IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

OWP No. 97/1979
c/w
OWP No. 441/2013

Reserved on: 26.02.2026
Pronounced on : 02.04.2026
Uploaded on : 02.04.2026
Whether the operative part or full judgment is pronounced: Full

Syed Lutfullah Shah and Anr

....Petitioners

Through:- Mr. Altaf Haqani, Sr. Advocate vice
Mr. Aasif Wani, Advocate
(through virtual mode)
Mr. Dinesh Singh Chauhan, Advocate
with Ms. Damini Chauhan, Advocate.

V/s

A.W. Kirpak Supdt. Engineer
& Ors.

.....Respondents

Through:- Mr. P.N. Raina, Sr. Advocate with
Mr. J.A. Hamal, Advocate.
Mr. A.A. Hamal, Advocate
Mr. Ayjaz Lone, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

01. The subject matter of the afore-titled two writ petitions is the dispute relating to management and entitlement to the properties pertaining to Ziarat Farid-ud-Din

Sahib and Ziarat Assrar-ud-Din Sahib situated in Kishtwar. The litigation in this regard has a long chequered history, which was initiated before this Court in the year 1979 by institution of writ petition-OWP No. 97 of 1979 by the writ petitioners, who claim to be Sajjada Nasheens of the aforesaid two shrines. They also lay claim to the properties attached to the aforesaid two shrines. The writ petition was decided by this Court by virtue of judgment dated 10.09.1998 whereby the claim of the writ petitioners was rejected. The judgment passed by this Court was challenged by the writ petitioners by way of an LPA bearing LPA(OW) No. 283/1998, which came to be dismissed by the Division Bench of this Court in terms of judgment dated 30.05.2003. The writ petitioners challenged the said judgment before the Supreme Court by way of Civil Appeal No. 65 of 2006. The writ petitioners also filed a petition under Article 32 of the Constitution of India before the Supreme Court of India bearing Writ petition (Civil) No. 633 of 2004 whereby they laid challenge to the vires of the provisions contained in Jammu and Kashmir Wakafs Act, 1978 (hereinafter to be referred to as "**Act of 1978**") and Jammu and Kashmir Wakafs Act, 2001 (hereinafter to be referred to as "**Act of 2001**").

02. The civil appeal and the aforesaid writ petition were clubbed together and disposed of by the Supreme Court in

terms of order dated 28.02.2013. A consensual order came to be passed by the Supreme Court and both the cases were disposed of in the following terms:

> *(i) The order dated May 30, 2003 passed by the Division Bench and orders dated September 10, 1998 and February 10, 2000 passed by the learned Single Judge of the High Court are set aside.*
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> *(ii) Writ Petition being Writ Petition No. 97 of 1979 is restored to the file of the High Court for fresh consideration and decision after hearing the parties in accordance with law. The petitioners shall be at liberty to file additional documents/additional affidavit in support of the Writ Petition. It will be open to the respondent to file additional counter affidavit with additional documents.*
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> *(iii) Writ Petition (Civil) No. 633 of 2004 filed before this Court is transferred to the Jammu & Kashmir High Court. The Registry shall send the paper books of the Writ Petition along with annexures to the Registry of the Jammu & Kashmir High Court, which will register the said Writ Petition on the record of the High Court.*
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> *(iv) The interim order dated January 2, 2006 passed by this Court shall remain operative until the decision by the learned Single Judge of the High Court on the above two Writ Petitions and for a further period of three months thereafter.*

03. In view of the aforesaid order of the Supreme Court, the matter again landed before this Court for its fresh decision on merits. The writ petition filed by the petitioners before the Supreme Court came to be registered as OWP No. 441/2013. It appears that during pendency of the writ petitions, efforts were made by the parties to settle the matter amicably and in this regard, an application CM No. 908/2026 came to be filed

by the petitioners to place on record a copy of agreement stated to have been executed between the petitioners and the respondent-Wakaf Board, which is dated 19.08.2003. However, during the course of arguments, learned counsel for the respondents submitted that the agreement is not acceptable to the respondent-Wakaf Board. He has placed on record a communication dated 24.02.2026 whereby the respondent-Wakaf Board has rejected the compromise agreement dated 19.08.2023 and it has been decided to get the writ petitions determined on their merits. It is in these circumstances that the present petitions are being taken up for their final determination on merits.

