
(2021) 11 TEL CK 0015

In the Telangana High Court

Case No : Writ Appeal Nos. 318, 319, 320, 321, 322, 326, 327, 328, 329, 356, 357, 360, 361, 363, 365, 366, 367, 368, 369, 370, 373, 375, 376, 382, 383, 384, 385, 386, 387, 388, 389, 392, 393, 394, 396, 397, 398, 400, 402, 428 Of 2021

Telangana State Wakf Board

APPELLANT

Vs

Perugu Radha Madhavi And 3 Others

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Registration Act, 1908 — Section 22A
Wakf Act, 1954 — Section 4, 5, 5(2), 6, 27, 112(1), 112(2)
Wakf Act, 1995 — Section 5(2), 112(2)
AP (Telangana Area) Abolition Of Inams Act, 1955 — Section 4, 4(1)

Citation : (2021) 11 TEL CK 0015

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Regard being had to the similitude in the controversy involved in the present cases, the writ appeals were analogously heard and by a common Judgment, they are being disposed of by this Court.

2. The present Writ Appeal and the connected Writ Appeals are arising out of a common order dated 11.02.2021 passed in W.P.No.5938 of 2006 and connected writ petitions passed by the learned single Judge. The common order is arising out of three group of writ petitions. They are reproduced as under:-

"(A) W.P. Nos.5938, 5987, 6082, 6775, 7473, 7474, 7475, 7476, 7477, 7559, 8416, 8417, 8418, 8419, 14734, 14745, 17125 of 2006, 5039 of 2008, and 15497 of 2016 are filed questioning the proceedings, dated 25.02.2006, issued by the Joint Collector-II, Ranga Reddy District, setting aside the Occupancy Rights Certificates (ORCs) granted by the Revenue Divisional Officer, Ranga Reddy East Division, dated 07.01.2005, in favour of the persons, who are in

possession of the subject lands, as on the date of vesting i.e. 01.11.1973, as illegal and arbitrary. These writ petitions are hereinafter referred to as 'first batch'.

(B) W.P.Nos.17505, 18298, 19893, 19905, 19996, 20113, 20164, 20326, 20425, 20431, 20526, 20838, 23549 of 2009, 3310 OF 2011 and 7960 OF 2017 are filed questioning the Gazette Notification Supplement 2 Part-II No.6A, dated 09.02.1989 issued by the Waqf Board. These writ petitions are hereinafter referred to as 'Second batch'.

(C) W.P.Nos.24100, 24102, 24104, 24105, 24109 of 2009 and 8780 of 2020 are filed aggrieved by the action of the Registration Authorities in refusing to register the subject documents on the ground that the said lands are included in the Prohibitory List under Section 22-A of the Registration Act, 1908 (in short 'Registration Act') being notified as property of Wakf Institution under Gazette No.6-A, dated 09.02.1989. These writ petitions are hereinafter referred to as 'Third batch'."

3. In the first batch of writ petitions, the petitioners have preferred Writ Petitions under Article 226 of the Constitution of India for quashment of the Order dated 25.02.2006 passed by the Joint Collector-II, Ranga Reddy District, setting aside the Order of the Revenue Divisional Officer, Ranga Reddy East Division, dated 07.01.2005, by which the names of the petitioners in the revenue records were directed to be deleted. By the same Order, the Occupancy Rights Certificates (ORC) granted to the petitioners and other persons were set aside and the Revenue Divisional Officer was directed to issue ORC in the name of the religious institutions. Various orders were passed by the Joint Collector in respect of large number of lands and a detailed chart in respect of the common order is reproduced as under:-

Sl.

No.

