2025 INSC 1116

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 276 OF 2025

IN RE: THE WAQF AMENDMENT ACT, 2025 (1)

WITH

WRIT PETITION (CIVIL) NO. 814 OF 2013
WRIT PETITION (CIVIL) NO. 269 OF 2025
WRIT PETITION (CIVIL) NO. 284 OF 2025
WRIT PETITION (CIVIL) NO. 314 OF 2025
WRIT PETITION (CIVIL) NO. 331 OF 2025
WRIT PETITION (CIVIL) NO. 344 OF 2025
WRIT PETITION (CIVIL) NO. 353 OF 2025
WRIT PETITION (CIVIL) NO. 375 OF 2025
WRIT PETITION (CIVIL) NO. 381 OF 2025
WRIT PETITION (CIVIL) NO. 398 OF 2025
WRIT PETITION (CIVIL) NO. 415 OF 2025
WRIT PETITION (CIVIL) NO. 427 OF 2025
WRIT PETITION (CIVIL) NO. 431 OF 2025
WRIT PETITION (CIVIL) NO. 436 OF 2025
WRIT PETITION (CIVIL) NO. 439 OF 2025
WRIT PETITION (CIVIL) NO. 440 OF 2025
WRIT PETITION (CIVIL) NO. 445 OF 2025
WRIT PETITION (CIVIL) NO. 447 OF 2025
WRIT PETITION (CIVIL) NO. 450 OF 2025

WRIT PETITION (CIVIL) NO. OF 2025

DIARY NO. 19103 OF 2025

TRANSFER PETITION (CIVIL) NO. 1316 OF 2025

J U D G M E N T

B.R. GAVAI, CJI

INTRODUCTION

1. The first five writ petitions in this batch of matters being Writ Petition (Civil) Nos. 276, 314, 284, 331 and 269 of 2025 challenge the validity of several of the Sections of the *Waqf (Amendment) Act, 2025*,[1] on the ground of they being *ultra vires* the Constitution of India being violative of Articles 14, 15, 19, 21, 25, 26, 29, 30 and 300A of the Constitution.

2. Though the petitioners seek to challenge the constitutionality of almost all the Sections of the impugned Act, from the tenor of the arguments advanced, it is apparent that the main challenge is to the amendments carried out in Section 3(r), 3C, 3D, 3E, 9, 14, 23, 36, 104, 107, 108, 108A of the *Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995*[2]. It is, therefore, clear that the most contentious Sections of the impugned Act are Sections 4(ix)(a), 4(ix)(b), 5, 10,

[1] **Hereinafter referred to as "impugned Act".**
[2] **Hereinafter referred to as "Amended Waqf Act".**

12, 16, 21, 43, 44 and 45 which have amended the provisions of the *Waqf Act, 1995*[3].

3. At the outset, Shri Tushar Mehta, the learned Solicitor General, appearing on behalf of the respondent-Union of India submitted that at the hearing which took place on 16th April 2025 and 17th April 2025, this Court had identified the following three issues for consideration at the interim stage:

(i) Challenge to Section 3(r) of the Amended Waqf Act, which de-recognises 'Waqf by user' prospectively;

(ii) Challenge to special provision for Government Properties under Section 3C of the Amended Waqf Act; and

(iii) Changes in the composition of the Central Waqf Council and State Waqf Board under Section 9 and 14 of the Amended Waqf Act, respectively.

4. This position was, however, disputed by Shri Kapil Sibal, the learned Senior Counsel appearing on behalf of one of the petitioners. It was submitted by the learned Senior Counsel

[3] **Hereinafter referred to as "Original Waqf Act".**

that there is nothing on record to that effect. We, therefore, proceeded to consider all the issues raised by the parties on the question of interim relief.

5. It is also relevant to note that when the matter was heard by the previous Bench presided over by the then Chief Justice of India, Shri Sanjiv Khanna on 17th April 2025, on certain aspects, a statement of the learned Solicitor General to the following effect was recorded:

> "…He assures this Court that till the next date of hearing, no appointments would be made to the Central Waqf Council and the Waqf Boards in the States and the National Capital Territory of Delhi, under Sections 9 and 14 respectively of the principal Act, that is, the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, as amended by the Waqf (Amendment) Act, 2025. He further states that if the Government of any State or the National Capital Territory of Delhi makes any such appointment(s), the same may be declared void.
>
> It is also stated that till the next date of hearing, no Waqf, including a Waqf by user, whether declared by way of notification or by way of registration, shall be de-notified, nor will their character or status be changed."

SUBMISSIONS

6. We extensively heard Shri Kapil Sibal, Dr. Rajeev Dhavan, Dr. A.M. Singhvi, Shri C.U. Singh and Shri Huzefa Ahmadi, learned Senior Counsel appearing on behalf of the petitioners. We also heard at length Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the Union of India as well as Shri Rakesh Dwivedi, Shri Ranjit Kumar, Shri Gopal Sankaranarayanan and Shri Guru Krishna Kumar, learned Senior Counsel appearing on behalf of intervenors supporting the stand of the Union of India.

i. On behalf of the Petitioners

7. Shri Sibal, learned Senior Counsel submitted that though the impugned Act says that it has been enacted to "protect" Waqfs, but the real intention behind it is to take away or *expropriate* the Waqf properties. It was submitted that till 2025, the registration of a Waqf was not mandatory inasmuch as though under the *Mussalman Waqf Act, 1923,* and later on in the Original Waqf Act which was continued till 2013, there was provision for registration of a Waqf, however, no consequences

were provided for non-compliance except the removal of the Mutawalli.

8. He submitted that prior to 1954, registration of a "Waqf by User" was not necessary. He further submitted that by virtue of Sections 4(ix)(b) and 4(ix)(e) of the impugned Act, the provision of "Waqf by User" has been deleted and the *proviso* inserted in Section 3(r) now requires the existing "Waqf by User" to have registered on or before the commencement of the impugned Act.

9. Challenging the provision of Section 3D of the Amended Waqf Act, Shri Sibal would submit that under the various enactments in existence from 1904 to 1958, the right to religious practices, even in buildings which were ancient monuments, was preserved. It is submitted that, however by virtue of the newly added provision contained in Section 3D, on notification of any monument as a "protected monument", the declarations made under the Waqf Acts shall be void. He further submitted that the impugned Act infringes upon the rights of the citizens to continue with their religious practices which is violative of Article 14, 15, 25 and 26 of the Constitution.

10. Insofar as the amendment to Section 3(r) by virtue of Section 4(ix)(a) of the impugned Act is concerned, Shri Sibal submitted that the requirement that one has to *"show or demonstrate"* that he is practicing Islam for at least five years for the declaration of any movable or immovable property as Waqf is totally discriminatory and arbitrary. He further submitted that no such provision is there insofar as other religions are concerned. Shri Sibal, therefore, submitted that such a requirement is in clear violation of Articles 14, 15, 19, 21, 25 and 26 of the Constitution.