OWP No. 97 of 1979

04. Before narrating the case set up by the petitioners in the aforesaid writ petition, it would be necessary to narrate a brief background of the history of the two shrines viz, Ziarat Farid-ud-Din Sahib and Ziarat Assrar-ud-Din Sahib. Prior to the annexation of Kishtwar and its merger with erstwhile state of J&K by Maharaja Gulab Singh in 1821 A.D, Kishtwar was an independent state. Somewhere in the year 1681 A.D, Raja Kirat Singh, who was the monarch of Independent State of Kishtwar, converted to Islam. Prior to that, Shah Farid-ud-Din Sahib, a saint, came to Kashmir somewhere in 1664 AD. He is

stated to have passed away in the year 1725 AD at the age of 99 years. His elder son, namely, Shah Assrar-ud-Din Sahib, who was also a saint, is stated to have died in the year 1685 AD. Two separate mausoleums came to be built over the graves of these two saints, which came to be known as the Ziarats of Shah Farid-ud-Din Sahib and Shah Assrar-ud-Din Sahib. These two ziarats are being visted by thousands of devotees from all over the Union Territory especially on death anniversary of these two saints, which fall on 7th Har and 25th Kartak every year. Urs of Shah Assrar-ud-Din Sahib is a public holiday for the districts of Kishtwar, Doda and Ramban on account of reverence of the two saints, which is being paid to them by the people of these districts.

05. As per case of the writ petitioners, petitioner No. 1 including other members of his family are Sajjadu Nasheens of Ziarat of Shah Farid-ud-Din Sahib whereas, petitioners No. 2 and 3, who happen to be the legal heirs of original petitioner No. 2-Peer Nizam-ud-Din along with their other family members are Sajjadu Nasheens of Ziarat Shah Assrar-ud-Din Sahib situated at Kishtwar. It is case of the petitioners that right of Sajjadu Nasheen is their hereditary right and that both these ziarats are their exclusive properties. It has been contended that the petitioners have exclusive right of collection of offerings or Nazur-u-Nayaz and they are also responsible to

maintain these two ziarats from their own incomes. According to the petitioners, these two ziarats are not wakaf properties, as such, cannot be governed by Wakafs Act because these properties are personal properties of the petitioners, which have devolved upon them from their forefathers.

06. It has been submitted that the Special Officer, Auqaf appointed under Section 4(3) of J&K Muslim Wakaf Act, 1959 (hereinafter to be referred to as "**Act of 1959**") in his report dated 09.08.1969 has categorically stated that both the aforesaid ziarats are being maintained by Sajjadu Nasheens, who have got hereditary rights and that these Sajjadu Nasheens hold charge of both these ziarats independently for the last 300 years. The Special Officer further reported that these ziarats are separate and independent, which should continue as such and that the committee to be appointed will not have jurisdiction in the maintenance and other affairs of these two ziarats, which are the sole properties of the petitioners.

07. It has been submitted that after the repeal of Act of 1959, the Act of 1978 came into force on 09.05.1978 and the Government dissolved the earlier committee and appointed Deputy Commissioner, Doda to be the administrator of Wakafs Committee. Subsequently, Deputy Commissioner, Doda was removed and in his place original respondent No. 1-

Superintending Engineer, Doda was appointed as the Administrator of Tehsil Wakaf Committee. It has been submitted that respondent No. 1, upon his appointment as Administrator, started interfering with the rights of the petitioners in the two ziarats by issuing two proclamations. Vide one proclamation, public upon being informed about the appointment of respondent No. 1 as Administrator, was asked to obtain receipts in respect of donations to these two shrines from the Administrator, thereby bringing these two ziarats under the purview of Wakaf. It is case of the petitioners that respondent No. 1 was not competent to issue such proclamation. It has been submitted that during the pendency of the writ petition, respondent No. 2 appointed respondent No. 4 as the Special Officer in an illegal manner even though the earlier Special Officer had already submitted his report, which had become final.

08. It has been submitted that respondent No. 4-the Special Officer, without issuing notice to the petitioners or other interested persons and without hearing the petitioners, rendered his report dated 05.08.1979, which according to the petitioners, is factually incorrect and is not passed on any documentary evidence. It has been contended that report of the Special Officer, appointed under the Act of 1959, had become final and binding between the parties and that the

same could not be re-opened even after repeal of the Act of 1959 because in terms of Section 61 of the Act of 1978, any action taken in exercise of power conferred under the repealed Act is saved. It has been submitted that pursuant to report dated 05.08.1979 of respondent No. 4, respondent No. 2 issued SRO 619 of 15.11.1979, declaring thereunder wakaf properties situated at Kishtwar town, which includes the aforesaid two shrines.

09. Upon coming to know about the report dated 05.08.1979 and SRO dated 15.11.1979, an appeal came to be filed by the petitioners before respondent No. 3. The petitioners also filed their written arguments before respondent No. 3 but the appeal came to be dismissed by respondent No. 3 in terms of order dated 30.04.1982.

10. The petitioners have laid challenge to the report dated 05.08.1979 of respondent No. 4, the notification bearing SRO No. 619 of 15.11.1979 issued by respondent No. 2 and the judgment dated 30.04.1982 passed by respondent No. 3 through the medium of the present writ petition. They have also sought a direction upon the respondents not to interfere in any manner whatsoever with the management, affairs, collection of offerings and Nazar-u-Nayaz of the aforesaid two ziarats by the petitioners and their family members as Sajjadu Nasheens.

