforesaid statement of, object and reason in the Bill, the learned counsel representing the Wakf Board submitted that intention of the legislature was that any dispute relating to the Wakf property be decided by the Tribunal and not only those disputes contemplated u/s 6-A of the Act as substituted. In the case of Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, the Apex Court while considering the effect of statement of objects and reasons appended to a bill held as follows (at p. 378 of AIR):--

"32. As regards the property of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what object he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the

members. We, therefore, consider that the statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute."

11. In the case of *The Central Bank of India Vs. Their Workmen*, the Apex Court speaking through S. K. Das, J. reiterated the principle and observed "The statement of objects and reasons is not admissible, however, for construing the section far less can it control the actual words used". Again in case of *State of West Bengal v. Union of India* AIR 1963 SC 241 the Supreme Court while considering the scope of statement of objects and reasons stated the law in the following words:--

"It is well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation."

12. In the statement of objects and reasons, it has been stated that a large number of cases are pending in the Court and to overcome that the Bill was introduced but in my opinion the scope of the Act has to be tested on the anvil of the provisions of the Act. The Tribunal being the creation of the statute, it can decide only those disputes and grant those reliefs which the legislature intended to decide. However the object of the bill can be used only for the purpose understanding the antecedent state of affairs leading up to legislation.

13. Section 6-A of the Act as substituted reads as follows:--

"6-A. Power of tribunal to determine dispute regarding Wakfs:--

(1) If after the commencement of the Wakf (Madhya Pradesh Amendment) Act, 1994 any question arises whether a particular property specified as Wakf property in a list of Wakfs published under Sub-section (2) of Section 5 is Wakf Property or not, or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the Mutawalli of the Wakf, or any person interested therein may apply to the Tribunal having jurisdiction in relation to such property for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that--

(a) In the case of the list of Wakfs relating to any area of the State and published or purporting to have been published after the commencement of the Wakf (Madhya Pradesh Amendment) Act, 1994, no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs under Sub-section (2) of Section- " 5; and

(b) In the case of the list of Wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year

immediately preceding the commencement of the Wakf (Madhya Pradesh Amendment) Act, 1994 such an application may be entertained by the Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in suit instituted before such commencement, the Tribunal shall not reopen Such question.

(2) The Wakf Commissioner shall not be made a party to any application under subsection (1).

(3) The list of Wakfs published under Sub-section (2) of Section 5 and where any such list is modified in pursuance of a decision of the Tribunal under Sub-section (1) the list as so modified, shall be final.

A reading of the aforesaid provisions makes it explicit that the Tribunal is conferred with the power in relation to a question as to whether a particular property specified as a Wakf property in list of Wakfs published u/s 5(2) of the Act is a Wakf property or not. It is relevant here to state that Section 4 of the Wakf Act inter alia provides for preliminary survey of Wakf property by the Survey Commissioner and Additional Survey Commissioners appointed by the State Government. The Survey Commissioners and the Additional/Assistant Survey Commissioners, appointed by the State Government are required to submit a report to the State Government containing the particulars about the number of Wakfs showing Shia Wakf or Sunni Wakf separately besides other particulars. Such a Commissioner is further required to decide whether a particular Wakf is Shiya or Sunni Wakf on the basis of the deed of Wakf. The report thus submitted by the Survey Commissioner, Additional Survey Commissioner or Assistant Survey Commissioner as the case may be, are required to be forwarded to the State Government and the later in turn is obliged to examine the report submitted by the Survey Commissioner and forward it to the Board. The Board after such an examination is obliged to publish in the official gazette, a list of Wakfs. Thus, under the scheme of the Act firstly the Survey Commissioner appointed by the State Government are required to make a survey of wakf property and submit a report to the State Government, the State Government is then required to forward the same to the Board and thereafter the Board is required to publish a list of Wakf in the official gazette. It is only after the publication in the official gazette u/s 5(2) of the Act by the Wakf Board, the powers of the Tribunal to determine the dispute springs into action. A reading of Section 6-A of the Act as substituted by M. P. Amendment Act 1 of 1955 makes it implicit that after the commencement of the aforesaid Act any question whether a particular property specified as Wakf property in a list of Wakfs published under Sub-section (2) of Section 5 is a Wakf property or not, falls for determination by the Tribunal. Further u/s 6-A of the Act whether a Wakf specified in the list published u/s 5(2) of the Act is a Shia Wakf or Sunni Wakf, the same can be decided by the Tribunal. Section 6-A of the Act further provides for the persons, who can apply to the Tribunal for determination of the question

and those persons are the Board, Mutawalli of the Wakf or any person interested therein. Therefore, in my opinion, u/s 6A of the Act the Tribunal, at the instances of the Board or Mutawalli of the Wakf or any person interested therein, can render decision in relation to question whether the property specified as Wakf property and published in the list of Wakf as contemplated u/s 5(2) of the Act is a Wakf property or not or whether the same is a Shia or Sunni Wakf. This is one of the instances in which the tribunal is required to determine the dispute under the Act itself, which is preserved u/s 55(1) of the Act, as amended.