11. Further, Shri Sibal submitted that Section 3E of the Amended Waqf Act provides that no land belonging to members of Scheduled Tribes under the provisions of the Fifth and Sixth Schedule of the Constitution is permitted to be declared or deemed to be Waqf property. He submitted that such a restriction is a direct attack on the religious freedom of persons belonging to Scheduled Tribes who are practicing Islam and who desire to donate their properties for creation of a Waqf.

12. Shri Sibal submitted that the amendments to provisions contained in Sections 9, 14 and 23 of the Original Waqf Act have a direct impact on the Muslim community as majority of the members in the Waqf Council and Waqf Boards could be non-Muslims and they would be permitted to interfere in the affairs of the Waqfs, thereby directly affecting the rights of the Muslims to independently manage the affairs of their religious practice.

13. He further submitted that under Section 9 of the Amended Waqf Act, which pertains to the establishment and constitution of Central Waqf Council, out of 22 members, 12 members could be non-Muslims, thereby leaving space only for 10 Muslims in the Council. Similarly, under Section 14 of the Amended Waqf Act which pertains to composition of the Board for a State and the National Capital Territory of Delhi, it is submitted that out of 11 members, 7 members could be non-Muslims, again enabling a majority of non-Muslims to manage the affairs of the Waqf.

14. It is further submitted that under Section 23 of the Amended Waqf Act, the Chief Executive Officer of the Board was earlier required to be a Muslim but by virtue of the impugned Act, he will now have to be a person not below the rank of Joint Secretary to the State Government and not necessarily be a Muslim. Not only that but it was also submitted that the mode of constituting the Board has now been changed from election to nomination by the Government.

15. Insofar as Section 3C of the Amended Waqf Act is concerned, Shri Sibal submitted that under sub-section (1) of Section 3C, any "Government property" identified or declared as Waqf property, before or after the commencement of the Act, will not be deemed to be a Waqf property. He submitted that sub-section (2) of Section 3C is totally arbitrary inasmuch as if a question arises as to whether any property is a Waqf property, the State Government can nominate a designated officer, above the rank of Collector, to conduct an inquiry as per law and to determine whether the property in question is a Government property or not and submit a report to the State Government. It is submitted that the term "Government property" as defined in

Section 3(fb) of the Amended Waqf Act read with the definition of "Government Organization" in Section 3(fa) thereof allows even a tenuous/arbitrary connection with the State, to defeat the Waqf status of a property. It is further submitted that the words used in Section 3C of the Amended Waqf Act are *"as per law"* and no detailed guidelines as to in what manner the inquiry would be conducted by the designated officer have been provided making the provision totally arbitrary. It is further submitted that the *proviso* to sub-section (2) of Section 3C is also totally unconstitutional inasmuch as even before the report is submitted, the property in question will cease to be Waqf property.

16. Shri Sibal submitted that the only remedy available to a Waqf in such a case is to approach the Tribunal as provided under Section 83 of the Amended Waqf Act. However, it is submitted that even before the findings of the inquiry report can be challenged before the Tribunal, as per sub-sections (3) and (4) of Section 3C of the Amended Waqf Act, the status of the property in question would be automatically changed in the revenue records as Government property and the Waqf loses its

possession. It is, therefore, submitted that on the unilateral decision of the designated officer, the property declared as a Waqf will cease to be the property of the Waqf and the Waqf will be left *high and dry*, knocking on the doors of the Waqf Tribunal.

17. Shri Sibal further submitted that Sections 3C and 3D of the Amended Waqf Act were not circulated in the original bill and as such there could not be any discussion on the same either in the Joint Parliamentary Committee[4] or the Parliament and they were enacted unilaterally.

18. It was further submitted by the learned Senior Counsel that under the Original Waqf Act, sub-sections 1(A), 2 and 3 of Section 4 provided for an elaborate procedure for conducting a survey of the auqaf. However, by Section 6(c) of the impugned Act, the said provisions have been done away with.

19. Shri Sibal further submitted that in view of Section 36 of the Amended Waqf Act, the requirement of registration of every Waqf with the Board has been made mandatory. It has been further provided that on or after the commencement of the

[4] **Hereinafter referred to as "JPC".**

impugned Act, no Waqf shall be created without execution of the Waqf Deed. Shri Sibal submitted that the said provision is totally contrary to the tenets of Islamic law. It is submitted that under the Islamic law, a Waqf can be created even by an oral gift. It is, therefore, submitted that such a provision adversely affects the rights of practicing Muslims to create a Waqf by an oral gift.

20. Shri Sibal, thereafter, invited the attention of this Court to sub-sections (7) and (7A) of Section 36 of the Amended Waqf Act; as per which on receipt of an application for registration, the Board shall forward the application to the Collector to inquire into the genuineness and validity of the application and in case, the Collector, in his report, mentions that the property, wholly or in part, is "in dispute" or is a "Government property", the Waqf shall not be registered unless the dispute is decided by a competent court. It was, accordingly, submitted that in view of sub-sections (7) and (7A) of Section 36 read with sub-section (10) thereof, a Waqf which is not registered has been rendered remediless inasmuch as it bars any suit, appeal or other legal proceedings for enforcement of any right of the Waqf. It is,

therefore, submitted that this is a "wholesale takeaway" of the entire community's rights.

21. Shri Sibal further submitted that Section 108 of the Original Waqf Act was a special provision in respect of the Waqf created out of evacuee properties. It is submitted that by the impugned Act, the said provision has totally been omitted, thereby prohibiting the Waqf from being created out of the evacuee properties.

22. Dr. Dhavan, learned Senior Counsel, submitted that earlier provision contained in Section 104 of the Original Waqf Act, which applied to the properties given and donated by persons not professing Islam for support of certain Waqfs, has been deleted by Section 43 of the impugned Act, thereby putting restriction on non-Muslims to donate their properties for the Waqf related activities. It is submitted that the same is violative of provisions of Part III of the Constitution.

23. Dr. Dhavan submitted that by insertion of the second *proviso* to Section 2 of the Original Waqf Act, there is now a restriction on the applicability of the Act to a "trust" created by a

Muslim for carrying out activities similar to a Waqf. He submitted that prior to the said amendment, even a Muslim could have created a trust similar to Waqf for charitable purposes. However, that right has now been taken away by virtue of Section 3 of the impugned Act.

24. Dr. Dhavan further submitted that the impugned Act is a direct attack on the secular character of the Constitution inasmuch as it adversely affects the right to preserve culture under Article 25 of the Constitution.

25. Insofar as the deletion of provision *qua* "Waqf by User" is concerned, Dr. Dhavan has relied on paragraph 1,134 of the judgment of a Constitution Bench of this Court in ***M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das and Others***[5]**.**

26. Dr. Abhishek Manu Singhvi, learned Senior Counsel submitted that the amendment to the provision contained in Section 3(r) of the Original Waqf Act, insofar as showing or demonstrating at least five years of practice of Islam is

[5] **(2020) 1 SCC 1**

concerned, was done totally to infuse terror and give entire control in the hands of the State leading to endless visits to government offices and thereby harassing them. It is submitted that there is no such provision insofar as any other religion is concerned, which requires a person to show practice of a religion for five years before being able to enjoy their rights. It is, therefore, submitted that the amended provision is totally violative of Article 15 of the Constitution of India being discriminatory solely on the ground of religion.