Appeal Case No. before the Joint Collector, Ranga Reddy District

(Aggrieved by the Order of the RDO, RR East Division) Lower

Court Proceedings No. & Dated

Survey Numbers

Extent Acres Guntas

1

F1/337/2005

J/4163/1986

7-1-2005

251, 252, 253,

254, 255 & 266

75-04

2

F1/338/2005

J/4162/1986

7-1-2005

275, 276, 277

42-00

3

F1/339/2005

J/4164/1986 7-1-2005

257, 260, 261

46-01

4

F1/340/2005

J/4165/1986

7-1-2005

259. 262, 269 &

270

45-28

5

F1/4849/2005

J/4165/1986 7-1-2005

259,

270

260, 269 &

45-28

6

F1/4850/2005

J/4162/1986

7-1-2005

275, 276, 277

42-00

7

F1/4867/2005

J/4164/1986

7-1-2005

257, 260, 261

46-01

8

F1/4868/2005

J/4163/1986 7-1-2005

251 to 256

75-04

9

F1/4869/2005

J/4165/1986

7-1-2005

259, 262, 269, 270

45-28

10

F1/4870/2005

J/4162/1986 7-1-2005

275, 276, 277

42-00

11

F1/1899/2005

J/4164/1986

7-1-2005

257, 260, 261

46-01

12

F1/4902/2005

J/4163/1986

7-1-2005

251 to 256

75-04

4. The Operative paragraph of the Order passed by the Joint Collector is reproduced as under:-

".... Thus it is evident that the said lands are Waqf lands and grant of Occupancy Rights Certificate to individuals in respect of Wakf lands is not in order.

No individual is entitled to get any Occupancy Rights Certificate on such land and religious institution alone is entitled to get Occupancy Rights Certificate. Hence the Occupancy Rights Certificate issued by the Revenue Divisional Officer Ranga Reddy East Division in File No.(1) J/4163/1986 dated 7-1-2005 (2) J/4162/1986 dated 7-1-2005 (3) J/4164/1986 dated 7-1-2005 & J/4165/1986 dated 7-1-2005 are set aside and the Revenue Divisional Officer is directed to issue Occupancy Rights Certificate in the name of religious institutions only in light of the above amended Act No.19 of 1994....."

5. The facts of W.P.No.15497 of 2016, from which W.A.No.319 of 2021 arises, are being dealt with to decide first batch of cases. The facts of the case reveal that the writ petitioners were in physical possession of the land in question. After coming into force of the Telangana Abolition of Inams Act, 1955, the writ petitioners, who were protected tenants, became pattadars of the subject lands by virtue of 38-E Certificate granted by the Revenue Divisional Officer, Hyderabad. The lands were sold by the predecessor-in-title and various sale deeds have taken place from time to time. The ORCs were granted in the year 2005 and without granting any opportunity of hearing to the petitioners or to the predecessors-in-title, the ORCs were cancelled by order dated 25.02.2006 passed by the Joint Collector.

6. The facts of the case further reveal that a Notification was issued on 09.02.1989 by the Wakf Board in exercise of powers conferred under the Wakf Act, 1954 read with Wakf Amendment Act, 1984 declaring the lands including the aforesaid lands in Mamidipalli Village as wakf lands. The undisputed facts further reveal that ORCs were granted in favour of petitioners keeping in view the Abolition of Inams Act, 1955 and it was set aside by the Joint Collector in Appeal without granting any opportunity of hearing to the petitioners. The undisputed facts further reveal that genesis on the basis of which the Order was passed by

the Joint Collector is based on Notification dated 09.02.1989 issued by the Wakf Board declaring the lands as wakf lands and earlier also the same Notification was subjected to judicial scrutiny before this Court. The learned Single Judge has allowed the writ petitions on the ground that earlier also same Notification was declared by this Court a nullity in W.P.No.9378 of 2009 decided on 06.02.2012, against which Writ Appeal was preferred i.e., W.A.No.1010 of 2012 and the same was also dismissed on 07.11.2013.

7. In the considered opinion of this Court, keeping in view the history of earlier litigation, once the Notification dated 09.02.1989 itself has been held as invalid, unsustainable and was set aside, the Joint Collector could not have passed the order granting ORC in favour of the Wakf Board and therefore, this Court is of the opinion that the Order passed by the Joint Collector behind the back of the petitioners based on the Notification dated 09.02.1989, which was held in the earlier round of litigation as bad in law, has rightly been set aside by the learned Single Judge and in those circumstances, the learned Single Judge was justified in allowing the writ petitions.

