



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. \_\_\_\_\_ of 2026**  
**(@Special Leave Petition (C) No.2937 of 2022)**

**Habib Alladin & Ors.**

**...Appellants**

**Versus**

**Mohammed Ahmed**

**...Respondent(s)**

**J U D G M E N T**

**K. VINOD CHANDRAN, J.**

Leave granted.

2. The neat question arising in the above appeal as to the reach and sweep of the jurisdiction of the Tribunal constituted under the Wakf Act, 1995<sup>1</sup>, though short, has been rendered complex by divergent opinions expressed by coordinate benches of this Court.

3. On facts, for the present suffice it to notice that the 1<sup>st</sup> appellant herein was the owner of a land which was developed by constructing an apartment complex through a builder on the strength of a development agreement. The

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<sup>1</sup> for short, 'Act of 1995'

respondent herein contended that on the ground floor of the building, meant for residential purpose, an area was enclosed as a Mosque with the active participation of the owner, constructed by the builder. The respondent claimed that himself and other members of the public have been offering prayers in the premises, more fully described in the schedule to the plaint, which is now being obstructed by the petitioners. The cause of action according to the respondent arose when the ingress to the Mosque, established in the year 2008, was obstructed in the year 2021. The plaintiff sought for a perpetual injunction restraining the defendants from causing any interference or hindrance to the plaintiff and other Musallies from entering into the premises and offering prayers.

4. The appellants filed an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908<sup>2</sup> specifically contending that there is no such Mosque established or continued in the residential complex. There is no demarcation of such a Mosque in the sanctioned plan and in any event, it is not a waqf under the Act of 1995; inclusion in

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<sup>2</sup> for short, 'the CPC'

the list notified or registration by the Waqf Board under that Act being mandatory for the plaintiff to approach the Tribunal. The confined jurisdiction conferred on the Tribunal, by the Act of 1995, does not enable the prayer for an injunction with respect to the property which has not been conferred with the status of a wakf under that Act. An Order VII Rule 11 application having been rejected, the defendants were before the High Court, which revision was dismissed by the impugned order. The High Court found that the averments in the plaint indicate a 'waqf by user' covered under the definition of waqf in Section 3(r)(i) of the Act of 1995. The defendants are hence before this Court canvassing their prayer for rejection of plaint.

5. Shri C. Aryama Sundaram learned Senior Counsel appearing for the appellant argued that the prayer for injunction simpliciter before the Tribunal is impermissible in view of the fact that the scheduled premises has not been established to be a Mosque or even a waqf. A declaration to that status of a property, not included in the list notified under Chapter II or registered under Chapter V of the Act of 1995 cannot be agitated before the Tribunal constituted

under that Act. Section 6 and 7 of the Act of 1995 confers jurisdiction on the Tribunal specifically with respect to a question arising as to whether a particular property is a waqf property or not or to be determined by the Tribunal, if and only if such property is specified as a waqf property in a '*list of Auqaf*' under Section 5. The same having not been done, there is no question of even a declaration being sought before the Tribunal, which prayer has to be necessarily made before the Civil Court, without which there cannot be a relief prayed for injunction simpliciter.

6. Reliance is placed on ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal***<sup>3</sup> wherein, a dispute regarding non-inclusion of certain property in the '*list of auqaf*' notified long back in the official gazette was found by the Tribunal to be a manifestly vexatious and meritless suit in the sense of it disclosing no right to sue; rejected under Order VII Rule 11. Insofar as the claim of 'waqf by user', reliance was placed on ***Faqir Mohamad Shah v. Qazi Fasihuddin Ansari***<sup>4</sup>, in which it was held that, as a matter of law, a waqf normally requires express dedication and in the event of the

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<sup>3</sup> (2017) 13 SCC 174

<sup>4</sup> AIR 1956 SC 713

contention being one of user for religious purpose, it should be from time immemorial. In the present case, the plaint itself asserts the Mosque to have been established only in the year 2008, which assertion is also false. It is argued that the decision in ***Rashid Wali Beg v. Farid Pindari***<sup>5</sup> insofar as it finds jurisdiction of the Tribunal having been conferred under Section 83 of the Act requires reconsideration, especially looking at the contrary stance taken in ***Ramesh Gobindram v. Sugra Humayun Mirza Wakf***<sup>6</sup>, an earlier decision of a coordinate bench.

7. Shri Niranjan Reddy learned Senior Counsel for the respondent/plaintiff, at the outset, argues that there is no case made out for rejection of a plaint under Order VII, Rule 11 of the CPC. The only question that arises is as to whether a Gazette notification is necessary for the Tribunal to get jurisdiction to deal with the question as to whether a property is a waqf property or not. It is urged that the statute provides for three measures by which the status of a waqf can be conferred on a property. The first is by a survey under Chapter II, in pursuance of which a '*list of auqaf*' is

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<sup>5</sup> (2022) 4 SCC 414

<sup>6</sup> (2010) 8 SCC 726

prepared, which after consultation with the Board has to be published, in pursuance to which the revenue authorities are required to update the land records in accordance with that list and reckon it when proceeding with a mutation of a property, included in the list. The second measure in which the status can be conferred is by a registration under Chapter V by the Waqf Board, which can be done by an application or even *suo motu*, after collection of information regarding the subject property and issuing notice to whomsoever is interested in the said property. The third measure according to the learned Senior Counsel is under Chapter VII, specifically under Section 83 of the Act where the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a waqf or waqf property which takes within it the decision as to whether a property is a waqf or not.

8. It is also pointed out that the survey as per Section 4(6) is a decennial exercise which also has not been carried out scrupulously. The auqaf so dedicated in the interregnum between two surveys cannot be said to have no status of waqf, the disputes regarding which cannot be adjudicated

by the Tribunal. Emphasis is laid on Section 2 of the Act, providing that the Act applies to all auqaf whether created before or after the commencement of this Act, again read with Section 2(r)(i) brings in, a waqf by user, which identical issue arises in the subject case. Reference is also made to Section 2(g) which was substituted by an amendment of 2013 bringing within the definition clause not only the list published under Section 5(2) but also those contained in the ‘*Register of Auqaf*’ maintained by the Board under Section 37 of the Act. **Ramesh Gobindram**<sup>6</sup> has been distinguished in **W.B. Wakf Board v. Anis Fatma Begum**<sup>7</sup>, which later decision has been followed by **Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji**<sup>8</sup> and **Punjab Wakf Board v. Pritpal Singh**<sup>9</sup>.