11. For seeking the aforesaid reliefs, the petitioners contend that the impugned report, notification and the judgment passed by respondent No. 3 are illegal, unconstitutional and malafide as the same is a result of political vendetta. It has been contended that the impugned documents are without jurisdiction because in the presence of report of the Special Officer appointed under the Act of 1959, which had become final, the respondents had no power to conduct fresh enquiry from the Special Officer. It has been submitted that in terms of Section 61 of the Act of 1978, the report of Special Officer, appointed under the Act of 1959, is saved and once the said report had become final, it was not open to the respondents to appoint the new Special Officer for the purpose of conducting enquiry.

12. It has been contended that the report of respondent No. 4 is ex parte and the same has been made in an illegal and arbitrary without issuing notice to the petitioners and without holding any enquiry as envisaged under the provisions of Act of 1978. It has been submitted that the impugned report, issued by respondent No. 4, is factually incorrect and non-speaking. It has been contended that the two ziarats cannot be deemed as Wakaf properties under the Muslim law as no dedication of the said properties has been made by the owner of these properties, namely, Raja Kirat Singh. It has been

contended that even otherwise, Raja Kirat Singh, who was a Hindu, could not make dedication of properties for wakaf.

13. It has also been contended that Raja Kirat Singh, Teg Singh and Zorawar Singh had executed *'pattas'* in respect of the properties in question in favour of the ancestors of the petitioners, as such, the same could not have been treated as properties of the ziarats. It has been contended that the respondents have failed to appreciate khilafatnama (Settlement Deed) executed by Shah Akhyar Sahib, from a perusal of which it is amply clear that ancestors of the petitioners were given the proprietary rights over the land in question upon which they have constructed their own houses. The same could not be termed/declared as wakaf property. It has been contended that respondent No. 3 has failed to appreciate the material on record while passing the impugned judgment dated 30.04.1982.

14. The respondents have contested the writ petition by filing their reply affidavit in which it has been submitted that the document (Annexure-A) to the writ petition, whereby Shah Akhyar-ud-Din Sahib, the brother of Shah Assrar-ud-Din Sahib and son of Shah Farid-ud-Din Sahib Baghdadi had appointed Hafiz Inayat Ullah, the predecessor-in-interest of petitioner No. 2, as his Khalifa and successor, is not a genuine document. It has been contended that the two ziarats have

not devolved upon the petitioners and they can be described only as Managers. It has been submitted that the copies of jamabandis annexed to the writ petition clearly reflect that the properties in question belong to the Ziarat and not to the petitioners in their individual capacity. According to the respondents, the khilafatnama does not confer any right upon the predecessor-in-interest of the petitioners. The respondents have also disputed the genuineness of *patanama* on which the petitioners have placed reliance.

15. It is stand of the respondents that the two ziarats are not exclusive property of the petitioners nor they have any right to collect offerings and Nazar-u-Nayaz. It has been submitted that the petitioners are liable to render accounts as the offerings, which have been received by them in the past, have not been used for public purpose but they have appropriated the same for their personal use. It has been submitted that in the year 1963-64 when the holy ziarat of Shah Assrar-ud-Din Sahib got damaged due to fire, Government of J&K donated an amount of Rs. 50,000/- and an equal amount was donated by the public for its renovation.

16. Regarding the report of the Special Officer appointed under the Act of 1959, it is the stand of the respondents that the said report was never accepted by the Government nor was it published in the Government gazette,

therefore, it had not become final. It has been submitted that the Special Officer, appointed under the Act of 1978, had given ample opportunity to the petitioners to establish their claim. It has been submitted that members of public were free to approach the Special Officer and produce evidence and the petitioners had knowledge about the same. According to the respondents, the report of the Special Officer appointed under the Act of 1978 was accepted by the Government. Accordingly notification for inclusion of the two ziarats as wakaf properties was issued. According to the respondents even without the declaration, the two ziarats qualify to be wakaf property and the declaration merely confirms the said fact. It has been further submitted that the two ziarats are wakafs by user and these were not created by any deed. It has been submitted that in the year 1681 A.D., Raja Kirat Singh had converted to Islam and the in the year 1687 A.D, emperor Aurangzeb changed his name to Sadat Yar Khan. Thus, when the zirats were built, Raja Kirat Singh had already converted to Islam.

17. The respondents have denied the existence and authenticity of *pattas* alleged to have been executed by Raja Kirat Singh, Raja Teg Singh and Raja Zorawer Singh. The respondents have submitted that area of land measuring 37 kanals, which is claimed to the personal property by the petitioners, is wakaf land and the same was erroneously gifted

by one of the mohtamims in favour of his relative but the mutation based on this gift deed was rejected by the revenue authority. This shows that the said land is wakaf property.