27. Dr. Singhvi submitted that the impugned Act, specifically the Sections concerning amendment to Section 36 of the Original Waqf Act creates a *Catch 22* situation. He submitted that on the one hand the concerned authorities can refuse to grant the registration as a Waqf on the ground of a dispute and on the other hand on non-registration of the property as a Waqf, the concerned parties would be remediless to file any proceedings in view of sub-section (10) of Section 36 of the Amended Waqf Act.

28. Dr. Singhvi submitted that provision of Section 3D of the Amended Waqf Act is again wholly discriminatory inasmuch as it is only Waqfs created by Muslims on which such a restriction has been imposed and there is no similar provision with respect to monuments which are being used by the people belonging to other religions. It is, therefore, submitted that the said provision is violative of Article 15 of the Constitution. Dr. Singhvi submitted that even the survey which is a pre-requisite for giving effect to the provisions of the impugned Act has not been carried out and it would be clear from the pleadings of the respondent themselves that only in respect of 5 out of 28 States the survey has been conducted.

29. Shri C.U. Singh, learned Senior Counsel, submitted that under the provisions of the earlier Acts so also the Original Waqf Act, the effect of non-registration of a Waqf was a penalty affecting only the Mutawallis and it did not have any effect on the Waqf. Now, however, the effect of non-registration directly reaches the Waqf, thereby affecting the beneficiary of such a Waqf as defined in Section 3(a) of the Original Waqf Act.

30. Shri Ahmadi, learned Senior Counsel submitted that under the old Section 107, the provisions of the *Limitation Act, 1963,* were not applicable for any suit for possession of immovable property comprised in any Waqf or for possession of any interest in such property. However, by the impugned Act, specifically Section 44 thereof, the said provision has been changed thereby making provisions of the *Limitation Act, 1963,* applicable to such property. It is submitted that the combined effect of amendments to Sections 107 and 108 of the Original Waqf Act, the latter of which has been completely omitted, would be that if any proceedings in respect of any evacuee property is to be initiated, the same would be barred by limitation.

ii. On behalf of the Respondents

31. Shri Tushar Mehta learned Solicitor General of India, in reply submitted that the present proceedings are in the nature of a Public Interest Litigation. It is submitted that not even a single person who is said to be affected by the amendments in question has approached this Court, being aggrieved by any of the provisions of the impugned Act.

32. Shri Mehta submitted that insofar as the legislative competence of the Parliament to enact the impugned Act is concerned, the same is not disputed. He further submitted that the presumption of validity is always in favour of the legislation. It is submitted that the burden to prove unconstitutionality would be on the other side, and that a very heavy burden would lie on them to dislodge the presumption regarding the constitutionality of the statute in question. He submitted that in any case, the Court should always be very slow in staying any provision of the statute unless they are found to be beyond legislative competence, violative of any of the Fundamental Rights or any other provision of the Constitution or manifestly arbitrary. It is submitted that in this regard the petitioners herein have utterly failed to make out a case for grant of any interim relief.

33. Learned Solicitor General submitted that the impugned amendments were carried out by Parliament after taking into consideration various factors. He submitted that as a matter of fact, State is bound to keep pace with the changing societal

conditions and enact or amend existing laws to deal with challenges which arise on account of the changes in the society.

34. Learned Solicitor General submitted that the amendment to the provision with regard to "Waqf by User" is prospective in nature. He submitted that all such Waqfs which are registered as on 8th April 2025, shall stand protected except in those cases where the Waqf property, is in full or in part, in dispute or which is a Government property. He submitted that the purpose behind such provision not being made applicable to the Government property was that the Government holds a property for and on behalf of its citizens and that too as a trustee. He submitted that as a natural corollary, the State is under an obligation to protect the Government properties. It is further submitted that many instances had come to notice where large chunks of properties owned by Governments were claimed to be property covered by "Waqf by User". He submitted that the case of ***State of Andhra Pradesh (Now State of Telangana) v. Andhra Pradesh State Wakf Board and Others***[6] is one such

[6] **(2022) 20 SCC 383**

instance where the State Government was required to approach the High Court in exercise of writ jurisdiction against the action of the Andhra Pradesh Waqf Board to declare the land measuring 1,654 acres and 32 guntas as Waqf property. It is submitted that in the said case, vast chunk of Government land was encroached upon and the Waqf Board had registered the same as "Waqf by User". Upon the dismissal of the Writ Petition filed by the then State of Andhra Pradesh (now State of Telangana), the question came up for consideration before this Court. The issues involved in the said case *inter-alia* were whether the State Government was entitled to file the writ petition before the High Court. He submitted that this Court in the said case held that the State Government is competent to invoke the writ jurisdiction as it is the right of the Government to protect the public property.

35. Learned Solicitor General submitted that in another instance, the Telangana State Waqf Board itself determined a hotel's property as not a Waqf property. However, in 2007, the said position was revisited by the concerned Board and the hotel's property was declared to be a Waqf property. It is submitted that the aforesaid became the subject matter of a *lis*

which culminated in the case of ***Viceroy Hotels Limited and Others v. Telangana State Waqf Board and Others***[7], whereby the High Court quashed the claims of the Telangana State Waqf Board and declared the hotel to be the lawful owner of the property.

36. Learned Solicitor General further submitted that there were several such instances where the provision of "Waqf by User" and the power of the Waqf Board to declare any land as Waqf property were noticed, which proved to be a safe haven for encroachment of Government properties and private properties. Accordingly, in view of such examples, it is submitted that the deletion of the provision of "Waqf by User" has been carried out by way of the impugned Act, so as to curb the practice of encroachment of Government properties on pretext of them being Waqf property.

37. Shri Mehta countered the submission that Section 3C of the Amended Waqf Act will be used to "grab" the property of the Waqf without following provisions of law. He submitted that

[7] **2024 SCC OnLine TS 689**

such an argument is totally untenable. He submitted that taking into consideration the instances where Government properties were encroached upon and given a colour of "Waqf by User", the provision under Section 3C provides only a mechanism whereby the designated officer will conduct an inquiry after hearing the affected parties and submit his report. He submitted that the only consequence of such an inquiry would be that the revenue records and the Board records would be corrected. He further submitted that in any case, on a mere declaration or submission of a report by the designated officer, no rights would be crystallized and unless a final determination with regard to the title is made by the Waqf Tribunal or by the further appellate forums being the High Court or this Court, the possession of the property cannot be taken away.

38. With respect to the argument *qua* inclusion of non-Muslims in the Waqf Council, the learned Solicitor General submitted that firstly, the Central Waqf Council, primarily, has an advisory role and cannot be treated as a religious interference. Secondly, he submitted that advising on "due administration" of Waqf would not be an interference with the religious activities of

the Waqf, as it merely amounts to regulating economic, financial or other secular activities.

39. Learned Solicitor General further submitted that under sub-section (4) of Section 9 of the Amended Waqf Act, the Central Waqf Council is entitled to issue directive on the following aspects:

a. Financial performance;
b. Survey;
c. Maintenance of waqf deeds;
d. Revenue records;
e. Encroachment of waqf properties; and
f. Annual reports and audit reports.