8. The Joint Collector has set aside the ORCs without putting the parties on a notice and without affording them an opportunity of hearing and therefore the learned Single Judge has rightly remanded the matter back to the Joint Collector and a liberty has also been granted to the Wakf Board to implead itself and to produce any other material besides Notification dated 09.02.1989. The parties before this Court will certainly have a right to argue their respective cases before the Joint Collector and they shall be free to produce any material in respect of their claims and the Joint Collector shall certainly be free to decide the matter in accordance with law keeping in view various Judgments delivered by this Court and the statutory provisions governing the field.

9. In respect of second batch of writ petitions, i.e., W.P.No.20425 of 2009 and other connected matters, writ petitions have been filed challenging the Notification, dated 09.02.1989. The facts in W.P.No.20425 of 2009, from which Writ Appeal No.318 of 2021 is arising, are being deal with. The facts of the case reveal that the Notification dated 09.02.1989 issued by the Wakf Board declaring the land in Survey No.253 to the extent of Acs.0.20 guntas situated at Mamidipally Village, Saroornagar Revenue Mandal, Ranga Reddy District as wakf land. The petitioner contended before this Court that one Smt. S.P.S. Gowri purchased the land from one Peromoni Komaraiah under a registered sale deed dated 23.06.1989. Subsequently, Smt. S.P.S. Gowri sold the land to the petitioner vide sale deed dated 13.03.2008 and the document was presented for registration under the provisions of the Registration Act on 13.03.2008. However, the Sub Registrar, Champapet, Ranga Reddy District (West) in spite of repeated requests, did not register the aforesaid document. The petitioner preferred W.P. No.8480 of 2009 to declare the action of the Sub Registrar in not registering the document bearing No.27 of 2008, dated 13.03.2008 as arbitrary and illegal and the said writ petition was disposed of by order dated 23.04.2009 directing the

Sub Registrar to process the document for registration and in case of non-registration, to communicate the reasons to the petitioner. The petitioner submitted representation along with the order passed by this Court to the Sub Registrar. However, the Sub Registrar passed an order dated 15.06.2009 refusing to register the document on the ground that the property is a wakf property keeping in view the Notification dated 09.02.1989. It is pertinent to note that in another writ petition, i.e., W.P.No.9378 of 2009, by an order dated 07.09.2009, this Court has directed the Sub Registrar to register the sale deed, which was also not being registered on account of Notification, dated 09.02.1989 and it was also observed that the registration shall be subject to result of the writ petition. The writ petitioner, thereafter, has preferred the present writ petition No.20425 of 2009 praying for issuance of an order directing the Sub Registrar to register the property and also for declaring the Notification, dated 09.02.1989 as arbitrary and opposed to law. Thus, in short, in the second batch of writ petitions, the Notification, dated 09.02.1989 issued by the Wakf Board declaring the subject lands as wakf lands is under challenge.

10. The learned Single Judge has dealt with the Notification, dated 09.02.1989 issued by the Wakf Board declaring the lands as wakf lands. The relevant findings of the order passed by the learned Single Judge which deals with the Notification dated 09.02.1989 is reproduced as under:-

"Admittedly, vide notification dated 09.02.1989, the Waqf Board has issued notification declaring the lands in Mamidipally Village as Waqf lands. The question as to whether the notification could have been issued by the Waqf Board, based on the survey conducted under the Repeal Act, has fell for consideration before this Hon'ble Court and is no longer res integra.

In Tamil Nadu Wakf Board (supra), the Hon'ble Supreme Court held as under:-

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

A learned Single Judge of this Court, in W.P.No.25076 of 2004, vide order, dated 19.04.2012, at para 4, while dealing with the same issue, has observed as under:

"..... the impugned Gazette notification, dated 17.10.2002, does not stand to scrutiny in the eye of law as it is a notification issued under a repealed enactment, this Court can only say that the said notification published in the Gazette is a deadwood."

Another learned Single Judge of this Court, in W.P.No.19611 of 2012, vide order, dated 22.03.2016, observed as under:

"This Court considered the similar issue in W.P.No.25076 of 2004 relied on by the learned Counsel for the petitioners and wherein, this Court quashed the

notification under Act of 1954 on the ground that Wakf Act, 1954 is repealed by Section 112(1) of the Wakf Act, 1995, and notification published in the Gazette does not stand to scrutiny in the eye of law, as it is a notification issued under a repealed enactment. In this case also, admittedly the impugned notification is also issued under Act of 1954 is repealed by the present Act. Since the order in the said writ petition has become final and Wakf Board is a party to it, the present issue is squarely covered by the judgment of W.P.No.2074 of 2004...."