18. The petitioners have filed rejoinder affidavit to the writ petition in which they have reiterated the contentions raised in the writ petition and they have also referred to certain historical books written by Sh. Zia-ud-Din Zia, Sh. Shiv Ji Dhar, Sh. Hasmat-ullah Khan and Sh. Syed Nizam Din. According to the petitioners, these historical books confirm the fact that the property annexed to the two ziarats was gifted to the predecessor-in-interest of the petitioners by the then ruler. It has been submitted that a piece of twenty kanals of land on which the petitioners have personally built houses/orchards was given in dowry by Raja Kirat Singh to his grand-daughter, who was married to Hafiz Abdul Qasim, the predecessor-in-interest of the petitioners and that the nikahnama in this regard is available on record. This record finds mention in the history of Kishtwar written by Syed Nazam-ud-Din.

19. It is pertinent to mention here that after the case was remanded by the Supreme Court for its fresh decision by this Court, the petitioners placed on record additional documents before this Court in the shape of copies of historical books on which they have placed reliance. Besides

this, the petitioners have also placed on record copy of Khilafatnama, copy of gift deed allegedly executed by Raja Kirat Singh and Teg Singh, copy of nikahnama of Mst. Zaib-un-Nisa Begum, copy of *Ahadnama* executed by Raja Kirat Singh in favour of Hafiz-ul-Qasim, copy of royal decree dated 22 Rabi-ul Saini (1094) (H), copy of royal decree of Aurangzeb favouring Hafiz Annayatullah dated 24 Jamit-ur-Akhir 1123 Hijri and copy of Muafie.

20. I have heard learned Senior counsels appearing for the parties and I have also gone through the material on record.

21. The first contention that has been raised by the petitioners to claim that the two ziarats and the properties attached thereto cannot be termed as wakaf properties is that there has been no dedication to the wakaf by the owner of these properties viz, Raja Kirat Singh and if at all, the same has been done because Raja Kirat Singh was not a muslim, he could not have created a wakaf. To support their claim that the ziarats and the properties attached thereto cannot be termed as Wakaf, the petitioners have relied upon the document (Annexure-A) to the writ petition whereby predecessor-in-interest of the petitioners is stated to have been appointed as Khalifa by Akhyar-ud-Din Sahib, the brother of Shah Assrar ud-Din Sahib.

22. Before determining the merits of the aforesaid contention, it is necessary to understand as to what is meant by "Wakaf".

23. Section 3(d) of the Act of 1959 and under Section 3(d) of the Act of 1978 lay down definition of "Wakaf" which is identical excepting that in terms of the Act of 1978, dedication has to be made by a person professing Islam whereas, under the Act of 1959, there is no such restriction. Here, it would be apt to refer to the provisions contained in Section 3(d) of the Act of 1978:

> *"3(d) "Wakaf" means the permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable and includes-*
>
> *(i) a Wakaf by user such as Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza. Mausoleum, Takia, Sarai, Yatim Khana. Madrasa and Shafakhana; and*
>
> *(ii) a Wakaf-ul-Aulad?*
>
> *(a) for the maintenance and support, wholly or partially of his family, children or decendents; or*
>
> *(b) for the maintenance of the Wakaf or for the payments of his debts out of the rents and profits of the property dedicated:*
> *Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Muslim law as a religious, pious or charitable purpose of a permanent character;*
>
> *(iii) a grant, endowment or dedication of any property movable or immovable, made by the Government or any person or ruler for any of the aforesaid purposes;*

24. From a perusal of the aforesaid provision, it appears that a Wakaf would mean permanent dedication of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable. Thus, there has to be a dedication by a person professing Islam of any property movable or immovable for the aforesaid purpose. However, the Wakaf also includes a Wakaf by user such as Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takia, Sarai, Yatim Khana, Madrasa and Shafakhana. Thus, not only a property, which has been dedicated for the purpose recognized by Muslim Law or usage as religious, pious or charitable but even the Wakafs by user of the nature as mentioned in sub-clause (i) quoted above would become a wakaf without there being any dedication.

25. The aforesaid view is supported by the judgment of the Division Bench of this court rendered in the case of **Intizamiya Committee Dargah (I) & Anr Vs. Ut of J&K & ors (LPA No. 187/2023, decided on 05.06.2025)**. The Court while interpreting the provisions contained in Section 3(d) of the Act of 1978 has observed as under:

> *13. From a plain reading of the definition of 'Wakaf', it is crystal clear that the Wakaf would mean permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or*

charitable. It would also include a Wakaf by user, such as, Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takia, Sarai, Yatim Khana, Madrasa etc. etc. It is, thus, quite evident that Wakaf can be created by permanent dedication by a person professing Islam with respect to his property for any religious, pious or charitable purposes recognized by Muslim law. The properties like Masjid, Dargah etc. by virtue of their user as such are also Wakafs and no formal declaration to declare such properties as 'Wakaf' is required under the Act of 1978."