He submitted that all such activities are secular activities which do not interfere with the religious practices of the Muslims.

40. He further submitted that in any case as per sub-section (2) of Section 9 of the Amended Waqf Act, the Council, at the most, can consist of 4 non-Muslim members which is inclusive of clause (a) i.e., the Union Minister as in charge of Waqf – Chairperson, *ex officio* and clause (g) i.e., the Additional Secretary or Joint Secretary to the Government of India dealing

with Waqf matters in the Union Ministry or department—member, *ex officio*. He submitted that insofar as clauses (b), (d), (e) and (f) are concerned, out of 10 Members to be appointed as per the said clauses, only 2 are required to be non-Muslims. It is, therefore, submitted that at any given point of time, the Council may consist, at the most, 4 non-Muslim members.

41. Insofar as the members of the Board to be appointed under Section 14 of the Amended Waqf Act are concerned, it is submitted that it is only 2 members, excluding *ex-officio* members, who could be non-Muslims. It is submitted that, if the Joint Secretary to the State Government dealing with the Waqf Property, who is an *ex-officio* member, is a non-Muslim, then at the most, at that given point of time, there would be only 3 non-Muslims in the Board out of a total of 11 members. It is, further submitted by the learned Solicitor General that the Waqf Board is declared as a "State" in the case of ***State of Andhra Pradesh v. Andhra Pradesh Waqf Board*** (supra) and therefore once a statutory body is a "State" within the meaning of Article 12 of the Constitution, the argument that the Members of the Board

should be taken only from one particular religion is not sustainable in law.

42. It is further submitted by the learned Solicitor General that the Ministry concerned has specifically made a statement before the JPC to the following effect:

> "9.6.6 Further explaining about the inclusion of non-Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under:
>
> .....the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members)..... and another category (12 members). Out of this (second) category, two members will be non-Muslim. Remaining all will be Muslims."

43. It is further submitted by the learned Solicitor General that the JPC, after considering the suggestions of the stakeholders and justification given by the concerned Ministry, found that considering the statutory nature of the Central Waqf Council, inclusion of 2 non-Muslim members would make it

more broad based and promote inclusivity and diversity in the Waqf property management.

44. The learned Solicitor General, with regard to the argument that the impugned Act is without remedy, submitted that the said contention is without any substance. He submitted that under sub-section (1) of Section 83 of the Amended Waqf Act, the jurisdiction of the Tribunal is wide enough, and it encompasses within its scope the determination of any dispute, question or other matters relating to Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property. It is submitted that perusal of the provisions contained in sub-sections (3), (4), (5), (6), (7), (8) and (9) of Section 83 would reveal that ample remedy is prescribed for deciding the disputes relating to Waqf or Waqf property. Not only that, under sub-section (7) it is specifically provided that, the decision of the Tribunal is final and binding upon the parties to the application and it shall have the force of a decree made by a civil court. It is further submitted that sub-section (8) thereof also provides for execution of any decision of the Tribunal by the civil court to which such decision is sent for

execution. He further submitted that sub-section (9) thereof, which has been amended by Section 39(f) of the impugned Act, provides for the right to appeal to the High Court against the decision of the Tribunal to any person aggrieved.

45. Dealing with the amendment to sub-clause (i) of clause (r) of Section 3 of the Amended Waqf Act, the learned Solicitor General submitted that various instances which were noticed right from 1913 were taken into consideration while effecting the said amendment to make the requirement of registration mandatory. The learned Solicitor General further submitted that, on account of many instances of misuse of the endowments made for pious, religious or charitable purposes being noticed, the legislature has been enacting laws from 1923 to control such a misuse. To illustrate, it is submitted that the Statement of Objects and Reasons of the *Mussalman Waqf Act, 1923*, itself shows that the legislature found it necessary to have a "system of compulsory registration". Accordingly, Section 3 of the said Act provided for compulsory registration, so also, Section 4 of the said Act provided for publication of particulars and requisition of further particulars. The said Act also provided penalties in

Section 10 for non-registration of the Waqf. It is submitted that necessity for registration was also reinforced by subsequent Acts like the *Bengal Wakf Act, 1923*, which for the first time introduced the term "Waqf by User".

46. Shri Mehta, submitted that post-independence, the Parliament enacted the *Muslim Wakfs Act, 1954*[8]. It is submitted that a perusal of scheme of 1954 Act shows that it also provided for mandatory registration. The learned Solicitor General further submitted that noticing the menace of deliberate non-registration by several Waqfs, the Wakf Enquiry Committee was appointed by the Central Government in the year 1969-70. It is submitted that the said Committee consisted of three eminent persons from the Muslim community and it also considered the result of wilful non-registration of the Waqfs and recommended enactment of a provision prohibiting a suit to be filed on behalf of a Waqf unless the said Waqf was registered. Accordingly, Section 55E was added to the 1954 Act by *Wakf (Amendment)*

[8] **Hereinafter referred to as "1954 Act".**

Act, 1984. It is submitted that though the said 1984 Amendment was made to the 1954 Act, the same was never given effect to.

47. The learned Solicitor General further submitted that in order to further streamline the administration of the Waqfs, the Parliament enacted the *Waqf Act, 1995*. In the said Act also, Section 36, in detail, provided for registration and its procedure. Shri Mehta, therefore, submitted that the amendment by way of which the *proviso* to Section 3(r) has been added does not, in any way, fall foul of the object of the Original Waqf Act.

48. Shri Mehta further submitted that *Sajjadanashin* is different from Mutawalli. It is submitted that it is *Sajjadanashin* who undertakes religious activities concerned with the Waqf. However, Mutawallis are only concerned with the administrative activities of the Waqf, and their functions have no bearing on the religious activities. It is, therefore, submitted that the impugned amendments are not violative of any of the rights guaranteed under Article 25 and 26 of the Constitution.

49. Learned Solicitor General submitted that insofar as the contention regarding provisions for removal of Mutawallis is

concerned, the said cannot be said to be discriminatory. Further, Solicitor General submitted that similar provisions can be found in various acts concerning removal of *Mathadipatis*. To illustrate, the learned Solicitor General refers to the provisions related to removal of *Mathadipatis* in the *Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987,* and the *Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987*.

50. In reply to the challenge to Section 3D of the Amended Waqf Act, the learned Solicitor General submitted that the Archaeological Survey of India[9] had made submissions before the JPC pointing out the difficulties with regard to protected monuments which are notified as Waqf properties. It was stated by the ASI that the Waqf Board restricted ASI from carrying out the survey activities in such properties. ASI had also stated that various instances where Waqf authorities had carried out several additions and alterations in the original structure of the protected monuments which adversely hampered the

[9] **Hereinafter referred to as "ASI".**

authenticity and integrity of the protected monuments. It is, therefore, submitted that Ministry of Culture had proposed insertion of Section 3D. It is further stated that sub-section (6) of Section 5 and Section 16 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, itself protects the rights of the persons to use any of the protected monuments for customary religious observances. It is, therefore, submitted that the only restriction now is that by way of Section 3D of the Amended Waqf Act, the protected monuments cannot be used for any purposes inconsistent with the provisions of the 1958 Ancient Monuments Act.