While dealing with the validity of the impugned Gazette Notification No.46-A, dated 15.11.2001, issued by the State under the provisions of the Wakf Act, 1954, which has been repealed by the Wakf Act, 1995, this Court in W.P.No.33133 of 2014, by order, dated 22.09.2016, held as under:

"45. In view of the rival submissions, it is first necessary to consider whether the conduct of survey by a Survey Commissioner during the time when the Wakf Act, 1954 was in force, without publication of the same in the Gazette under sub-Section(2) of Section 5 of the said Act, conferred any right on the 2nd respondent or not. If the answer is 'yes', then such right is saved under sub-Section (2) of Section 112 and not otherwise.

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

been filed and not otherwise. It therefore affirmed the decisions of the Courts below.

47. The ratio of this decision is that in the absence of proper notification under Sub-section 92) of Section 5 of the Wakf Act, 1954 that the properties in question are wakf properties, even if there is any survey report of a Survey Commissioner, the said report is of no avail and does not impress the property with the character of a wakf property.

48. In view of this decision, I reject the contention of the 2nd respondent that the survey report of the Survey Commissioner prepared in 1963 under the Wakf Act, 1954 is a completed action which is deemed to have been saved under the deeming clause in Sub-section (2) of Section 112 of the Wakf Act, 1995. It is clearly an inchoate act and not a complete act and cannot be treated as something "done" or action "taken" under the Wakf Act, 1954. It would have been complete only or treated as something "done" or action "taken", only if there had been a Gazette Notification under Sub-section (2) of Section 5 of the Wakf Act, 1954.

49. Consequently, the principle laid down in D.C.BHATIA AND OTHERS v. UNION OF INDIA (UOI) AND ANOTHER (1995) 1 SCC 104) would apply i.e., the provisions of a repealed statute cannot be relied upon after it has been repealed and though what has been acquired under the Repealed Act cannot be disturbed, if any further step is needed to be taken under the Act (such as publication of Gazette Notification under Sub-section (2) of Section 5 of the Wakf Act, 1954), that cannot be taken after the Wakf Act, 1954 is repealed by the Wakf Act, 1995.

52. Second Proviso to Sub-section (1) of Section 4 of the AP (Telangana Area) Abolition of Inams Act, 1955, no doubt states that if any person other than charitable or religious institutions has been registered as an occupant under Sections 5 to 8 after the commencement of the AP (Telangana Area) Abolition of Inams (Amendment) Act, 1985, such registration shall and shall be deemed always to have been null and void and no effect shall be given to such registration. The proviso was introduced by the AP Act 19 of 1994 with effect from 26.12.1985.

56. Second proviso to Section 4 was introduced by the AP Act 19 of 1994 with effect from 26.12.1985. For this to operate in respect of the subject land, a valid Gazette Notification must already have been issued under Sub-section (2) of Section 5 of the Wakf Act, 1954 or Sub-section (2) of Section 5 of the Wakf Act, 1995. Only then it would be impressed with the character of "wakf property" as held in Tamil Nadu Wakf Board's case (supra) referred to above.

57. It is not the case of the 2nd respondent that the property in question became wakf property on account of permanent dedication by any person professing Islam. The sole basis of the claim of the 2nd respondent that subject property is a wakf property is that it was included in the Survey report of the Survey Commissioner prepared in 1963 under the Wakf Act, 1954."

This Court in *B.Gowra Reddy vs. Government of Andhra Pradesh* (2002) 3 ALT 439 while dealing with the very same notification, dated 09.02.1989, at paragraph Nos.26, 29, 32 and 33 has held as under:

"26. A survey of various decisions referred to above would led to two issues, which have to be considered by this Court, viz., whether there was a contravention of the provision of Sections 4 to 6 of the Act and whether the writ petitions are maintainable under Article 226 of the Constitution of India.