26. In the light of aforesaid legal position with regard to definition of Wakaf by user, if we have a look at the document (Annexure-A) to the writ petition, it clearly refers to expression 'Rauza'. Since 'Rauza' is included in sub-clause (i) of Clause (d) of Section 3 of the Act of 1978, therefore, even as per the document upon which the petitioners have placed reliance, the property in question qualifies to be a "wakaf by user" within the meaning of Section 3(d) of the Act of 1978 and no formal dedication of the owner viz Raja Kirat Singh was required for including the property in question within the purview of Wakaf.

27. The next contention that has been raised by the petitioners is that the Special Officer appointed under the Act of 1959 had, vide his report dated 09.08.1969, concluded that the two ziarats, which are subject matter of the present writ petition, have attained a separate and independent position

and should not, as such, be brought within the jurisdiction of the Committee. It has been contended that in the said report, it has been stated that the petitioners have got hereditary rights as Sajjadu Nasheens as one of their ancestors has been nominated as successor (khalifa) by Hazrat Shah Farid-ud-Din Sahib and, therefore, these properties cannot be brought within the purview of Wakaf. This report, according to the petitioners, has acquired finality and in spite of repeal of Act of 1959, the said report is saved and could not have been ignored by the respondents under any circumstances. In this regard, reliance is being placed upon the provisions contained in Section 61 of the Act of 1978.

28. In the above context, if we have a closer look at the report dated 09.08.1969 made by the Special Officer appointed under the Act of 1959, it would come to the fore that the officer has not given any finding to the effect that the two ziarats do not qualify to be wakafs. The Special Officer has, by relying upon the nomination of predecessor-in-interest of the petitioners as Khalifa by Hazrat Farid-ud-Din Sahib, observed that these two Ziarats have attained a separate and independent position and has recommended that while constituting Tehsil Wakaf Committee, names of Sajjadu Nasheens of these two ziarats be included as representatives of these two shrines. The officer has suggested that these two

shrines should not be brought within the jurisdiction of the Committee.

29. Here it is to be noted that as per the provisions contained in Section 4(3) of the Act of 1959, the Special Officer is duty bound to provide details about the wakaf properties. Section 4(3) of the Act of 1959 reads as under:

> *"S.4(3) The Special Officer shall, after making such inquiry as he may consider necessary, submit his report to the Government containing the following particulars, namely:-*
>
> *A) the number of wakafs in the area;*
>
> *B) the nature and object of the wakaf;*
>
> *C) the gross income of the property comprised in each wakaf;*
>
> *D) the amount of land revenue cesses, rates and taxes payable in respect of such property;*
>
> *E) the expenses incurred in the realization of the income and the pay or other remuneration of the Mutwalli of each wakaf; and*
>
> *F) such other particulars relating to each wakaf as may be prescribed.*

30. From a perusal of the aforesaid provisions, it is clear that the function of a Special Officer is to submit a report with regard to number of wakafs in the year, the nature and object of the wakaf, the gross income of the property comprised in each wakaf, the amount of land revenue, cesses, rates and taxes payable in respect of such property, the expenses incurred in the realization of the income and the pay or other remuneration of the Mutwalli relating to each wakaf as may be prescribed. While it is correct that a Special Officer while making an enquiry has to ascertain whether a particular

property is or is not a wakaf property, it is none of his job to recommend whether the Sajjadu Nasheens of a particular ziarat should be included in the Tehsil Committee. It is also none of the functions of the Special Officer to determine as to whether a particular ziarat has attained a separate status and whether said ziarat should be kept beyond the purview of the Wakaf Committee. The only recommendation, which the Special Officer could have made, is whether the aforesaid two ziarats qualify to be the wakaf. Regarding this aspect, the Special Officer has rendered no opinion. The recommendation with regard to the two ziarats made by the Special Officer, vide his report dated 09.08.1969, appears to be beyond his jurisdiction.

31. Apart from the above, if we have a look at the provisions contained in Section 5 of the Act of 1959, it provides that upon receipt of report of the Special Officer, the same has to be forwarded by the Government to the committee constituted under the Act, which has to examine the report and thereafter the report has to be published in the Government gazettee. Sub-section (4) of Section 6 of the Act of 1959 makes the list of wakafs published under sub-section (2) of Section 5 final and conclusive.

32. In the present case, the Government has, at no point of time, forwarded the report dated 09.08.1969 issued by

the Special Officer to the concerned committee nor has it been published in the Government gazette. Even otherwise, what becomes conclusive and final is the list of wakafs published in the Government gazette and not the observations of the Special Officer made in his report in respect of any property, which is not included by the officer in the list of Wakafs. Therefore, report dated 09.08.1969 can, by no stretch of reasoning, be stated to have attained the status of finality so as to attract a follow up action by the Government or any other authority.

33. Section 61 of the Act of 1978 does save anything done or any action taken in exercise of any power conferred by or under the Act of 1959 but having regard to the nature of the report dated 09.08.1969, no follow up action could have been taken on the basis of the said report. As already stated, the said report had not attained the finality and it was neither accepted by the Government nor by the Committee, as such, the same is not saved by the provisions contained in Section 61 of the Act of 1978.