51. Insofar as the challenge to Section 3E of the Amended Waqf Act is concerned, the learned Solicitor General has submitted that the Scheduled Tribes are recognized as a distinct class requiring special protection, especially with regard to land ownership. He submitted that there are various statutes which impose restrictions on the transfer of land belonging to Scheduled Tribes to non-tribals. He further submitted that the Fifth and Sixth Schedules of the Constitution are pre-existing

constitutional classifications embedded in the Constitution itself.

52. The learned Solicitor General submitted that Article 29 of the Constitution puts an obligation on the State to protect the language, script and culture of citizens. It is submitted that the cultural and economic identity of the Scheduled Tribes is intrinsically tied to the land held by them and therefore, the State has a constitutional obligation to safeguard their property rights. The learned Solicitor General relied on the judgments of this Court in the cases of ***Amrendra Pratap Singh v. Tej Bahadur Prajapati and Others***[10]***, P. Rami Reddy and Others v. State of Andhra Pradesh and Others***[11]***, R. Chandevarappa and Others v. State of Karnataka and Others***[12] and ***Lingappa Pochanna Appelwar v. State of Maharashtra and Another***[13].

53. The learned Solicitor General submitted that the JPC, after considering peculiar cases of the citizens belonging to the

[10] **(2004) 10 SCC 65**
[11] **(1988) 3 SCC 433**
[12] **(1995) 6 SCC 309**
[13] **(1985) 1 SCC 479**

Scheduled Tribes and particularly the constitutional protection granted to them under the Fifth and Sixth Schedules of the Constitution, recommended taking appropriate legislative measures to ensure protection of Scheduled Areas and Tribal Areas.

54. Insofar as deletion of Section 104 of the Original Waqf Act is concerned, the learned Solicitor General submitted that by virtue of the amendment in the definition of "Waqf" under Section 3(r) of the Original Waqf Act, only a person practicing Islam for at least five years and having ownership of such property can create a waqf. Since in view of the amendment to Section 3(r), non-Muslims cannot create a waqf, the provision under Section 104 of the Original Waqf Act enabling non-Muslims to create a waqf was deleted as a consequence in order to avoid conflicting provisions under the Act. It is further submitted that the said provision was also considered by the JPC in detail and the JPC concurred with the opinion of the Ministry of Minority Affairs finding it in congruence with the original legislative intent post-independence as well as in agreement with the proposed definition of waqf.

55. Insofar as the challenge to the amendment to Section 107 of the Original Waqf Act is concerned, Shri Mehta submitted that the amendment is prospective in nature and would not apply to the pending cases. It is submitted that the question of applicability of Section 107 of the Original Waqf Act to the pending cases was specifically considered by the JPC and the JPC recorded the assurance of the Ministry of Minority Affairs that the said provision would apply only with prospective effect. The learned Solicitor General submitted that in order to address the concern of various stakeholders with regard to applicability of the *Limitation Act, 1963*, to pending cases, the JPC redrafted Section 107 of the Original Waqf Act to the present form. The learned Solicitor General further submitted that the applicability of the *Limitation Act, 1963,* aims to reduce litigation and simplify the process of recovering waqf properties.

56. Insofar as Section 108 of the Original Waqf Act is concerned, the learned Solicitor General submitted that the concept of evacuee property as it existed under the *Administration of Evacuee Property Act, 1950*, has been repealed.

57. Shri Rakesh Dwivedi, learned Senior Counsel appearing on behalf of the State of Rajasthan submitted that "Waqf by User" was initially introduced by Privy Council in the case of ***Court of Wards for the Property of Makhdum Hassan Bakhsh v. Ilahi Bakhsh and Others***[14]. He submitted that, in the said case, the respondents therein had contended that even if no express dedication of the land could be proved the continuous use of the land for the purpose of burial showed that it had become "Waqf by User". He submitted that Their Lordships of the Privy Council agreed with the respondents while dismissing the appeal that the land in suit forms part of a graveyard set apart for the Mussulman community, and that "by user" if not by dedication the land is waqf. He, therefore, submitted that "Waqf by User" was only an application of adverse possession doctrine and not a concept rooted in Islamic theology.

58. Relying on ***Khazan Chand and Others v. State of Jammu and Kashmir and Others***[15], Shri Dwivedi submitted that the Constitution has a federal structure. He, therefore,

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[14] **1912 SCC OnLine PC 45**
[15] **(1984) 2 SCC 456**

submitted that there can be no comparison of a Parliamentary law with certain State laws on Hindu religious endowments.

59. Shri Ranjit Kumar learned Senior Counsel appearing on behalf of the State of Haryana and Adivasi Aadim Samajik Sanstha submitted that the freedom to manage religious affairs and to administer property in connection thereof has to be in accordance with law. It is submitted that such freedom will have to be exercised only in accordance with the provisions enacted under the statute. He, therefore, submitted that all the enactments governing waqf property, including the impugned Act, are in accordance with the provisions of Article 26(d) of the Constitution.

60. Shri Ranjit Kumar further submitted that a reading of paragraph 176 of the Treatise *"Principles of Mahomedan Law (20th Edition)"* by Mulla would show that only an "owner" of a property can create a waqf. It is submitted that a property encroached upon by a person cannot be declared as a waqf.

61. Shri Ranjit Kumar, thereafter, referring to *Key Quranic Verses* specifically by Surah Al-Baqarah, submitted that the very

concept of creation of waqf is based on charity i.e., to spend one's own wealth in the way of Allah. He submitted that the principle behind the establishment of a waqf is redistribution of wealth by giving one's wealth to those in need, to those who ask and to those who are deprived. It is, therefore, submitted that it is clear that unless one owns a property, a waqf cannot be created and certainly never by encroachment.

62. Shri Ranjit Kumar further submitted that under the provisions of Section 40 of the Original Waqf Act, an inquiry with regard to the question as to whether the property is a waqf property or not was vested with the Board. However, taking into consideration that the said power was misused by the Board, Section 40 of the Original Waqf Act has been deleted by Section 23 of the impugned Act, and the power is now solely vested with the Tribunal which can conduct an inquiry under Section 83 of the Amended Waqf Act.

63. Shri Ranjit Kumar further submitted that till the year 2013, a waqf could be created only by a Muslim and not by a non-Muslim. It is submitted that the *Wakf (Amendment) Act*

2013, however, permitted a non-Muslim to create a waqf which has now been done away with by bringing an amendment to Section 3(r) of the Original Waqf Act. As a natural corollary, it is submitted that, by way of the impugned Act, Section 104 of the Original Waqf Act has been deleted so as to bring the provisions of the Act in conformity with the amended Section 3(r).

64. Shri Gopal Sankaranarayanan, learned Senior Counsel submitted that in the State of Telangana itself, more than five thousand properties owned by the Government have been encroached upon on the premise of them being "Waqf by User".