29. The pre-requisite for publishing the Wakf is an enquiry to be conducted under Section 4 of the Act and such an enquiry report has to be forwarded to the State Government, who in turn has to forward the same to the Wakf Board and the Wakf Board is required to examine the report and thereafter publish the list of Wakfs in the Official Gazette. If these requirements were fulfilled, then the contention of the learned Counsel for the Wakf Board and the learned Government Pleader would be sustainable. When the pre-requisite for publishing the Wakf is not fulfilled, then the question would remain Whether that can be challenged under Article 226 of the Constitution of India or in a suit as is sought to be contended by the learned Counsel for the respondents.

32. It is true that under Section 83 of the Act any dispute arising out of Wakf properties can be agitated only before the Tribunal constituted under the Act. But, in the instant cases, the very principal requirement of notice and conducting enquiry as envisaged under the Act are lacking. Therefore, the question of driving the petitioners to the Tribunal would not arise. Admittedly, the petitioners have made out their occupation rights from Mr.Rangaiah's possession and thereafter, Mr.Lakshmaiah and they have purchased the land under registered sale deeds and that too after obtaining appropriate permission from the Competent Authority and it is also one of the contentions of the petitioners that they have acquired title by adverse possession. But, I am not inclined to adjudicate the same inasmuch as I am only concerned with the validity of the notification published in the Gazette on 9.2.1989. The decision referred to by the learned Counsel for Wakf Board that the petitioner have to approach the Tribunal or the Civil Court, as the case may be, even after the expiry of one year period after the publication of Gazette notification is not applicable to the present cases, as that situation would not arise inasmuch as when the notice itself is lacking and no purpose will be served by approaching the Tribunal, or Civil Court. It is also to be noted that the report of the Survey Commissioner sent by the Government to the Wakf Board has no automatic acceptance. It is required to examine such report before publishing the list. This statutory obligation is also totally lacking in this case. When the violation of statutory provisions is made out, it is always open to the parties to approach this Court under Article 226 of the Constitution of India. Admittedly, as can be seen from various documents filed by both the parties in these matters, nothing has been established to sustain the contention that the enquiry was conducted as required under Section 4(3) of the Act. In such a situation, it cannot be said that the impugned

Notification is binding on the petitioners and accordingly, the petitioners are entitled to challenge the same as it is illegal and not enforceable as far as petitioners are concerned. Accordingly, I have to reject the contention raised on behalf of the Wakf Board and also the Government in this regard.

33. It is also to be noted in this regard that though the Wakf Board has been contending that the property in question is a Wakf property, which was notified in the Official Gazette as early as in 1989, but it is surprising to note that till today no action has been initiated either for evicting the petitioners or for recovery of possession of the Wakf property and no proceedings were initiated before the Tribunal constituted under the Act. None of the revenue records even whisper about the property as belonging to Wakf Board. It appears that the Wakf Board has filed an appeal only against the order of granting occupancy rights to the petitioners, and that too after one year and half decades which is pending before the appellate authority on which I am not inclined to make any comments. Under these circumstances, I have to necessarily hold that the notification published by the Wakf Board in the Gazette on 09.02.1989 is not valid and the same is not binding on the petitioners. Accordingly, it is set aside as far as the petitioners are concerned. So far as the relief for quashing the proceedings pending before the appellate authority under the Inams Abolition Act is concerned, I am not inclined to do so. It is open for the parties to agitate their respective rights before the appropriate authority."

In A.P. State Wakf Board vs. Hyderabad Archdioceses Society Archbishop House 2010 SCC Online AP 1227, this Court while dealing with the notification, dated 29.12.1988, at paragraph Nos.16 and 33 to 36 has held as under:

16. In the light of the above submissions referred to above, the following points arise for consideration in this batch of appeals.

1) Whether the learned Single Judge is justified in setting aside the notification and giving a finding with regard to title of the property in a proceeding under Article 226 of the Constitution, which are summary in nature?

2)

3)

33. Once it is established that before notifying the property as Wakf no notice as such was issued to the persons, whose rights are likely to be affected, they can always maintain the writ petition questioning the notification.