14. Section 55 of the Act, as submitted by Section 6 of M. P. Act 1 of 1995 reads as follows:--

"Section 55. Appointment, Powers and Jurisdiction of Tribunals:--

(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 which such Tribunal is or may be, required to determine under this Act, or any rule or order made thereunder and may, by the same or subsequent notification in the Official Gazette, define the local limits of the area in relation to which each Tribunal appointed by it shall exercise jurisdiction under this Act.

(2) Any mutawalli of a Wakf, person interested in a Wakf or any other person aggrieved by any order made under this Act or any rule or order 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 (2) 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 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 interest 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 and Sessions Judge or of a Civil Judge, Class I, and the appointment of every such person as 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" while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (No. 5 of 1908) the Tribunal shall follow such procedure as may be prescribed:

Provided that where any procedure, different from the prescribed procedure is specified by this Act Tribunal shall follow the procedure specified by this Act.

(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) 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 (No. 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 High Court, on it's 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 or pass such other order as it may think fit.

15. Learned counsel appearing on behalf of the plaintiffs submit that u/s 55(1) of the Act, the Tribunal is conferred with the jurisdiction to determine only those disputes in relation to Wakf or Wakf property, which it is required to decide under the Act or Rule of Order made thereunder. In their submissions Section 55(1) is not the repository of the power of Tribunal but it preserves those powers which are already conferred under the Act, the Rule or Order made under the Act. In this connection my attention has been drawn to Section 6-A of Act, as substituted by M. P. Act I of 1995. It is further submitted by the plaintiffs" learned counsel that Section 55(2) of the Act does not confer any independent jurisdiction but pro vides for locus standi of the category of persons i.e. mutawallis, person interested in Wakf or persons aggrieved by any order, who can approach the Tribunal for determination of any dispute.

16. Having given my most anxious consideration to the rival submissions, I am of the opinion that the submission of the learned counsel representing the plaintiffs has no substance. Section 55(1) of the Act as substituted by M. P. Act 1 of 1955 provides for constitution of Tribunal by the State Government and the Tribunal so constituted, has been conferred the power to determine any dispute, question or

other matters relating to Wakf or Wakf property, which the Tribunal has been specifically asked to determine under the Act or any Rule or Order, made thereunder. Section 6-A of the Act as substituted by M. P. Act I of 1995 is an instance wherein the Act itself has conferred power on the Tribunal. The instances of such power can be seen in Sections 15-B and 15-D(3)(4) (provisions although not enforced till day) of the Wakf Act, 1954.

17. Further Section 55(2) of the Act as amended does not operate in the field of locus standi, as submitted by the learned counsel for the plaintiffs. In my considered view, besides providing for locus standi it also confers on the Tribunal the power for the determination of any dispute, question or other matters relating to the Wakf, in which the order has been passed under the provisions of the Act, Rule or Order. It is to be borne in mind that under the Scheme of the Act, the authorities under the Act have been conferred with the power of determination of rival contentions. Reference in this connection can be made to the provisions of Sections 21B, 21C, 21D, 26A and 27 of the Act wherein power under the Act itself has been conferred on the authorities for deciding dispute or giving directions. Such order or decision passed by the authorities under the Act or Rule made thereunder can be challenged before a Tribunal u/s 55(2) of the Act. It is made clear that Sections quoted above are illustrative in nature and not exhaustive.

18. In other words, in my opinion, the validity of orders made under the provisions of the Act or any rule or order made thereunder can be challenged by aggrieved persons before the Tribunal for determination of the dispute relating to Wakf. However, the Mutawalli of a Wakf, or persons interested in a Wakf are competent u/s 55(2) of the Act to approach the (sic) other matters relating to the Wakf. According to me Section 55(2) of the Act confers discretion to aggrieved person to file an application to the Tribunal only in case he is aggrieved by any order made under ;his Act or any rule or order made thereunder. However, any Mutawalli of a Wakf and person interested in a Wakf can file application to the Tribunal for determination of any disputed question or other masters relating to the Wakf. Even in case of persons aggrieved, he can file an application to the Tribunal only in case the order passed under the Act, rule or order made thereunder is in relation to the Wakf Property. In my opinion, in case the power of the Tribunal is confined for determination of only those disputes which are required to be determined under the specific provision of the Act, Rule or Order, it will lead to rendering the provision of Section 55(2) of the Act superfluous. Legislature does not Waste words and I do not have any compelling reason to adopt a course of interpretation to render the provisions of Section 55(2) of the Act, superfluous. As I have held earlier both operate in the different field.