65. Shri S. Guru Krishna Kumar, learned Senior Counsel submitted that the provisions of Sections 96 and 97 of the Original Waqf Act would reveal that the Act and any amendment thereto have been enacted with the purpose of only controlling the "secular activities" of auqaf and the Act in no way interferes with the religious activities to be carried out by the auqaf. He submitted that a comparison between Section 23 and Section 38 of the Amended Waqf Act would reveal that whereas the Chief Executive Officer of the Board appointed under Section 23 of the

Amended Waqf Act does not have direct control in the administration of waqf, it is the Executive Officer appointed by the Board under Section 38 of the Amended Waqf Act who has direct control over the waqf. It is submitted that a person to be appointed as an Executive Officer under Section 38 of the Amended Waqf Act is required to be a person professing Islam. It is, therefore, submitted that the contention of the petitioners that a person not professing Islam would be interfering with the management of a particular waqf is without substance.

iii. Rejoinder

66. In rejoinder, Shri Kapil Sibal, learned Senior Counsel, submitted that for considering the constitutional validity of the provisions of the statute, the provisions of the statute will have to be read as it is. It is submitted that neither the affidavit of the Central Government nor its submissions could be taken into consideration to add words in the text of the statute which are not there. In that light, the learned Senior Counsel submitted that a plain reading of Section 3C of the Amended Waqf Act would show that it is *ex-facie* arbitrary inasmuch as no

procedure is prescribed for determining the question as to whether the property in question is a Government property or not. He submitted that the failure by the State Governments in conducting surveys and not registering the waqfs as per Section 4 of the Original Waqf Act cannot be permitted to act to the prejudice of the waqfs by user. He submitted that the concept of "Waqf by User" has been recognized by this Court in the case of ***Syed Mohd. Salie Labbai (Dead) By LRs and Others v. Mohd. Hanifa (Dead) By LRs and Others***[16]. Shri Sibal reiterated that Sections 3D and 3E of the Amended Waqf Act were not part of the original bill but were introduced for the first time in Parliament. He further submitted that Section 96 of the Amended Waqf Act permits the Central Government to directly interfere with the affairs of the auqaf. Shri Sibal, therefore, strenuously urged that this is a fit case where all the parameters for grant of interim relief are made out and the Court should interfere to stay the operation of the impugned Act.

[16] **(1976) 4 SCC 780**

67. Dr. Rajeev Dhavan, learned Senior Counsel submitted that charity is one of the five tenets of Islam. He submitted that though charity is one of the essential characteristics of Islam, it is not so with any other religion. He, therefore, submitted that the impugned Act which permits the State to interfere with the religious freedom of persons professing Islamic religion is not sustainable in law.

68. Dr. Singhvi submitted that the concept of "Waqf by User" has been recognized judicially since the 1912 judgment of the Privy Council in the case of ***Ilahi Bakhsh*** (supra) and even recently by a Constitution Bench judgment of this Court in the case of ***M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case)*** (supra). He further submitted that Section 36 of the Amended Waqf Act which requires registration creates an anomalous situation. He submitted that whereas under sub-section (1) of Section 36 of the Amended Waqf Act, all the waqfs are required to be registered, sub-section (7A) thereof provides that when the Collector in his report mentions that the property is wholly or in part, either in dispute or is a Government property, the waqf in

relation to such part of property cannot be registered. He, therefore, submitted that the Collector is empowered to stop the registration of a waqf by exercising powers vested in him. He further submitted sub-section (10) of Section 36 of the Amended Waqf Act bars any remedy in respect of unregistered waqf thereby creating an anomalous situation.

69. Dr. Singhvi lastly submitted that four High Courts have held that the lack of registration does not affect the original character of the waqf. To buttress his submission the learned Senior Counsel relied on the judgments in the cases of ***Khudawand Haiyul Qaiyum v. State of U.P. and Others***[17]***, Mohammed Ghouse v. Karnataka Board of Wakfs***[18]***, Muneerul Islam Sangham and Others v. Valiya Peedikakkal Kunhamu and Another***[19] ***and S. Manikya Reddy v. The A.P. State Wakf Board, Rep. by its Chief Executive Officer, Hyderabad and Another***[20]**.**

[17] **2013 : AHC : 89349 (Second Appeal No.2471 of 1978)**
[18] **1985 SCC OnLine Kar 144**
[19] **2004 SCC OnLine Ker 54**
[20] **2014 SCC OnLine AP 336**

70. Shri Huzefa Ahmadi, learned Senior Counsel submitted that Section 3E of the Amended Waqf Act does not only affect dedication of any land in Scheduled or Tribal areas in future but also affects the dedications made in past. He submitted that the said Section having retrospective application is violative of the fundamental rights of the persons professing Islam as provided under Articles 25 and 26 of the Constitution. It is further submitted that the said provision is enacted only insofar as Muslims are concerned and therefore, it is directly hit by Article 15(1) of the Constitution.

71. The learned Senior Counsel reiterated that the three prongs for grant of interim relief i.e., *prima facie* case, balance of convenience and irreparable injury having been satisfied a clear case for stay of the impugned Act is made out.

DISCUSSION AND ANALYSIS

72. Having heard the parties on the question as to whether the amended provisions, as enacted by the impugned Act, should be stayed or not pending the final hearing of the present batch

of matters, we proceed to firstly analyze the extant position of law on the subject.

i. Scope of Grant of Interim Relief

73. By now, it is a settled principle of law that the courts should be very slow in granting interim relief by way of staying the provisions of an enactment. Interim relief of such a nature can be granted in rare and exceptional cases; where parties are in a position to point out that either the legislature which enacted the law lacks legislative competence or the provisions are *ex-facie* in violation of any of the provisions in Part III of the Constitution or constitutional principles or is manifestly arbitrary. Reference in this respect can be made to the following landmark judgments of this Court.

74. Right from the 1950 Constitution Bench judgment of this Court in the case of ***Charanjit Lal Chowdhury v. Union of India and Others***[21], the courts have accepted the legal position that presumption is always in favour of constitutionality of an enactment and the burden is upon him who attacks it to show

[21] **(1950) SCC 833**

that there has been a clear transgression of the constitutional principles. It is an established position that it must be presumed that legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.

75. Thereafter, a Constitution Bench of this Court in the case of ***The State of Bombay and Another v. F.N. Balsara***[22], after referring to the judgment in the case of ***Charanjit Lal Chowdhury*** (supra), has laid down the principles in the following terms:

> "**49.** .....
>
> (1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
>
> (2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other

[22] **[1951] SCR 682**

individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

76. Again, in the case of ***Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Others***[23], a Constitution Bench of this Court reiterated the position as under:

[23] **1958 SCC OnLine SC 6 : [1959] SCR 279**

"**11.** .....The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(*a*) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(*b*) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(*c*) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(*d*) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(*e*) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(*f*) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is

> nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.
>
> The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

77. Another Constitution Bench of this Court, thereafter, in the case of ***Mohd. Hanif Quareshi and Others v. The State of Bihar***[24], has observed thus:

> "**15.** .....The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its

[24] **1957 SCC OnLine SC 17 : [1959] SCR 629**

> restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation….."