34. It is now well settled that notification issued under sub-section (1) of Section 6 of Wakf Act making list as final and conclusive between the Wakf Board and the Muttawalli land the persons interested in the Wakf and not to extend its scope to the persons who are not persons interested in the Wakf. Therefore, the right, title and interest of a stranger, a non-Muslim to the Wakf in a property cannot be put in jeopardy merely because that property is included in the list of Wakfs. (See Board of Muslim Wakfs v. Radha Kishan 9179) 2 SCC 468)

35. The Supreme Court in PUNJAB WAKF BOARD v. GRAM PANCHAYAT (2000) 2 SCC 121) and SAAYYED ALI v. A.P.WAKF BOARD, HYDERABAD (1998) 2 SCC 642) reiterated that the persons who are not served with any notice can file the writ petition challenging the notification.

36. In view of the same, quashing notification on the ground that persons, who are likely to be affected by such notification, have not been served with any notice is justified. The rest of the finding recorded by the learned Single Judge with regard to claim of the Wakf Board to notify the property as Wakf Property and title of the writ petitioners vis-à-vis Wakf Board, the learned Judge was not justified in deciding the said issue, which is dealt with in points Nos.2 and 3.

A learned Single Judge of this Court, in W.P. No.9378 of 2009, by order dated 06.02.2012, while dealing with the very same notification, dated 09.02.1989, in respect of Sy.Nos.302 and 303 of this very same village i.e. Mamidipally Village, under similar set of facts, has held as under:

"From this, it is clear that a detailed survey is required to be conducted. The publication of the notification must be soon, though not immediate, after the survey. The reason is that, any events, that occur between the date of survey, and date of publication of the notification would render the very exercise futile. If any substantial development takes place between the two events, the survey conducted earlier can not at all constitute the basis for publication. Even otherwise, unreasonable delay would defeat the very objective, underlying the provision.

It was way back in the year 1960, that the survey in respect of the land in Sy.Nos.299 to 306 of Mamidipally village was conducted under Section 4 of the Wakf Act, 1954. The publication was made only in the year 1989. In the period of three decades, that has intervened, several legislative and administrative changes have taken place. The Inams Act came into force, and in the course of its implementation, the ORCs were granted in respect of the lands. Had any survey been conducted immediately preceding the publication in the year 1989, the fact that the petitioners or their predecessors in title had in possession and enjoyment of the property, as absolute owners or were issued ORCs; could have been noticed, and issuance of notification would certainly have become doubtful. By no stretch of imagination, the survey conducted in the year 1960 can be said to be the basis for publication of a notification in the year 1989. Therefore, the notification dated 09.02.1989 cannot be said to be in conformity with the provisions of the Wakf Act.

This Court, in B.Gowra Reddy's case (sura) dealt with the manner in which the notification under challenge herein was issued, and expressed the view that it does not accord with law. The principle laid down therein covers the facts of this case also.

The third contention arises on account of the objection raised by the 2nd respondent, the effect that the petitioners cannot challenge the notification at

this stage, when its right to file a suit under the Act is barred.

The question as to whether the limitation and other aspects covered by Section 4 to 6 of the Wakf Act would apply in relation to proceedings initiated by third parties also, was dealt with by the Hon'ble Supreme Court in Board of Muslim Wakfs, Rajasthan v. Radha Kishan (1979) 2 SCC 468). It was held that the notification would become final and conclusive as between the Wakf Board and the Mutawalli, on the one hand, and the persons interested in the wakf, on the other, but not against the persons, who are not interested in the wakf. The petitioners herein did not claim any interest in the wakf concerned.

For the foregoing reasons, the writ petition is allowed, as prayed for."

The order, dated 06.02.2012, passed by the learned Single Judge in W.P.No.9378 of 2009 has been confirmed by the Division Bench of this Court in W.A.No.1010 of 2012 vide judgment dated 07.11.2013, and the same has become final.

Recently while dealing with the lands in survey Nos.302 and 303 of the very same village, this Court in W.P.No.1442 of 2020, vide order dated 11.02.2020, relying on the judgment of the learned Single Judge in W.P.No.9378 of 2009, dated 06.02.2012, while dealing with the lands in survey Nos.302 and 303 of Mamidipally village, has held as under:

"In view of the above judgment of the learned Single Judge, the objection taken by the 4th respondent with regard to publication of the notification, dated 09.02.1989, notifying the subject land as wakf land, has no legs to stand, as the said notification is held to be not in conformity with the provisions of the Act.