19. Learned counsels for the plaintiffs have further submitted that relief sought for by them in the Civil Court cannot be adjudicated by the Tribunal and in that view of the matter even if the Tribunal has got the power u/s 55(1) and (2) of

the Act the suits and the proceedings cannot be transferred. In the submission of the learned counsels when the Tribunal is not competent to grant relief sought for in the Civil Court the necessary corollary of the same, in their submission, shall be that the Tribunal shall have no power. The whole premises on which the learned counsels have proceeded is unfounded and they totally ignore the provisions of Section 55(5) of the Act as amended. u/s 55(5) of the Act the Tribunal is deemed to be a Civil Court and has the same power as that of a Civil Court under the Code of Civil Procedure, while trying the suit or executing the decree or order. In view of the aforesaid specific provisions, I do not have slightest hesitation in holding that the relief which can be granted by the Civil Court can also be granted by the Tribunal.

20. It is submitted that Section 55-C of the Act, completely bars the jurisdiction of the Civil Court to hear dispute in relation to Wakf property. Section 55-C of the Principal Act as Amended by M. P. Act 1 of 1995 reads as follows:--

55-C. Bar of Jurisdiction of Civil Courts in respect "of matters determined by Tribunal --No suit or other legal proceedings shall lie in any Civil Court in respect of any dispute question or other matter relating to any Wakf or Wakf property or other matter which is required by, or under this Act, to be determined by a Tribunal,

21. In support of this submission learned Counsel placed reliance on a judgment of the Apex Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . My attention has been drawn to the following paragraph the judgment (at Pp.89-90 of AIR):--

"Para 32. Neither of the two cases of Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, or Kamala Mills Ltd. Vs. State of Bombay, can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:--

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the

determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in Civil Courts course are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunal constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for, refund of the tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Question of the correctness of the assessment part from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Court is not readily to be inferred unless the conditions above set down apply."

22. Further reliance has been placed on the judgment of the Supreme Court in the case of Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), and my attention has been drawn to the following passage from the judgment (at p. 756 of AIR):-

"Generally speaking, the* broad guiding considerations are that wherever a right, not pre-existing in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Courts jurisdiction is impliedly barred. If, however, a right statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Courts" jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inheritance."

23. In view of the express bar of the jurisdiction of the Civil Court u/s 55-C of the Act (as amended), I do not have the slightest hesitation in holding that no suit or legal proceedings would lie in Civil Court, which is required by or under the Act, to be determined by the Tribunal.

24. Section 55-G of the Act provides for transfer of pending cases. Section 55-G of the Act as amended by the State amendment reads as follows:--

55-G Transfer of pending cases :--

(1) Every suit or other proceedings pending before any Court or other authorities immediately before the date of constitution of the Tribunal under this Act being a suit or proceeding the cause of action, whereon it is based, is such that it would have been, if it had arisen after such constitution, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal;

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before the High Court.

(2) Where any suit or other proceedings stands transferred from any Court or other authority to the Tribunal under Sub-section (1) --

(a) The Court or authority shall as soon as may be after transfer forwarded the records of such suit or other proceeding to the Tribunal, and

(b) The Tribunal may, on receipt of such records proceed to deal with such suit or other proceeding in such manner as the Tribunal deem fit.

25. Section 55-G of the Act contemplates transfer of those pending suits or other proceedings which (SIC) on a cause of action which comes within the jurisdiction of the Tribunal and such suits and proceedings are required to be transferred to the Tribunal. Therefore, those cases in which the cause of action of the suit or proceeding contemplate decision by the Tribunal that such a suit or proceeding is required to be transferred.

26. Now I must answer an ancillary submission of the learned counsel for the plaintiffs. According to them the bar to enter the property in the Register of Wakf u/s 27(2) of the Act has been made final unless revoked or modified by a Civil Court of competent jurisdiction. The learned counsel in view of the aforesaid provisions submit that in case the property is included in the register of Wakf as contemplated u/s 26 of the Act, the Civil Court shall have jurisdiction to revoke or modify the order of the Board.