9. Another Coordinate Bench in **Rashid Wali Beg**<sup>5</sup> found the sub-stratum of **Ramesh Gobindram**<sup>6</sup> to have been removed by the Amendment Act 27 of 2013. It was categorically held that though Sections 6 and 7 speak of only two categories of cases, Section 83 covers the entire gamut

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<sup>7</sup> (2010) 14 SCC 588

<sup>8</sup> (2014) 16 SCC 65

<sup>9</sup> 2013 SCC OnLine SC 1345

of possible disputes in relation to any waqf or waqf property and the Civil Court's jurisdiction with regard to "*other matters which is required by or under this Act to be determined by a Tribunal*" has also been ousted by Section 85. **Rashid Wali Beg**<sup>5</sup>, hence requires no reconsideration; it pithily states and declares the law. Insofar as the principles governing a Mosque and 'waqf by user' reliance is placed on **Syed Mohd. Salie Labbai v. Mohd. Hanifa**<sup>10</sup> and **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**<sup>11</sup>.

10. Before we look at the plaint which is produced as Annexure P-9, we have to understand the law as delineated by this Court in the various decisions starting from **Ramesh Gobindram**<sup>6</sup>, which came in the year 2010, before the amendment of 2013. **Ramesh Gobindram**<sup>6</sup> was a case in which three appeals arising from the orders of the High Court, raised a common question whether the Tribunal constituted under Section 83 of the Act of 1995 was competent to entertain and adjudicate upon disputes regarding eviction of tenants occupying property which are admittedly waqf properties. It was found on an examination

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<sup>10</sup> (1976) 4 SCC 780

<sup>11</sup> (2020) 1 SCC 1

of the various provisions that neither Sections 6 and 7 nor the other provisions confer on the Tribunal the power to deal with eviction of tenants.

11. **Anis Fatma Begum<sup>7</sup>, Pritpal Singh<sup>9</sup>, P.V. Ibrahim Haji<sup>8</sup> and Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel Pvt. Ltd.<sup>12</sup>** distinguished the decision in **Ramesh Gobindram<sup>6</sup>** and found the subject issues arising in all the three cases capable of determination by the Tribunal. At the same time, **Haryana Wakf Board v. Mahesh Kumar<sup>13</sup>, Bhanwar Lal v. Rajasthan Board of Muslim Wakf<sup>14</sup> and Punjab Wakf Board v. Sham Singh Harike<sup>15</sup>** followed **Ramesh Gobindram<sup>6</sup>**. **Sham Singh Harike<sup>15</sup>** in fact found the divergent opinion in **Anis Fatma Begum<sup>7</sup>, P.V. Ibrahim Haji<sup>8</sup> and Pritpal Singh<sup>9</sup>** to be wholly unwarranted. It was categorically found that despite **Anis Fatma Begum<sup>7</sup>** having only distinguished the decision in **Ramesh Gobindram<sup>6</sup>**, its ratio as available from para 10 of the judgment sounds substantially different from **Ramesh Gobindram<sup>6</sup>** meaning thereby that a divergent view was taken. **Anis Fatma**

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<sup>12</sup> 2023 INSC 949

<sup>13</sup> (2014) 16 SCC 45

<sup>14</sup> (2014) 16 SCC 51

<sup>15</sup> (2019) 4 SCC 698

**Begum**<sup>7</sup> categorically held that the “*Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property*” as indicated from the words employed in Section 83(1) of the Act of 1995. On a bare perusal of the citation, it is evident that **Ramesh Gobindram**<sup>6</sup> was the first in point of time, a decision of a two-Judge Bench, the other decisions referred are of coordinate benches, which have taken a divergent view. This would not accord with the principles laid down in the decision of the Constitution Bench in **National Insurance Co. Ltd. v. Pranay Sethi**<sup>16</sup>. To understand the *ratio decidendi* of each of the aforesaid decisions, we have to necessarily look at the principles culled out, and the application of law made to the facts germane to the individual decisions.

**12. Ramesh Gobindram**<sup>6</sup> as we noticed dealt with eviction of tenants from admitted waqf properties. We have to notice at the outset that the amendment of 2013 conferred powers for removal of encroachers from waqf properties, on the Tribunal, bringing in a definition of an ‘encroacher’ which

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<sup>16</sup> (2017) 16 SCC 680

also included tenants, lessees and licensees whose rights had either expired or had been terminated by the Mutawalli or Board. True, the declaration with respect to the Tribunal not having powers to evict tenants stands offset by the amendment made, which removed the sub-stratum of the reasoning regarding that dispute, in the said decision. However, the larger principle of the ouster of jurisdiction of civil courts being confined to the precise power conferred under the statute, according to us, survives the amendment and is not extinguished by reason of the particular amendment. We are of the opinion that the principle laid down that, the Tribunal is only clothed with the powers under Sections 6 and 7, to resolve disputes and questions arising with respect to whether a property is wakf property or not; survives the amendment, as confined to those properties included in the '*list of auqaf*', defined in Section 2(g). The definition clause by the amendment of 2013 was expanded to bring within it, those properties registered by the Board and entered in the register maintained under Section 37, in addition to properties entered in the list under Section 5(2). Only such disputes or questions as to the status

of such properties in the ‘*list of auqaf*’ can be agitated before the Tribunal, especially since finality is conferred and conclusiveness provided, only to the decision of the Tribunal [Section 6(1)]. Finality is conferred on the list, only if it is not modified by the Tribunal [Section 6(4)]; meaning thereby that the list and the register are subject to modification by the Tribunal.

**13. *Ramesh Gobindram***<sup>6</sup> noticed the divergence of opinion with respect to the specific issue of eviction of tenants, as coming forth from the decisions of the various High Courts. It opened with the trite law that even if the statute accords finality to the orders of the Tribunal, a Court will have to see whether the Tribunal has the power to grant the reliefs, which the Civil Courts would normally grant and if the answer is in the negative, ordinarily there can be no inference of exclusion of the Civil Courts’ jurisdiction. Reliance was placed on ***Rajasthan SRTC v. Bal Mukund Bairwa (2)***<sup>17</sup>, a three-Judge Bench decision which reiterated the presumption of a Civil Court being conferred with jurisdiction, unless there is an express ouster made by the

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<sup>17</sup> (2009) 4 SCC 299

statute, which cannot be readily inferred and has to be confined to such matters on which power is conferred on the Tribunal, by express words employed. Sections 6, 7 and 85 were extracted, it was categorically held so in paragraphs 25 to 28:

*“25. Whenever a question arises whether “any dispute, question or other matter” relating to “any wakf or wakf property or other matter” falls within the jurisdiction of a civil court, the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of the civil court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the jurisdiction of the civil court only in relation to questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the civil courts not only in relation to matters that specifically fall in Sections 6 and 7 but also other matters required to be determined by a Tribunal under the Act. There are a host of such matters in which the Tribunal exercises original or appellate jurisdiction.*

*26. To illustrate the point, we may usefully refer to some of the provisions of the Act where the bar contained in the said section would get attracted. Section 33 of the Act deals with the power of inspection by a Chief Executive Officer or person authorised by him. In the event of any failure or negligence on the part of a mutawalli in the*

*performance of his duties leading to any loss or damage, the Chief Executive Officer can with the prior approval of the Board pass an order for the recovery of the amount or property which has been misappropriated, misapplied or fraudulently retained. Sub-section (4) of Section 33 then entitles the aggrieved person to file an appeal to the Tribunal and empowers the Tribunal to deal with and adjudicate upon the validity of the orders passed by the Chief Executive Officer. Similarly, under Section 35 the Tribunal may direct the mutawalli or any other person concerned to furnish security or direct conditional attachment of the whole or any portion of the property so specified.*

*27. Section 47 of the Act requires the accounts of the wakfs to be audited whereas Section 48 empowers the Board to examine the audit report, and to call for an explanation of any person in regard to any matter and pass such orders as it may think fit including an order for recovery of the amount certified by the auditor under Section 47(2) of the Act. The mutawalli or any other person aggrieved by any such direction has the right to appeal to the Tribunal under Section 48. Similar provisions giving powers to the Wakf Board to pass orders in respect of matters stipulated therein are found in Sections 51, 54, 61, 64, 67, 72 and 73 of the Act. Suffice it to say that there are a host of questions and matters that have to be determined by the Tribunal under the Act, in relation to the wakf or wakf property or other matters.*

*28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal.*

*So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred."*

***[underlining by us for emphasis]***

**14.** It was hence found that a reading of Section 6 and 7 makes it clear that the jurisdiction, to determine whether or not a property is a waqf property, or whether a waqf is a Shia waqf or a Sunni waqf, inheres in the Tribunal only if the particular property is specified as waqf property in the '*list of auqaf*'. The bar of jurisdiction under Section 85 is much wider than that in Section 6(5) since there are various provisions under the Act of 1995 which confers power on the Tribunal, the jurisdiction to consider which is ousted from the Civil Court; some of these provisions illustrated in paragraphs 26 to 28 above.

**15.** What is more important for our purpose is the interpretation of Section 83 in ***Ramesh Gobindram***<sup>6</sup>, which according to us survives the amendment of 2013. Section 83 has been given an expansive interpretation, an all-inclusive definition by the later decisions, taking a divergent view.

We extract herewith paragraphs 31 & 32 again from

**Ramesh Gobindram<sup>6</sup>: -**

*“31. It is clear from sub-section (1) of Section 83 above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the Rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.*

*32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question or other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reason of such establishment.”*

***[underlining by us for emphasis]***

**16.** Section 85, but for the cosmetic change of having corrected the spelling of the word 'waqf' from 'wakf' and substitution of '*Civil Court, Revenue Court and any other authority*' for the words '*Civil Court*' is substantially and verbatim the same as it existed prior to the amendment of 2013. Section 83 likewise, effectively has incorporated the aspect of eviction of a tenant or determination of the rights and obligations of the lessor and lessee of such property; the conferment of such power being under Section 54 (3) & (4), enabling the Chief Executive Officer to move the Tribunal either on complaint received or *suo motu*. Both these provisions, in our definite opinion, falls for no fresh interpretation, even after the Amendment of 2013.

**Ramesh Gobindram<sup>6</sup> followed:**

**17.** **Bhanwar Lal<sup>14</sup>** dealt with a suit instituted by the Waqf Board in the year 1980 for possession of a property as well as for rendition of accounts claiming it to be a waqf property. After evidence was led, at the final stage, the Board itself raised a contention under Section 85 of the Act

that the suit would be triable by the Tribunal and not the Civil Court as per the Act of 1995. This Court in the cited case referred to **Ramesh Gobindram**<sup>6</sup> with approval and found so in paragraph 23 to 24 extracted herein below:

*23. The exclusion of the jurisdiction of the civil courts to adjudicate upon disputes whether a particular property specified in the wakf list is or is not a wakf property or whether a wakf specified in the list is a Shia wakf or a Sunni wakf is clear and presents no difficulty whatsoever. The difficulty, however, arises on account of the fact that apart from Section 6(5) which bars the jurisdiction of the civil courts to determine matters referred to in Section 6(1), Section 85 of the Act also bars the jurisdiction of the civil courts to entertain any legal proceedings in respect of any dispute, question or matter relating to a wakf property.*

*24. Section 85 of the Act reads:*

*“85. Bar of jurisdiction of civil courts. — No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.”*

*A plain reading of the above would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words “which is required by or under this Act to be determined by a Tribunal” holds the key to the question whether or not*

*all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.”*

**[underlining by us for emphasis]**

18. The principle that the jurisdiction of the Tribunal constituted under Section 83 and the ouster of jurisdiction of the Civil Court provided under Section 85 would only be applicable to those matters specified under Sections 6 and 7 as also the specific conferment of jurisdiction contained elsewhere in the Act, and the ouster of jurisdiction is not absolute or all pervasive, were reiterated. It was found that, after the Act of 1995 some of the reliefs sought for, like rendition of accounts and removal of trustees would be within the jurisdiction of the Tribunal. But therein, the civil suit having been filed before the commencement of the Act, was possible of continuance before the Civil Court under Section 7(5) based on the exception to ouster of jurisdiction provided in the Act for suits initiated prior to the Act of 1995, was the finding.

19. In ***Mahesh Kumar***<sup>13</sup>, the suit was filed by the Waqf Board before the Civil Court, seeking possession of a property given on rent to a third party, whose widow in turn

executed a long-term lease in favour of the defendant and handed over possession. The property was duly notified under Section 5(2) of the Wakf Act, 1954. The decree passed by the Civil Court was reversed by the Appellate Court finding that the question as to whether the suit scheduled property is waqf property or not could be decided only by the Tribunal constituted under the Act of 1995 and directed the plaint to be returned under Order VII Rule 10 of the CPC to be presented before the Court of competent jurisdiction, which order was affirmed by the High Court. Therein the Waqf Board, as found by the Trial Court, clearly and cogently led consistent evidence and proved its title over the land in question, which was also specified in the 'list of waqfs', in which event, the jurisdiction was with the Tribunal.