34. Learned Senior counsel appearing for the petitioners has, while relying upon the judgment of the Supreme Court in the case of **Abdul Kuddus Vs. Union of India and Ors, (2019) 6 SCC 604**, contended that the findings recorded by Special Officer in his report dated 09.08.1969

would act as res judicata and, therefore, the same could not have been re-opened in the subsequent report of the Special officer appointed under the Act of 1978. In this regard, it is to be noted that the observations of the Special Officer rendered in the report dated 09.08.1969, as already indicated hereinbefore, were beyond his jurisdiction and the said report at no stage had attained finality as it was never examined by the Government and the committee, therefore, the observations made by the Special Officer in the said report would not act as res judicata and would not create a bar to the subsequent Special Officer to go into the issue as to whether the two ziarats qualify to be wakaf. The argument of the learned Senior counsel is, therefore, without any substance.

35. The next contention that has been raised by learned Senior counsel for the petitioners is that the Special Officer while making his impugned report dated 05.08.1979 did not afford an opportunity of hearing to the petitioners who, by virtue of previous report of the Special Officer and by virtue of being in the possession and management of the two shrines, were the interested persons, hence entitled to right of hearing. It has been pleaded in the writ petition that the Special Officer visited Kishtwar only for a couple of days to make the enquiry and it was impossible for him to make enquiry within this short period of time. The learned Senior counsel has relied

upon a number of judgments to buttress his argument that the Special Officer is a quasi judicial authority, who has a duty to afford an opportunity of hearing to all interested persons.

36. I would not like to burden this judgment with the case law relied upon by the learned Senior counsel for the petitioners to buttress his aforesaid contention because there is no dispute to the legal position that having regard to the nature of enquiry that a Special Officer has to undertake, the said officer acts as a quasi judicial authority and he has to afford an opportunity of hearing to all the interested persons. The question that begs for an answer is whether the petitioners in the instant case were afforded an opportunity of hearing by the Special Officer.

37. If we have a look at the order passed by the Special Officer, it is clearly stated therein that certain applications were received from the people of the locality as also from mohtamims of the two mausoleums. It has also been recorded in the impugned report that only two persons, who claimed themselves to be Sajjadu Nasheens of the dargah, stated that they were owners of the wakaf property of the ziarats and that they are proprietors of the two mausoleums. Having regard to the fact that the Special Officer has noticed the contentions of the petitioners, it can be inferred that they were heard by the Special Officer. The impugned report clearly takes note of the

contention of the petitioners and the Special officer goes on to record that after having examined the evidence and the documents produced including the old land revenue record, he has come to the conclusion that the immovable property dedicated to the two ziarats is a wakaf property. The contention of the petitioners that they were not heard and they were not allowed to produce material in support of their contentions is, therefore, contrary to what the Special Officer, has recorded in the impugned report.

38. It is to be noted that the petitioners filed an appeal against the aforesaid report of the Special Officer before the Minister concerned in terms of Act of 1978. In their memo of appeal before the appellate authority, the petitioners have claimed that the ziarats have been gifted to their ancestors and, as such, the same are their personal properties. They have also raised the plea that their right as Sajjadu Nasheens is a hereditary one. The petitioners have also contended before the appellate forum that in view of Section 61 of the Act of 1978, the first report of the Special Officer is saved and it has further been contended that no proper enquiry was conducted by the Special Officer on the second occasion as no notice was issued to the petitioners. The memo of appeal is comprehensive in nature. It raises as many as nineteen

grounds for assailing the second report of the Special Officer and the SRO dated 15.11.1979.

39. The Minister Incharge has, after dealing with the aforesaid contentions raised in the memo of appeal, passed a detailed order dated 30.04.1982. As per the appellate authority, in view of the entries in the Record of Rights, the property in question is not the personal property of the petitioners but it is the property of the ziarats, which qualifies to be wakaf. The appellate authority has also dealt with in detail the contention of the petitioners with regard to finality of the first report of the Special Officer and their contention that no adequate opportunity of presenting the case was given to them by the Special Officer on the second occasion. It has also been noted by the appellate authority that the petitioners have not produced any document to support their claim that the two ziarats and the property attached thereto is their personal property.

40. Thus, even if it is assumed that the petitioners were not granted adequate opportunity to present their case before the Special Officer when he rendered his report dated 05.08.1979 still then it can safely be stated that the petitioners had all the opportunity to place on record all the documents and the material that was available in their possession in support of their claim before the appellate authority, which

they failed to do, as a result of which, the appellate authority, on the basis of the entries in the Records of Rights, came to the conclusion that two ziarats and the property attached thereto is not the personal property of the petitioners but the same is the property of the ziarats, which qualify as wakaf.