27. It is worthwhile here to mention that u/s 5(2) of the Act a list of wakf is required to be published in the Official Gazette, Section 26 of the Act provides for" maintaining register of wakfs containing certain particulars. Section 27 of the Act reads as follows:-- :-

Section 27. Decision if a property is wakf property,

(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on any question under Sub-section (1) shall, unless revoked or modified by a Civil Court of competent jurisdiction be final.

(3) Whether the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and, if after such inquiry the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as Wakf property or show cause why property could not be so registered.

Provided that in all such cases, notice of the action proposed to be taken under this Subsection shall be given to the authority by whom the trust or society had been registered,,

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under Sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Civil Court of competent jurisdiction.

Thus, u/s 27(1) of the Act the Board is required to decide the question whether a particular property is a Wakf property or not or whether a wakf is a Sunni wakf of a Shia wakf. Sections 26 and 27 of the Act fall in Chapter IV of the Act and its heading is "Registration of Wakfs". It is relevant here to state that Section 25 of the Act provides for registration of every wakf and decision of the Board to enter the same in the register of wakfs is subject to modification or revocation by the Civil Court.

28. It is contended that the decision of the Board being made final subject to revocation or modification by the Civil Court, clearly shows the intention of the legislature that the decision of the Board for inclusion of the property in register of wakf can be challenged before the Civil Court.

29. In my opinion, the decision of the Board to include a property in the register of Wakf is a statutory decision and as held earlier, its validity can be decided by the Tribunal. The necessary (sic) thereof is that against such decision no suit or proceedings shall lie before the Civil Court. By holding so, am I rendering the provisions of Section 27(2) of the Act superfluous? It seems so but this is inevitable. Order passed u/s 27(1) of the Act can be assailed before the Tribunal and no proceedings or suit lie against the decision of the Tribunal u/s 55-C of the Act. Further u/s 55(7) of the Act the decision of the Tribunal has the force of a decree made by a Civil Court and has rendered final subject to High Court's power u/s 55(9) of the Act. The High Court has been conferred, with the power to confirm, reverse or modify the order of the Tribunal. Thus, I am of the view that the Tribunal has the power to determine the dispute and the matter cannot be agitated before the Civil Court.

30. Another submission made on behalf of the learned counsel is that the suit which is pending before the original Court can also be transferred. I am afraid,

the submission is devoid of any substance. A reading of Section 55(G) of the Act makes it explicit that it is not only suit but other proceedings pending before any Court or other authorities are required to be transferred.

31. Having cleared the legal position, now I advert to individual cases.

32. Civil Revision Nos. 847/95 and 1010/ 95:

In the aforesaid suit the relief sought for is that Majar Hajrat Naharsa Wali is not a Wakf property and consequently the order of the Wakf Board is illegal. This lis can be decided by the Tribunal. Consequently, the impugned order of transfer of the cases from Civil Court to the Tribunal cannot be said to be illegal.

33. Civil Revision No. 893/93:

The relief sought for in the present suit is for grant of permanent injunction restraining the defendants or their agents from dismantling the roof of the shop or cause any damage to it. Plaintiff is the tenant in the Wakf property and there is no dispute about the same. The plaintiff is also not aggrieved by any order passed under provisions of the Act Or Rules or order made thereunder but is aggrieved by the action of the defendant of dismantling the roof of the shop. The Tribunal not competent to hear such dispute and as such the relief sought for by the plaintiff cannot be granted by the Tribunal; Thus, the impugned decision to transfer the suit to the Tribunal cannot be said to be illegal.

34. Civil Revision No. 894/ 95 :

In this case also the relief sought for is for permanent injunction restraining the defendants from demolishing the shop. Again in this case also, it is admitted position that, plaintiff is a tenant of the shop which is a wakf property. Plaintiff is neither Mutwalli or person interested in the Wakf and cannot come within the expression "person aggrieved by any order made under the Act or any rule or order made thereunder and in-that view of the matter he cannot file an application before the Tribunal for grant of relief sought for in the civil suit. Consequently, the Tribunal shall have no jurisdiction to grant this relief. In that view of the matter, I am of the opinion that the learned Judge was right in not transferring the suit to the Tribunal.

35. Civil Revision No. 910/95:

In the present case the plaintiff filed the suit for declaration of his title and possession, it was averred that the suit property which has been entered at Serial No. 27 of the Wakf Register be deleted. The plaintiffs prayer further was that the defendant Wakf Board has no authority to ask for the amount of the property. Thus, the plaintiff is seeking for relief against the order of the Wakf Board. The plaintiff can file an application before the Tribunal seeking the relief. In that view of the matter the learned Judge was right in transferring the suit to the Tribunal.

36. In the result all the civil revisions are dismissed. However, in the facts and

circumstances of the case there shall be no order as to costs.