Having to the facts and circumstances of the case and the submissions of the learned counsel and order passed by this Court, which is referred to above, and for the reasons alike, the present writ petition is allowed, and the 3rd respondent is directed to receive and register the document i.e., sale deed presented by the petitioner in respect of the subject land, provided the same is in order as per the provisions of the Indian Stamp Act, 1899, and the Registration Act, 1908, and the Rules made there under."

Moreover, all the above referred judgments of this Court have become final and till date they are not set aside by the Hon'ble Supreme Court and therefore hold good.

In view of the law laid down by this Court as well as the Hon'ble Supreme Court in the above referred judgments, this Court is of the opinion that the notification, dated 09.02.1989, issued by the Waqf Board is one without jurisdiction and the same is liable to be set aside. Accordingly the second batch of writ petitions are allowed and the notification dated 09.02.1989, is set aside.

Coming to the first batch of writ petitions filed questioning the order of the Joint Collector, the operative portion of the impugned order dated 25.02.2006 setting aside the orders of the RDO reads as under:

".... Thus it is evident that the said lands are Waqf lands and grant of Occupancy Rights Certificate to individuals in respect of Wakf lands is not in order.

No individual is entitled to get any Occupancy Rights Certificate on such land and religious institution alone is entitled to get Occupancy Rights Certificate. Hence the Occupancy Rights Certificate issued by the Revenue Divisional Officer Ranga Reddy East Division in File No.(1) J/4163/1986 dated 7-1-2005 (2) J/4162/1986 dated 7-1-2005 (3) J/4164/1986 dated 7-1-2005 & J/4165/1986 dated 7-1-2005 are set aside and the Revenue Divisional Officer is directed to issue Occupancy Rights Certificate in the name of religious institutions only in light of the above amended Act No.19 of 1994....."

A perusal of the above portion reveals that the Joint collector has suo moto taken up the issue and while setting aside the orders of the RDO has granted ORC in favour of the Waqf Board, solely based on the Gazette Notification dated 09.02.1989. Neither the material on record nor the counters filed before this Court reveal that either the legal representatives of the Inamdars or the persons, in whose favour the RDO has granted ORCs, were put on notice nor given an opportunity of hearing with regard to the suo moto taking up of the case or that reliance was being placed on the Gazette Notification dated 09.02.1989 while passing the order, dated 25.02.2006. This Court as well as the Hon'ble Supreme Court in catena of cases have held that the principles of natural justice are inviolable and fundamental to the rights of the parties to be heard before any orders are passed and the Courts under Article 226 of the Constitution of India can exercise judicial power to review the decisions made by the subordinates/quasi judicial authorities to see whether the principles of natural justice are violated or not and whenever warranted the Court will step-in to correct the same. The power of judicial review has been held to form the basic structure of the Constitution and the said power cannot be controlled or excluded by any provision of Statute or Rules made thereunder. Therefore, the contention of the learned Standing Counsels that the only remedy available to the petitioners is to approach the Waqf Tribunal for setting aside the Waqf Notification, if they are aggrieved by the same, cannot be countenanced and the same has to be rejected. The Court while exercising power under Article 226 of the Constitution of India is not denuded of the power to deal with the orders of the Joint Collector to see whether the orders that are passed are in accordance with the procedure established by law or whether there was any violation of the principles of natural justice. Even though the learned Standing Counsel for the Waqf Board has relied on the judgment of the Hon'ble Supreme Court in Whirlpool Corporation (supra), but, as a matter of fact, in the said decision, the Hon'ble Supreme Court has held as under:

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not

normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

Thus, mere existence of an alternative remedy will not by itself take away the powers of the High Court under Article 226 of the Constitution of India to exercise its power to review the decision made by the quasi judicial authority.

Moreover, in *State Bank of India vs. M.S. Basi & Ors.* (2004) 11 SCC 347, the Hon'ble Supreme Court has held that the order is liable to be set aside if no opportunity of hearing is afforded to the parties who are adversely affected.