It was held so in paragraph 11:

11. As per sub-section (1) of Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the Tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the civil court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to

*mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a civil court before the commencement of the Act in question, then such proceedings before the civil court would continue and the Tribunal would not have any jurisdiction.*

**[underlining by us for emphasis]**

20. In ***Sham Singh Harike***<sup>15</sup>, there were two appeals, both filed by the Punjab Waqf Board. The suit filed against *Sham Singh Harike* before the Civil Court was transferred to the Waqf Tribunal after its constitution. The suit was filed for grant of permanent injunction restraining the respondent from raising any construction and changing the agricultural land into a residential property, which land was asserted to have been leased out to *Sham Singh Harike*. The defendant had initiated litigation against the interest of the Board which was decided in favour of the Board. In the subject suit, the defendant raised a question as to whether the property was a waqf property or not and contended that the jurisdiction to entertain the suit was before the Civil Court. The High Court relying on the judgment of ***Ramesh Gobindram***<sup>6</sup> allowed the revision against the order of the Waqf Tribunal and also found that the petitioner being a

non-Muslim, the Waqf Tribunal has no jurisdiction in the matter. This Court, in appeal, found that when the question raised is of a waqf property being a waqf or not, the jurisdiction was with the Tribunal and **Ramesh Gobindram**<sup>6</sup> would not be applicable. This Court relied on **Mahesh Kumar**<sup>13</sup>, which in similar circumstance, directed; in an appeal from a suit in which such dispute was raised, the plaint to be returned for transfer to the Tribunal. It was also found that the limitation under Section 6(1) of raising such dispute within one year of the list being published applies to any person interested in the waqf and the limitation would apply only if a reasonable opportunity had been accorded to the interested person so as to put forth his case, by notice served and heard on that behalf, during the course of the relevant inquiry under Section 4. Obviously, that was a case in which the property was included in the list after the survey.

21. The other appeal dealt with in **Sham Singh Harike**<sup>15</sup> was a suit filed by the Waqf Board against one **Teja Singh** who was admittedly a lessee of the property belonging to the plaintiff Board. Teja Singh had also filed a suit for

injunction, which was decreed by the Civil Court restraining the respondent from forcible and illegal eviction other than under due course of law. The defendant's case was that despite his readiness to pay the rent, it was not accepted. The suit filed by the Waqf Board was one for possession of the leasehold property and seeking permanent injunction restraining the respondent from interfering in and changing the nature of the property. The suit filed by the Waqf Board before the Tribunal was found to be incompetent relying on ***Ramesh Gobindram***<sup>6</sup> since it was one for possession of a leased out property which would have to be preceded by eviction of the tenant, the power to adjudicate which cause was not available to the Tribunal at that point of time as has been held in ***Ramesh Gobindram***<sup>6</sup>. The plaint was directed to be presented before the appropriate Court.

**22. *Faseela M. v. Munnerul Islam Madrasa Committee***<sup>18</sup>, was concerned with a suit for eviction filed before the Waqf Tribunal by the Madrasa Committee against the appellant. The appellant who was the defendant denied that the subject property was waqf property and

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<sup>18</sup> (2014) 16 SCC 38

challenged the jurisdiction of the Waqf Tribunal to determine the dispute. The decision in **Ramesh Gobindram**<sup>6</sup> was noted with approval and the interpretation of Section 6, 7, 83 and 85 to explain the jurisdiction of the Waqf Tribunal vis-a-vis the Civil Court was affirmed. The contention taken by the appellant that **Bhanwar Lal**<sup>14</sup> took a different view, was negated. After looking at both the decisions, it was held that **Bhanwar Lal**<sup>14</sup> follows **Ramesh Gobindram**<sup>6</sup> and it is not in any manner inconsistent or contrary to the view taken in **Ramesh Gobindram**<sup>6</sup> despite **Bhanwar Lal**<sup>14</sup> having also referred to **Anis Fatma Begum**<sup>7</sup>.

**Ramesh Gobindram<sup>6</sup> distinguished/differed from:**

23. **Anis Fatma Begum**<sup>7</sup> distinguished **Ramesh Gobindram**<sup>6</sup> noticing that it dealt with eviction proceedings which alone was declared as falling within the jurisdiction of the Civil Court but more importantly, it looked at Section 83 (1) of the Waqf Act, 1995 (hereinafter referred to as the Act of 1995) and held so in paragraph 10 as under: -

*10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words “any dispute, question or other*

*matters relating to a wakf or wakf property” are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word “wakf” has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.*

24. In **Pritpal Singh**<sup>9</sup>, the Waqf Board filed a suit before the Tribunal for possession as also for mesne profits which was decreed. The High Court set aside the same, finding no jurisdiction on the Tribunal to entertain a suit for ejectment which was reversed by this Court finding that the subject suit was not one for eviction but for recovery of possession and mesne profits. The short order does not disclose the facts and does not deal with the provisions of the Act, which do not confer on it the sheen of a binding precedent since precedents *sub silentio*, without arguments addressed and reasoning supplied is of no import [**Municipal Corporation of Delhi v. Gurnam Kaur**<sup>19</sup>]. As has been held by a Constitution Bench in **State of Orissa v. Sudhansu Sekhar**

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<sup>19</sup> (1989) 1 SCC 101

***Misra and Others***<sup>20</sup> a decision is a precedent and is binding for what it explicitly decides, and every observation made or what logically follows, is not the *ratio* of the decision.

25. ***P.V. Ibrahim Haji***<sup>8</sup> was a case in which the plaintiff was a Society registered under the Societies Registration Act, 1860 formed for the management and administration of the waqf property, including a mosque situated therein. An injunction suit was filed by the plaintiff before the Civil Court, which was transferred to the Tribunal, which decreed the suit. The High Court, relying on ***Ramesh Gobindram***<sup>6</sup> set aside the judgment and decree passed by the Tribunal and directed the plaintiff to take back the plaint for presenting it before the appropriate Civil Court. A Division Bench of this Court found ***Ramesh Gobindram***<sup>6</sup> to be not applicable since that decision was solely concerned with the dispute regarding eviction of tenants from the admitted waqf properties. This Court relied on ***Anis Fatma Begum***<sup>7</sup> which distinguished ***Ramesh Gobindram***<sup>6</sup> while holding that the dispute arising for consideration in ***P.V. Ibrahim Haji***<sup>8</sup> was with respect to management and peaceful

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<sup>20</sup> AIR 1968 SC 468

possession and enjoyment of the mosque and other properties which relates to the waqf on the expansive interpretation given to Section 83.