78. In the case of ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others***[25], after referring to three earlier judgments in the cases of ***The Bengal Immunity Company Limited v. The State of Bihar and Others***[26], ***R.M.D. Chamarbaugwalla and Another v. Union of India and Another***[27] and ***Mahant Moti Das and Others v. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trust and Others***[28], a Constitution Bench of this Court observed that while considering the constitutionality of an enactment, it is necessary to consider its true nature and character i.e., its subject matter, the area in which it is intended to operate, its purport and the intent. It has further been held that in order to

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[25] **1959 SCC OnLine SC 38**
[26] **1955 SCC OnLine SC 2**
[27] **1957 SCC OnLine SC 11 : [1957] SCR 930**
[28] **1959 SCC OnLine SC 66**

do so, it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy.

79. This legal position has been consistently reiterated by this Court in a catena of judgments. Recently also, a Three-Judge Bench of this Court in the case of ***Dr. Jaya Thakur v. Union of India and Others***[29], to which one of us (Gavai, J. as he then was) was a Member, has observed thus:

> "**70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, on the law made by Parliament or a State Legislature cannot be declared bad.**
>
> **71.** It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the

[29] **(2023) 10 SCC 276**

fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it

> **has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.**
>
> **75.** In the present case, it is nobody's case that Parliament did not have power to enact on the subject on which the aforesaid Amendments have been enacted. As such, the said ground is not available to the petitioners."
>
> [emphasis supplied]

80. In the background of this categorical position, we will have to consider as to whether the petitioners have made out a strong case to show that the amendments brought into the Old Waqf Act by the impugned Act are beyond the legislative competence of the Parliament or *ex-facie* point out violation of any of the provisions in Part III of the Constitution or constitutional principles or is manifestly arbitrary.

ii. Legislative History of Waqf Enactments

81. For appreciating the provisions of the impugned Act, we will have to consider the legislative history of various enactments regulating and governing the creation of waqfs.

a. Mussalman Wakf Act, 1923

82. The first of such enactments was *Mussalman Wakf Act, 1923*. It will be relevant to refer to the Statement of Objects and Reasons of the said Act, which reads thus:

> "**Statement of Objects and Reasons** – The object of the present Bill is sufficiently indicated by the Preamble to the Bill. **For several years passed, there has been a growing feeling amongst the Mahomedan community, throughout the country that the numerous endowments which have been or are being made daily by pious and public-spirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time. Instances of such misuse of trust property are unfortunately so very common that a wakf endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty.** In some case, the mutawallis are persons who are utterly unfit to carry on the administration of wakf and who, by their moral delinquencies bring discredit not merely on the endowment but on the community itself. **It is believed that the feeling is unanimous that some**

step should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement, and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated.

In some cases, difficulties have arisen in finding out whether any particular properties are really subject to wakf or not. There are numerous wakf properties all over the country unknown to the public which the mutawallis are treating their own private property and dealing with in any way they think fit or necessary. It, therefore, seems that there should be a system of compulsory registration requiring a mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the mutawalli, but also the nature and extent and other incidents of the endowment. Further, even where a wakf is well-known and mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus of opinion amongst the Mahomedans throughout the country that there should be some responsible officer, who may go about and find for himself whether the various wakf properties scattered throughout the country are being properly managed or not. It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has, therefore, been made in the Bill authorizing the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the mutawallis

> for the purpose of meeting the cost on entertaining such an officer and his staff."
>
> [emphasis supplied]

83. It can thus be seen that since the menace of mismanagement of the wakf properties was noticed by legislature, an enactment was found to be necessary as early as in the year 1923. It was noticed that the endowments made by pious and public-spirited Mahomedans were being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time.

84. It was also noticed that the wakf endowment came to be regarded by the public as a *"clever device"* to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. A system of compulsory registration not merely about the fact of the waqf but also the nature, extent and other incidents of the wakf was found to be necessary even at that point of time. It was also found, at that time, that it was necessary to appoint a responsible officer, who may go about and find out for himself whether the various

wakf properties scattered throughout the country were being properly managed or not.

85. A perusal of the 1923 Act would show that various provisions were made in the said Act *qua* obligation to furnish particulars relating to wakf[30], publication of particulars and requisition of further particulars[31], statement of accounts[32], audit of account[33] and verification[34]. Not only that, a penalty was also provided in Section 10 of the 1923 Act for a person who failed to comply with the statutory requirements of the Act.

b. Bengal Wakf Act, 1934

86. It is to be noted that Section 6(10) of the *Bengal Wakf Act, 1934* recognized the concept of "Waqf by User". It will be appropriate to reproduce the same:

> "**6. .....**
> **(10).** "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;"

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[30] **Section 3 of 1923 Act**
[31] **Section 4 of 1923 Act**
[32] **Section 5 of 1923 Act**
[33] **Section 6 of 1923 Act**
[34] **Section 8 of 1923 Act**

c. Wakf Act, 1954

87. Post independence, the Parliament enacted the *Wakf Act, 1954*. The concept of "Waqf by User" was statutorily recognized by Section 3(l)(i) of the 1954 Act. Under Section 4 of the 1954 Act, the State Government was required to appoint a Commissioner of Wakfs who was required to conduct an inquiry and submit a report in respect of wakfs existing at the date of the commencement of the said Act, giving the particulars as prescribed under the provisions of the said Act. The State Government under sub-section (6) of Section 4 of the 1954 Act was also empowered to direct the Commissioner to make a second or subsequent survey of wakf properties in the State.

88. Under Section 5 of the 1954 Act, on receipt of a report from the Commissioner, the State Government was required to forward the same to the Board. Thereafter, the Board was required to examine the report and publish in the Official Gazette, a list of wakfs in the State and containing such particulars as were prescribed.

89. Sub-section (1) of Section 6 of the 1954 Act provided for determination of disputes regarding waqfs by a civil court of the competent jurisdiction. Under sub-section (4) of Section 6 of the said Act, the list of wakfs published under sub-section (2) of Section 5 thereof, shall unless it was modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

90. Section 25 of the 1954 Act also provided for registration of every waqf at the office of the Wakf Commissioner. A detailed procedure for making an application for registration and the inquiry to be conducted by the Wakf Commissioner in respect of genuineness and validity of the application, giving notice of the application to the person administering the wakf property, was prescribed under the said provision. Sub-section (8) of Section 25 of the 1954 Act mandated making of the application for registration of the wakfs created before the commencement of the said Act within a period of 3 months from the date of commencement of the said Act. Insofar as wakfs created after the commencement of the said Act are concerned, a period of 3 months was prescribed from the date of creation of the wakfs.

91. Under Section 26 of the 1954 Act, a register of wakfs was required to be maintained by the Wakf Commissioner.

92. Under Section 27 of the 1954 Act, the Board was required to collect information regarding any property which it has reason to believe to be wakf property. It was also empowered to hold inquiry where it had reason to believe that any property or any trust or any society registered in pursuance of the *Indian Trusts Act, 1882*, or under the *Societies Registration Act, 1860*, or under any other Act, was a wakf property. It was further provided that, if after an inquiry, it was found that such a property is wakf property, it was empowered to call upon the trust or the society, either to register such property under the said Act as wakf property or show cause why such property should not be so registered.