Further, in *Mariamamma Roy vs. Indian Bank & Ors.* (2009) 16 SCC 187, the Hon'ble Supreme Court has held that even if an alternative remedy is available, if violation of the principles of natural justice is alleged, the writ petition is maintainable and the High Court can interfere.

Therefore, the contention of the learned Standing Counsel that it is only the Waqf Tribunal that can go into the validity or otherwise of the Gazette Notification cannot be countenanced and the same is rejected. The impugned order passed by the Joint Collector setting aside the order of the RDO granting ORCs without putting the parties on notice and without affording them an opportunity of hearing, violates the well recognized principles of natural justice i.e. audi alteram partem and the same cannot be countenanced and is liable to be set aside on this sole ground.

As seen from the record, the only material before the Joint Collector was the Waqf Notification, dated 09.02.1989, and admittedly the Waqf Board was not a party to the said proceedings nor there was any other material to contend that the subject lands are Waqf lands. In view of the fact that the notification dated 09.02.1989 itself has been held to be invalid and unsustainable and is set aside by this Court in the second batch of writ petitions, the order of the Joint Collector granting ORC in favour of the Waqf Board is also liable to be set aside and the same is accordingly set aside.

However, taking into consideration the arguments putforth by the Waqf Board, this Court is of the opinion that the ends of justice would be met if the matter is remanded back to the Joint Collector. Accordingly, the first batch of writ petitions are allowed and remanded back to the Joint Collector (now designated as Additional Collector (Revenue) to decide the matter afresh duly taking into consideration the above observations made by this Court. This entire exercise shall be completed as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. It is needless to mention that the Waqf Board, if it chooses, can implead itself before the Joint Collector and place any other material besides notification dated 09.02.1989,

which has already been set aside, to buttress their case that the lands in question are Waqf lands and the same shall also be taken into consideration by the Joint Collector while passing the orders on merits. It is needless to mention that all the parties shall be put on notice and afforded reasonable opportunity of hearing, before passing of the orders. It is also made clear that pending the appeals before the Joint Collector, if the parties alienate or change the nature of the lands, the same will be subject to the final orders likely to be passed by the Joint Collector, and in case any adverse orders are passed, the parties shall not claim any equities.

Insofar as third batch of writ petitions filed aggrieved by the Notification issued under Section 22-A of the registration Act are concerned, in view of the fact that the said notification has been issued based on the Notification dated 09.02.1989 issued under the Waqf Act, which has already been set aside by this Court, the Notification issued under Section 22-A of the Registration Act has to be necessarily set aside and the same is accordingly set aside. Accordingly, the third batch of writ petitions are allowed.

Accordingly, all the writ petitions are allowed, to the extent indicated above."

11. In the considered opinion of this Court, once the Division Bench of this Court while dismissing the Writ Appeal i.e., W.A.No.1010 of 2012 has upheld the order passed by the learned Single Judge dated 06.02.2012, by which the Notification, dated 09.02.1989 was set aside, the question of taking a different view in the present Writ Appeals does not arise. Once the Notification has been held to be bad in law and the land which was subject matter of the Notification is again subject matter of the same Notification, this Court does not find any reason to interfere with the order passed by the learned Single Judge in allowing the writ petitions.

12. Resultantly, the order passed by the learned Single Judge in allowing the second batch of writ petitions does not warrant any interference and the writ appeals arising out of second batch of writ petitions are dismissed.

13. In the third batch of Writ Petitions, the grievance of the petitioners therein was prohibition of registration of land on account of a Notification under issued Section 22-A of the Registration Act based on the Notification dated 9.02.1989 declaring the lands as wakf. In the considered opinion of this Court, as the Notification dated 09.02.1989 has been held to be bad in law, the learned Single Judge was justified in quashing the Notification issued under Section 22-A of the Registration Act. Therefore, this Court does not find any reason to interfere with the Order passed by the learned Single Judge.

14. In the light of the above, the order passed by the learned Single Judge in allowing the third batch of writ petitions does not warrant any interference and the writ appeals arising out of that batch of writ petitions are dismissed.

15. Resultantly, all the writ appeals are dismissed. Miscellaneous petitions, if any

pending, shall stand dismissed. There shall be no order as to costs.