**26. *Telangana State Wakf Board v. Mohamed Muzafar***<sup>21</sup>

was a case in which the Waqf Board approached the Waqf Tribunal seeking to evict a tenant and also remove the encroachment the tenant had made on the Waqf property, which was registered and later renotified making an amendment to the extent of the land from 667.8 sq.yard to 998.66 sq.yard. The respondent tenant who had defaulted the rent and also had allegedly encroached upon a certain additional extent, raised a dispute that the property was not a waqf property. The Tribunal decreed the suit directing vacation of the suit scheduled properties, which was reversed by the High Court referring to ***Ramesh Gobindram***<sup>6</sup> finding the suit to be not maintainable before the Tribunal. ***Ramesh Gobindram***<sup>6</sup> was applied since the property in the subject case was admittedly waqf property and the relief was only for eviction of tenant, which at that point was not permissible to be agitated before the

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<sup>21</sup> (2021) 9 SCC 179

Tribunal. This Court, however, on facts noticed that the amended notification referred to a larger extent, in which context the dispute was raised as to whether the property was a waqf property or not, despite the entire extent having been notified, i.e.: being specified in the '*list of Auqaf*'. The encroachment alleged was of 40 sq.yard, the removal of which could not be agitated before the Tribunal unless it is found to be a waqf property. This Court held that the very observations made by the High Court indicate that there was a dispute with respect to the extent of the property included in the notification in which event the dispute had to be agitated before the Tribunal despite no legal remedy having been availed by the respondent within the time frame as provided by Section 6 of the Act.

**27. *Kiran Devi v. Bihar State Sunni Wakf Board and Others***<sup>22</sup> dealt with a dispute between two tenants, again, in an admitted Waqf property, wherein the Waqf Board was impleaded as the landlord. The plaintiff, who approached the Civil Court, was the descendant of the earlier tenant who claimed that the surrender of tenancy made by his

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<sup>22</sup> (2021) 15 SCC 15

predecessor-in-interest cannot be justified since the hotel run in the tenanted premises was a Joint Hindu Family business. The Waqf Board asserted that the tenancy was surrendered and later another person, the appellant before the Supreme Court, had been inducted as tenant in the very same property. While the matter was pending before the Civil Court the appellant and the Waqf Board who were the defendants filed an application for transfer of the case to the Waqf Tribunal, which was permitted. The Tribunal rejected the suit but later the High Court reversed it and found the surrender of tenancy to be not proper. Before the Supreme Court, the subsequent tenant, the appellant, raised a contention that the Tribunal did not have jurisdiction, which was rejected on the sole ground that it was the appellant along with the Waqf Board who sought for transfer of the suit to the Tribunal, which cannot be later resiled from, by contesting the very jurisdiction of the Tribunal, they invited and acquiesced to voluntarily, which, if permitted would result in the party being permitted to approbate and reprobate.

28. First of all, we observe that **Anis Fatma Begum**<sup>7</sup> was in clear conflict with the interpretation of Section 83 in **Ramesh Gobindram**<sup>6</sup>. It was divergently opposite to the conclusion in **Ramesh Gobindram**<sup>6</sup> that a plain reading of Section 83 does not suggest that it pushes the jurisdiction of the Civil Court beyond what has been provided in Section 6(1) & (5), Section 7 and Section 85 of the Act. Then, we notice that the wider jurisdiction found to have been conferred under Section 83(1) was after noticing the words, “*any dispute, question or other matters relating to a Wakf or Wakf property*” which words in fact were followed by the words “*under this Act*”, which has a definite meaning, available before and after the amendment. Hence, as held in **Pranay Sethi**<sup>16</sup>, if a divergent view had to be taken, necessarily the Coordinate Bench in **Anis Fatma Begum**<sup>7</sup>, ought to have referred the matter to a Larger Bench, following which the dictum in the earlier Division Bench survives.

29. Pertinently, the facts as coming out in **Anis Fatma Begum**<sup>7</sup> did not require such a finding on Section 83. Even otherwise, the subject matter of the said case brings it within the ambit of the jurisdiction of the Tribunal as conferred by

the Act of 1995. The question raised therein was with respect to a wakf which was “*enrolled under the appropriate laws, then prevailing as a Wakf estate*” (*sic-para 3*). The aforesaid property was partitioned by metes and bounds, keeping 25% for religious and charitable purposes and 75% for the benefit of the descendants of the family of the Wakifa; which benefit was expressly provided in the dedication, a registered Deed of Wakf dated 22.09.1936. The question raised was with respect to the correctness and validity of the demarcation and if it is found correct, whether the Act of 1995 applies to the property earmarked for Wakf-al-al-Aulad. The order challenged before this Court was of the Division Bench of the High Court answering both questions in the negative, while the learned Single Judge answered the first question in the negative and the second question in the affirmative. The plea raised before this Court was that the jurisdiction was with the Wakf Tribunal under the Act of 1995 which was agreed to by the Division Bench of this Court, setting aside the order of the High Court and leaving liberty to the parties to approach the High Court, if they so desired. Since there was a dedication by a registered deed

and it was also enrolled under the appropriate laws and registered as a waqf estate, the matter would squarely fall under Section 6(1) or 7(1) of the Act of 1995, since the question was of excluding 75% of the property from the purposes of the waqf. A wider interpretation of Section 83, in conflict with the earlier interpretation of a coordinate bench, according to us, with due respect, was not warranted.

**30.** We are conscious of the fact that the dispute in both the above cited cases arose before the amendment of 2013 and when the suit was filed before the High Court, the definition clause read as “*‘list of Wakfs’ means the list of Wakfs published under sub-section (2) of Section 5*”. But even before the amendment of 2013, as argued by the learned Senior Counsel for the respondent, there were two methods by which a waqf gets recognised under the Act, subject to any modification by the Tribunal constituted under the Act. The first, by a published list pursuant to a survey, after consultation with the Board under Chapter II, specifically by Section 5 (2) and the other by registration under Chapter V, more precisely under Section 37. The amendment of 2013

substituted the definition under Section 3 (g), including within its ambit both the list published under Section 5(2) and that contained in the register of Auqaf maintained under Section 37.