41. So far as the scope of power of this court under writ jurisdiction to interfere with the orders and findings recorded by a quasi judicial authority like the Special Officer or the appellate authority in this case is concerned, the same is limited in nature. A Constitution Bench of the Supreme Court has, in the case of **Syed Yaqoob Vs. K.S. Radhakrishnan & ors, AIR 1964 SC 477** has analyzed the legal position about the limits of jurisdiction of High Courts in issuing a writ of certiorari in respect of orders passed by inferior courts or Tribunals, in the following manner:-

> *7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is*

not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.), and Kaushalya Devi v. Bachittar Singh .

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-inter-pretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no

difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.

42. From the foregoing analysis of legal position, it is clear that it is only in cases where the quasi judicial authority has acted without jurisdiction or it has committed an error of law or there is violation of natural justice or when the decision arrived at by the quasi judicial authority is afflicted with irrationality or the same is tainted with malafides that the High Court would be within its jurisdiction to interfere with such orders. The High Court while exercising its writ jurisdiction cannot sit in appeal over the order of the tribunal or the quasi judicial authority and substitute its own opinion in place of the opinion rendered by the quasi judicial authority.

43. Applying the aforesaid legal position to test the legality of the impugned report of the Special Officer and the impugned order passed by the appellate authority, it is clear that neither the Special Officer while rendering his report dated 05.08.1979 nor the appellate authority while passing the judgment dated 30.04.1982 has committed any jurisdictional error or procedural irregularity. Further it is not a case where there is any error apparent on the face of the record in the orders passed by the two authorities. Therefore, the order passed by the Special Officer on 05.08.1979 and the appellate authority on 30.04.1982 do not warrant any interference from this court in its writ jurisdiction.

44. Learned Senior counsel appearing for the petitioners has further contended that the two ziarats and the properties attached thereto were allotted to the predecessors-in-interest of the petitioners. In this regard, the petitioners have relied upon khilafatnama 11-4-1100 (Hijri)/2.2.1689 A.D, which finds mention in the book of ***Tareekh Kishtwar*** written by historian Sh. Najam-ud-Din Hassunul Hussaini and is also supported by the books of history titled ***Tareekh Kishtwar*** by Sh. Pandit Shiv Ji Dhar and **Tareekh Kishtwar** written by Sh. Hashmatullah Khan.

45. It has been further contended that the land under the possession of the petitioners of both the ziarats was not

granted by the then rulers to the ziarats but the same was granted to the ancestors of the petitioners in consideration of their services to the rulers of time, which is testified by ***"Tareekh Kishtwar"*** written by Syed Najam-ud-Din Hassunul Hussaini. It has been submitted that in the said book, document styled as *Ahadnama* finds mention which clearly indicates that the land in question in the vicinity of the ziarat has been granted to Hafiz Abdul Qasim (ancestor of the petitioners) in consideration of his marriage with granddaughter of ruler of Raja Kirat Singh. On the basis of these documents and history books, it is being contended that mere entry in the relevant revenue record in the name of the shrines cannot extinguish the right of ownership of the petitioners over the said land. Learned Senior counsel for the petitioners while referring to the provisions contained in Section 57 of the Evidence Act has also placed reliance upon the following judgments:

(I) Aliyathammuda Beethathebiyyappura Pookoya and Anr Vs. Pattakal Cheriyakoya and Ors, 2019 (16) SCC 1

(II) Swami Harbansa Chari Ji and Ors Vs. State of Madhya Pradesh AIR 1981 MP 82

(III) Prabhagiya Van Adhikari Awadh Van Prabhag Vs. Arun Kumar Bhardwaj, 2021 (18) SCC 104

(IV) Bhimabai Mahadeo Kambekar (Dead) through legal representative Vs. Arthur Import and Export Company and ors, 2019 (3) SCC 191

(V) Balwant Singh and Ors Vs. Daulat Singh (Dead) by LRs and Ors, AIR 1997 SC 2719 and

(VI) Onkar Nath & Ors Vs. The Delhi Administration, AIR 1977 SC 1108.

46. In the above context, it has to be noted that the documents alleged to have been executed by the then rulers in favour of ancestors of the petitioners including the *Ahadnama*, which have been placed on record, are illegible photocopies though their translated version have also been placed on record. The authenticity of these documents has been denied by the respondents. The petitioners in order to substantiate their claim about the authenticity of these documents have placed reliance upon various history books pertaining to kingdom of Kishtwar reference whereof has been made hereinbefore. These *Patanamas* and *Ahadnamas* find mention in the books of history. The question that arises for determination is whether the statements made in the history books with regard to title of the petitioners and their ancestors to the properties in question can be relied upon.