**31.** It is trite that an Amendment will be retrospective only if expressly provided for and at times, when it follows by necessary implication. In **Garikapati Veeraya v. N. Subbiah Choudhry**<sup>23</sup>, a Constitution Bench of this Court reaffirmed the principle that a vested right can be taken away by a subsequent enactment which by express words or necessary intendment makes it retrospective. **Dayawati v. Inderjit**<sup>24</sup> held that the relief granted by an Act prohibiting future interest, is applicable to appeals pending from decrees passed, looking at the necessary intendment. The principles culled out in **Hitendra Vishnu Thakur v. State of Maharashtra**<sup>25</sup>, in para 26 is extracted hereunder:

*“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this*

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<sup>23</sup> 1957 SCC OnLine SC 28

<sup>24</sup> 1966 SCC OnLine SC 44

<sup>25</sup> (1994) 4 SCC 602

*Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:*

*(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*

*(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*

*(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.*

*(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*

*(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”*

**32.** The amendment in 2013 providing an expanded definition of ‘*list of Auqaf*’ was procedural in nature since it

merely enabled the disputes with respect to whether a property entered in the register maintained under Section 37, is a waqf property or not, also to be resolved by the Waqf Tribunal, as were similar disputes pertaining to those included in the list under Section 5(2) enabled to be resolved by the Tribunal. The right of action remained as such but the forum in which the issue had to be agitated was specified to be the Tribunal under the Act of 1995.

**33.** An amendment by way of substitution does not invariably result in a retrospective application. In the Act of 1995, originally the definition of '*list of Waqfs*' included only that notified under Section 5(2), which later was substituted, including also the register maintained under Section 37; which was in rectification of an anomaly, applicable from the inception of the Act. In ***Zile Singh v. State of Haryana***<sup>26</sup>, a three-Judge Bench while reaffirming that retrospectivity is not to be presumed and the presumption is to the contrary, held it was open for the legislature to enact laws having retrospective operation, by express enactment or by

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<sup>26</sup> (2004) 8 SCC 1

necessary implication from the language employed. It was held so, in paragraphs 15, 17 and 19:

*“15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right.”*

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*“17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it “may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it” (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the “inhibition of the rule” is a matter of degree which would “vary secundum materiam” (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared*

*to substitute another word or phrase for that which actually appears in the text of the Act.”*

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**“19. The Constitution Bench in *Shyam Sunder v. Ram Kumar*, [(2001) 8 SCC 24] has held:**

*“Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word ‘declaration’ in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective.”*

**34.** In ***Zile Singh***<sup>26</sup> the amendment which came up for interpretation was an exception to a disqualification, brought in, on 05.04.1994. The amendment was made to the Municipality Act bringing in a disqualification for being elected or continued as a member of the Municipality. The disqualification was to visit persons having more than two children, which also provided an exemption to those who had more than two living children: ‘on or after the expiry of

*one year of the commencement of the Act*'. The exemption brought in anomalous consequences verging on absurdity since a person who has a third child after the commencement of the amendment would be disqualified, but the disqualification ceases to operate after the expiry of a year. That was not the intention and noticing the anomaly a substitution was made in October changing the word 'after' to 'upto'. **Zile Singh**<sup>26</sup> who had the fourth child in August, 2004, when disqualified, argued that there can be no retrospective amendment given to the Act. This Court found that the substitution was intended to remove an anomaly and by necessary implication, it had retrospective effect from the date the disqualification was first brought into the statute.

35. The legislative measure of substitution having been employed in the amendment of Section 3(g) we are of the opinion that it was clarificatory in nature and applies to the Act from its inception. **Anis Fatma Begum**<sup>7</sup>, did not have the benefit of perusing the amendment of 2013 since it was rendered in the year 2010 much before the amendment. However, the fact that the subject property had been

enrolled under the appropriate laws and registered as a wakf estate, ought to have persuaded the Division Bench to find jurisdiction on the Tribunal under the Waqf Act to decide upon the demarcation of that waqf property, excluding 75% from the ambit of a waqf, to be squarely with the Tribunal as per the power conferred under the statute.

36. Hence, this Court in *Anis Fatma Begum*<sup>7</sup> even without looking at Section 83 could have found jurisdiction on the Tribunal for the subject matter dealt with and if it was otherwise, ought to have noticed the declaration of law with respect to Section 83 in *Ramesh Gobindram*<sup>6</sup> and referred it for consideration before a Larger Bench. On the same principle, we would have been persuaded to refer the matter, but for the fact that we have the benefit of the Amendment of 2013 which substituted the definition of ‘*list of Waqfs*’ with the new definition of ‘*list of Auqaf*’, additionally including those registered under the Act of 1995, which we find to be clarificatory based on *Zile Singh*<sup>26</sup>.

37. More importantly, we cannot find Section 83 to be a provision conferring jurisdiction on the Tribunal with

respect to matters in addition to which already jurisdiction has been conferred under the other provisions of the Act, as already noticed in **Ramesh Gobindram**<sup>6</sup>. Section 83 has a nominal heading of '*Constitution of the Tribunal etc*'. and it enables the State Government by notification in the official gazette to constitute as many Tribunals as it may think fit for the determination of disputes, questions or other matters relating to a waqf or waqf property under this Act. The last three words have not been omitted in the amendment, as we found in paragraph 10, which we will deal with more elaborately when considering the ambit and scope of Section 83.

38. In **Sham Singh Harike**<sup>15</sup> a Coordinate Bench re-affirming the principle in **Ramesh Gobindram**<sup>6</sup>, while noticing the divergent opinion in **Pritpal Singh**<sup>9</sup> and **P.V. Ibrahim Haji**<sup>8</sup>, clearly found that though the two Judge Bench decision in **Ramesh Gobindram**<sup>6</sup> was distinguished in **Anis Fatma Begam**<sup>7</sup>, in fact, a substantially different note was struck in the later decision on an interpretation of Section 83 quite contrary to the interpretation given in **Ramesh Gobindram**<sup>6</sup>. Reference was made to two decisions

of this Court again by Coordinate Benches which followed ***Ramesh Gobindram***<sup>6</sup>; ***Mahesh Kumar***<sup>13</sup> and ***Bhanwar Lal***<sup>14</sup>.

39. The gamut of decisions referred to above, or most of them were considered in ***Rashid Wali Beg***<sup>5</sup> which held, again, that the amendment made by Act 27 of 2013 removed the basis of the decision in ***Ramesh Gobindram***<sup>6</sup>; which, with all the respect at our command, we are unable to subscribe to. ***Rashid Wali Beg***<sup>5</sup> was a case in which the defendant in a suit, challenged the judgment of the High Court, which held that a permanent injunction prayer before a Civil Court is not barred by Section 85 of the Act of 1995. The plaintiff filed the suit on the contention that the predecessor-in-interest of the property had created a Waqf-al-al-aulad and the Mutawalli was appointed by way of succession from the descendants, which position came to be occupied by him; in usurpation of his father's right, as entrusted to him by the grandmother due to the wayward life of the father. The defendants at the instigation of the father of the plaintiff was alleged to have encroached into the property and attempted constructions thereon. The defendant who was the appellant before the Supreme Court,

filed a written statement admitting the existence of the waqf. Later, the defendant took out an application under Order VII Rule 11 for rejection of the plaint on the sole ground of the Civil Court having no jurisdiction. The Civil Court accepted the prayer and rejected the suit, and the First Appellate Court dismissed the appeal. The High Court reversed the finding of the Courts below on the short ground that the nature of the property was not a question involved in the case and hence, the simpliciter injunction sought for would be maintainable before the Civil Court. This Court tabulated the various provisions and the reliefs which could be sought for before a Tribunal and culled out the aspects on which proceedings could be initiated before the Tribunal constituted under the Wakf Act of 1995 in paragraphs 54 which we extract hereunder: -

*“54. In sum and substance, the Act makes a reference, to 3 types of remedies, namely, that of a suit, application or appeal before the Tribunal, in respect of the following matters:*

*54.1. Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Sections 6(1) & 7(1)].*

**54.2.** *A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)].*

**54.3.** *Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32(3)].*

**54.4.** *Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section 33(4)].*

**54.5.** *Conditional attachment of the property of a mutawalli or any other person [Section 35(1)].*

**54.6.** *Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)].*

**54.7.** *Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)].*

**54.8.** *Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)].*

**54.9.** *Challenge to an order for recovery of money from the mutawalli, as certified by the Auditor [Section 48(2)].*

**54.10.** *Challenge to an order for delivery of possession of a property issued by the Collector [Section 52(4)].*

**54.11.** *Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property [Section 54(3)].*

**54.12.** *Challenge to the removal of mutawalli from office [Section 64(4)].*

**54.13.** *Challenge to an order superseding the Committee of Management [Section 67(4)].*

**54.14.** *Challenge to the removal of a member of the Committee of Management [Section 67(6)].*

**54.15.** *Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)].*

**54.16.** *Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)].*

**54.17.** *Any dispute, question or other matter relating to a waqf [Section 83(1)].*

**54.18.** *Any dispute, question or other matter relating to a waqf property [Section 83(1)].*

**54.19.** *Eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property [Section 83(1) after its amendment under Act 27 of 2013].*

**54.20.** *Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94].”*

40. We have absolutely no doubt with respect to paragraphs 54.1 to 54.16 and 54.20; which we respectfully concur with. The expansion of the jurisdiction based on Section 83 as has been laid down in paragraphs 54.17 to 54.19, according to us is contrary to the principles culled out in **Ramesh Gobindram**<sup>6</sup> and quite divergent from the interpretation of Section 83 coming out in **Ramesh Gobindram**<sup>6</sup>.

41. This Court, no doubt, in **Rashid Wali Beg**<sup>5</sup> looked at the various decisions which followed **Ramesh Gobindram**<sup>6</sup> and took a contrary view, holding that the very basis of the decision was removed by Act 27 of 2013. It was held that Section 83(1) even as it stood before the amendment provided for determination by the Tribunal, any dispute, question or other matter, (i) relating to waqf and (ii) relating to a waqf property. Thus, holding that Section 83 has two limbs conferring jurisdiction on the Tribunal to decide questions arising with respect to (i) the waqf and (ii) the waqf property. To get over the divergence of opinion the decision in **Kiran Devi**<sup>22</sup> was relied on, a three-Judge Bench

decision to find that definitely if the Waqf Tribunal did not have jurisdiction to decide the question, the Court would not have held so in **Kiran Devi**<sup>22</sup>.

42. We are unable to agree. In **Kiran Devi**<sup>22</sup> the plaintiff had approached the Civil Court against the possession of a tenanted premises by one of the defendants, on such demise being made by the Waqf Board itself, of an admitted waqf property. Therein the dispute was between the tenants, one of whom was supported by the Waqf Board. The defendant tenant and the Waqf Board, sailing together, requested for a transfer of the proceedings to the Tribunal and later, before this Court a contention was raised that the Tribunal did not have jurisdiction. True, the three-Judge Bench despite referring to **Ramesh Gobindram**<sup>6</sup> found that the defendants having requested for a transfer to the Tribunal, could not later challenge the jurisdiction especially when the matter had attained finality before the Tribunal and there was no such contention raised, even before the High Court. The High Court reversed the order of the Trial Court only on the ground that the surrender of tenancy was not proper. The above measure employed by a

three-Judge Bench cannot be said to have overruled **Ramesh Gobindram**<sup>6</sup>. As was explicitly stated by the three Judge bench, the decision turned on the principle that a party to a litigation cannot approbate and reprobate and this was a measure adopted to avoid multiplicity of litigation.

43. Quite similar is the context in **Mumtaz Yarud Dowla Wakf**<sup>12</sup> wherein **Rashid Wali Beg**<sup>5</sup> was reaffirmed by another two-Judge Bench. Therein also the proceedings for eviction were commenced long prior to the amendment of 2013, before the Tribunal which was never attempted to be challenged on the ground of lack of absence of jurisdiction. The defendants, despite a decree passed on 13.11.2002, continued to occupy the property in which circumstance the waqf filed an execution petition in 2014. Still later, after four years, a plea was raised on jurisdiction relying on **Faseela M**<sup>18</sup> and **Ramesh Gobindram**<sup>6</sup> which was rightly rejected by this Court. In fact, in **Mumtaz Yarud Dowla Wakf**<sup>12</sup>, the contention could have been rejected based on the dictum in **Kiran Devi**<sup>22</sup> and not necessarily raising a doubt on **Ramesh Gobindram**<sup>6</sup>. In fact, if the suit for eviction though instituted without jurisdiction before the Tribunal, at the point of time

this Court ruled on it, the jurisdiction for removal of encroachment was squarely on the Tribunal, by virtue of the Amendment Act 27 of 2013. No purpose would have been served by a remand, and the litigation would have merely prolonged.