47. In this regard, the provisions contained in Section 57 of the Evidence Act, which provides that in all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference, needs to be properly understood and applied to the facts of the present case. The question whether the books of history can be relied upon for proving the title of the property has been

deliberated upon by Rajasthan High Court in the case of **Krishan Lal Vs. Sohan Lal and ors, AIR 1955 Raj 45.** The Court, while holding that the question whether a particular property was granted to a particular person by a former ruler is not a matter of public history, observed as under:

> *36. The argument is that this is a matter of public history, and therefore we should look into Nensi's-Khyat for this purpose. We must say that we cannot accept this contention. The question whether a particular village was granted to a particular person by a former ruler is not a matter of public history. It cannot really be contended that statements as to title of a certain person to a certain property, if found in some book written by somebody a century or two ago, would be relevant and admissible evidence to prove that title. We are, therefore, of opinion; that statements in Nensi's Khyat with respect to the grant of a particular jagir to a particular person is not a matter of public history, and therefore courts cannot take judicial notice of it.*
>
> *37. It is true that in Nensi's Khyat, it is mentioned that Kanawas was granted to Kana and Malpuria to Kumpa; but that statement is not a matter of public history of which courts can take judicial notice. This statement overrides the clear inference to be drawn from entries in state records over a period of about 200 years. The first appellate court was, therefore, wrong in taking judicial notice of Nensi's Khyat in this matter, and though the Chief Court did not hold that it could not take judicial notice of Nensi's Khyat, it preferred the evidence of entries in Government records to statements in Nensi's Khyat. We are prepared to go further and hold that we cannot take judicial notice of Nensi's Khyat, and therefore the clear inference to be drawn from Exs. A1 to A5 must prevail*

namely that the villages of Malpuria and Kanawas were both granted to Kumpa.

48. Thus, it is clear that it is only in the matters of public history that the court can rely upon appropriate books or documents of reference. Whether a person is or is not holding a title to a particular property cannot be a question of fact of public history.

49. Section 57 of the Evidence Act permits resort to appropriate books or documents of reference on matters of public history but not of a private or local nature. These history books or references cannot be used for proof of any fact relating to title of a property. The question of title between the Ziarats, though old and historical institutions and private person, the petitioners, herein cannot be deemed "matter of public history" and historical works cannot be used to establish title to such property. Therefore, even if it is assumed that the history books to which reference has been made by learned Senior counsel for the petitioners have been authored by reputed historians still then the facts relating to title of the property in question mentioned in those history books cannot be used to prove the title of the petitioners to the properties in question.

50. As against this, we have on record of the writ petition the extracts of *jamabandi charsala* relating to the

ziarat and the properties attached thereto. In all these documents, the name of the owner is shown as the ziarat and not that of the petitioners or their ancestors in their individual capacity. It is true that entries in the Record of Rights are not conclusive evidence with regard to title of the property but it is also equally true that entries in Record of Rights provide a strong evidence with regard to title of the property. It is only if it is rebutted by a cogent and convincing material that the said entries cannot be relied upon.

51. In the present case, the petitioners have not placed on record any cogent and convincing material that would rebut the presumption attached to the entries in the jamabandi. Therefore, it cannot be stated that the petitioners or their ancestors were the owners of the ziarat and the land attached thereto. In fact, it has come on record that at one point of time when a mohtamim of the ziarats tried to gift 20 kanals of the land attached to the ziarat to one of their relatives, the mutation in this regard was rejected right from the Tehsildar upto the Revenue Minister on the ground that the property does not belong to the mohtamims but it belongs to the ziarat hence, could not be gifted away.

52. For what has been discussed hereinbefore, it is clear that the petitioners have not succeeded in showing that the two ziarats and the properties attached thereto do not

qualify as wakaf property and that the same was the personal property of the petitioners and their ancestors. It is abundantly clear that the entire property in question is wakaf property. Thus, there is no ground to interfere in the impugned report of the Special Officer as upheld by the appellate authority vide its order dated 30.04.1982. However, it is to be noted that the appellate authority while passing order dated 30.04.1982 had directed that the petitioners be permitted to occupy the residential houses which they have built upon the land of the ziarats as lessees of wakaf property and the petitioners were directed to execute necessary agreements to this effect with the respondents. The petitioners were also given right to receive 25% of the offerings. This part of the direction has been set aside by this Court vide order dated 10.09.1998 passed in Writ Petition No. 520/1983 but the direction, permitting the petitioners to occupy the residential houses as lessees of wakaf property has acquired the finality.

53. In view of the above, while dismissing the writ petition, the petitioners are permitted to occupy the residential houses, which they have constructed upon the land of the two Ziarats as lessees of wakaf property in accordance with the directions contained in impugned order dated 30.04.1982 passed by the appellate authority.

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54. Through the medium of present petition, the petitioners have challenged the vires of Act of 1978 and the Act of 2001. The Act of 1978 has been repealed and replaced by Act of 2001 whereas Act of 2001, after coming into force of J&K Re-organization Act, 2019 also stands repealed. Presently Waqaf Act, 1995 (Central) has been made applicable to UT of J&K. The challenge to the aforesaid two legislations, which have already been repealed, has, thus, been rendered infructuous.

55. In view of the above, the writ petition is dismissed as having been rendered infructuous.

(SANJAY DHAR)
JUDGE

JAMMU
02.04.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**

..x..