**44. *Ramesh Gobindram*<sup>6</sup>** as we noticed, was the first in the line of the decisions cited hereinabove wherein the question arose as to whether an eviction of a tenant can be sought for before the Tribunal constituted under Act of 1995. As we have earlier noticed with extracts from the decision, ***Ramesh Gobindram*<sup>6</sup>** considered exhaustively as to what is the jurisdiction conferred on the Tribunal constituted under the Act of 1995. It found that the decision on the question raised as to whether a property is a waqf property or not would be under Section 6(1) and 7(1) of the Act, confined to properties specified in the list; which list includes the list under Section 5(2) and those in the register maintained under Section 37. Section 6 (5) though provided for an ouster of jurisdiction insofar as the matters referred to in sub-section (1); it was found to be confined to such questions since there were other issues that could be raised

before the Tribunal constituted under the Act, a few of which were illustrated in paragraphs 26 and 27, which we have extracted hereinabove. A more elaborate reference to the various powers is found in ***Rashid Wali Beg***<sup>5</sup> as available in paragraphs 54.1 to 54.16 and 54.20. Section 85 was found to have brought a wider ouster of jurisdiction of Civil Court, due to the conferment of jurisdiction on the Tribunal by the other provisions noticed hereinabove. It was categorically held in paragraph 32 of ***Ramesh Gobindram***<sup>6</sup> that Section 83 does not push the exclusion of the jurisdiction of the Civil Court beyond what has been provided in Section 6, Section 7 and Section 85 of the Act; holding thereby unequivocally that Section 83 does not by itself confer any jurisdiction on the Tribunal and even according to us, it merely enables the constitution of the Tribunal by the State.

**45. *Rashid Wali Beg***<sup>5</sup> not only found that Section 83 conferred an expansive power on the Tribunal to decide every question/dispute arising with respect to a waqf or waqf property; but also held that such jurisdiction was available even before the amendment and especially so after the amendment. In the teeth of the above finding, we

have to notice Section 83(1) before the amendment and after the amendment:

***Before the amendment of 2013***

*“Section 83(1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”*

***After the amendment of 2013***

*“Section 83(1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals”*

*[underlining by us to emphasize the incorporation by amendment]*

**46.** We cannot but notice that the decisions of this Court in ***Pritpal Singh***<sup>9</sup> and ***Rashid Wali Beg***<sup>5</sup> specifically dealing with Section 83(1) extracted only the words *“for the determination of any dispute, question or other matter relating to a wakf or wakf property”* and omitted the words *“under this Act”*. The wakf or wakf properties should thus be having a status under the Act which is possible only by

inclusion in the '*list of auqaf*' which as of now includes a list published after a survey under Chapter II or a registration made under Chapter V. After the amendment, the words "*eviction of a tenant or determination of rights or obligations of a lessor and the lessee of such property*" was brought in between the words "*wakf or wakf properties*" and "*under the Act*". This was only an abundant clarification of the powers conferred on the Tribunal, especially that of eviction of encroachments, which power according to us was not conferred under Section 83. It is Section 54 that confers the Tribunal with the power to dislodge encroachers, brought in by the Amendment Act of 2013. The amendment also incorporated a definition clause (ee), for encroachment, under Section 3, which meant unauthorized occupation of a waqf property including such occupation after the expiry or termination of a tenancy, lease or license. The specific power conferred on the Tribunal thus was under Section 54(3) & (4) and not under Section 83(1).

**47.** Section 85 remained as such after the amendment of 2013 only bringing in cosmetic changes as we noticed hereinabove. Section 83 does not confer any jurisdiction on

the Tribunal, either/or an omnibus consideration of any dispute, question or other matter related to waqf or of waqf property, nor with respect to eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property. It merely enables the constitution of the Tribunal and the mere recital of what the Tribunal could do, is not an expansive conferment of power especially considering the fact that the statute confers such powers under specific provisions, yet again Section 85 restricts the ouster of jurisdiction of the Civil Court, Revenue Court or any other authority to those aspects which are required by or under that Act to be determined by the Tribunal. There is hence no absolute and all-pervasive ouster of jurisdiction of the Civil Court even under Section 85 of the Act of 1995. The definition of 'waqf' under Section 85, 3(r) and the applicability of the Act of 1995 on all auqaf (Section 2) does not also determine jurisdiction which, in resolution to disputes with respect to a property being a waqf or not is expressly conferred on the Tribunal, only with respect to those properties specified in the '*list of Auqaf*'. This is the statutory imprimatur which cannot be deviated from by

Courts of law, especially when the statute could have provided merely for all disputes with respect to auqaf to be determined by the Tribunal; which it did not.

48. We cannot but also notice that the Tribunal, though conferred with the jurisdiction to remove encroachers, the power could be invoked only by the Chief Executive Officer of the Board as per Section 54(3) & (4), either *suo motu* or on a complaint. If the power to move directly before the Tribunal was available under section 83, even prior to the amendment of 2013, there was no reason to confer jurisdiction under Section 54 and much less reason to provide specifically for removal of encroachment.

49. We hence respectfully affirm the principle of jurisdiction conferred on the Tribunal under the Waqf Act, 1995 and the ouster of jurisdiction of the Civil Court under Section 85 of the said Act to be, as considered and declared in **Ramesh Gobindram**<sup>6</sup>. There could be instances where **Ramesh Gobindram**<sup>6</sup> can be distinguished insofar as the eviction of encroachers, which jurisdiction has now been specifically conferred on the Tribunal by the amendment Act of 2013. The amendment Act of 2013 removes the

sub-stratum of the decision in ***Ramesh Gobindram***<sup>6</sup> only to the extent of the absence found, of the jurisdiction conferred on the Tribunal to remove encroachers and does not, in any other manner, interfere with the principle stated of the jurisdiction of the Tribunal under the Act of 1995 and the jurisdiction of the Civil Court having been ousted only to the extent of the specific power conferred on the Tribunal by and under the Act.

**50.** Now, looking at the facts of the present case, a bare reading of the plaint would indicate that neither is the property specified in the '*list of auqaf*' as published in Chapter II nor registered under Chapter V and hence the decision as to whether the property is a waqf property or not cannot be decided by the Tribunal since the property is not one specified in the '*list of auqaf*', which is the mandatory requirement under Section 6(1) and Section 7(1) of the Waqf Act of 1995 to approach the Tribunal. We will not consider the issue as to whether the property can be deemed to be a 'waqf by user' since the question is still at large. The injunction simpliciter sought for before the Tribunal does not fall within its jurisdiction and the plaint

has to be rejected, which we do, allowing the application of the defendant under Order VII, Rule 11. The order of the Tribunal, ascertaining jurisdiction and that of the High Court, affirming it are set aside.

**51.** The Appeal is allowed, rejecting the suit filed before the Tribunal, leaving the question of whether the scheduled property is a waqf or not open to be agitated in accordance with law.

**52.** Pending applications, if any, shall stand disposed of.

..... J.  
(SANJAY KUMAR)

..... J.  
(K. VINOD CHANDRAN)

**NEW DELHI;  
JANUARY 28, 2026.**