93. Section 28 of the 1954 Act empowered the Wakf Commissioner to direct a Mutawalli to apply for the registration of a wakf or to supply any information regarding a wakf, or to himself cause the wakf to be registered and at any time amend the register of waqfs.

94. Section 41 of the 1954 Act provided penalties for non-compliance by a Mutawalli with regard to the provisions of the said Act.

d. Wakf Enquiry Committee & Wakf (Amendment) Act, 1984

95. It is further to be noted that though the 1954 Act provided for mandatory registration of all Waqfs, several waqfs had not registered themselves. As a result, the Central Government having taken note of the same, appointed a Wakf Enquiry Committee consisting of the following three eminent persons:

(i)	Sayeed Ahmad	-	Chairman
(ii)	M.H. Mohsin	-	Member
(iii)	Ishaq		

Later Mr. Zulfikar Alik Khan replaced M.H. Mohsin.

96. The final report of the Wakf Enquiry Committee was submitted in the year 1976. It will be relevant to refer to the following observations of the report submitted by the Wakf Enquiry Committee:

"Bar to hear or decide suits

(i) **Deliberate concealing of wakfs and wilful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure.** We consider that a carrot-and-stick policy is also required in the matter; dangling the carrot wherever possible and using the stick whenever it becomes necessary. We consider that, in the implementation of this policy, we have a very salutary provision under Section 31 of the Bombay Public Trusts Act 29 of 1950, which bars the hearing of any suits in respect of a public trust which has not been registered under the Act. **We consider that a similar provision is necessary in the Central Wakf Act of 1954, and no Mutawalli who has failed to have wakfs registered as required under the Central Wakf Act of 1954 should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. We, therefore, recommend that a fresh Section 55A may be added to the Central Wakf Act of 1954 on the following lines:**

> "(a) **55(1) No suit to enforce a right on behalf of a wakf which has not been registered under this Act shall be heard or decided in any court of law or tribunal**."
>
> "(2) **The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such wakf**.""
>
> [emphasis supplied]

97. It can thus be seen that the said Committee noticed that there were instances of deliberate concealing of wakfs and wilful failure to have them registered. It was observed that such a malady, which was deeply prevalent, was affecting the administration of wakfs. The Committee, therefore, recommended imprisonment as a punitive measure for such non-compliances. The Committee noticed that under the *Bombay Public Trusts Act, 1950*, there was a provision which barred the hearing of any suits in respect of a public trust which had not been registered under the said Act. The Committee was of the opinion that such a salutary provision was also necessary in the 1954 Act. As a matter of fact, in order to give effect to the said recommendations of the Wakf Enquiry Committee, the 1954 Act was sought to be amended by *Wakf (Amendment) Act, 1984*, by inserting Section 55E, which reads thus:

> "**55E**. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been

> instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

98. However, it is to be noted that the *Wakf (Amendment) Act, 1984*, was not brought into effect.

99. Thereafter, the Parliament noticed that the actual working of the 1954 Act had brought out many deficiencies in it as also in the setup of Waqf Boards. From the introduction of the Original Waqf Act, it can be seen that to remove the deficiencies, the 1954 Act was amended in 1959, 1964, 1969 and thereafter comprehensive amendments were made in 1984 based on the recommendations of the Wakf Enquiry Committee. It can be seen that a large number of persons from the Muslim community had strongly opposed various provisions of the *Wakf (Amendment) Act, 1984* including Section 55E (as discussed previously).

Therefore, only after carefully considering the objections to various provisions of the *Wakf (Amendment) Act, 1984*, and after holding wide ranging discussions with the leaders of the Muslim community, it was decided to bring in a new comprehensive Bill on waqf matters incorporating the features of the 1954 Act and such provisions of the *Wakf (Amendment) Act, 1984*, in respect of which there was a near consensus. The cumulative result of the process was the enactment of the 1995 Waqf Act, which we have been referring to as the Original Waqf Act.

e. Waqf Act, 1995

100. A perusal of the Statement of Objects and Reasons of the Original Waqf Act would also show that there were instances of misuse of waqf properties either with or without the connivance of the Mutawallis. It was, therefore, proposed to incorporate in the Bill a provision so that the alienation of Waqf properties would not be easy. It will be relevant to refer to Section 3(r) of the Original Waqf Act as it stood before the *Wakf (Amendment) Act, 2013*:

"**3. Definitions. –**

(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes –

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and;

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable,

and "wakif" means any person making such dedication;"

101. It can thus be seen that the definition of "wakf" also included a "Wakf by User". It can further be seen that such a waqf would not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser.

102. Section 4 of the Original Waqf Act provided for preliminary survey of auqaf.

103. Section 5 of the Original Waqf Act provided for publication of the list of auqaf. It also provided that the revenue

authorities shall include the list of auqaf referred to in sub-section (2) thereof, while updating the land record and taking into consideration the list of auqaf referred to in sub-section (2) thereof, while deciding mutation in the land records.

104. Section 6 of the Original Waqf Act provided that if any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or Mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and that the decision of the Tribunal in respect of such matter shall be final.

105. Section 7 of the Original Waqf Act provided for the power of Tribunal to determine disputes regarding auqaf.

106. Section 36 of the Original Waqf Act provided for registration of a waqf. It also provided for the procedure to be followed for registration of the waqf. It will be relevant to note that certain amendments were also carried out to the provisions of Section 36 of the Original Waqf Act by way of the *Wakf (Amendment) Act, 2013*. However, it is to be noted that even under

the Original Waqf Act, it was provided that an application for registration shall be made along with a description of the waqf properties sufficient for the identification thereof amongst other particulars.

107. Further, a perusal of sub-section (4) of Section 36 of the Original Waqf Act would reveal that every application for registration was required to be accompanied by a copy of the waqf deed or if no such deed had been executed or a copy thereof could not be obtained; the application was required to contain full particulars, as far as they are known to the applicant, about the origin, nature and objects of the waqf. It can thus be seen that even in case of a "Waqf by User", an application could have been made for registration even if no waqf deed was executed by giving the details, which were known to the applicant, about the origin, nature and objects of the waqf.

108. Under sub-section (7) of Section 36 of the Original Waqf Act, on receipt of an application for registration, the Board was required to make an inquiry as it deemed fit with regard to the genuineness and validity of the application and correctness of

any particulars therein. It was further provided that when the application was made by any person other than the person administering the waqf property, the Board, before registering the waqf, was required to give notice of the application to the person administering the waqf property and was further required to give him a hearing if he desired to be heard.

109. It is to be noted that under sub-section (8) of Section 36 of the Original Waqf Act, every application for registration, in the case of auqaf created before the commencement of the said Act, was required to be made within 3 months from the date of commencement and in case of auqaf created after such commencement, within 3 months from the date of the creation of the waqf. The *proviso* thereto enabled an application to be made within a period of 3 months from the date of establishment of the Board where there was no Board at the time of creation of the waqf.

110. Under Section 32 of the Original Waqf Act, which provided for the powers and functions of the Board, the Board was *inter-alia* required to maintain a record containing

information relating to origin, income, object and beneficiaries for which a waqf was created.

111. Under Section 40 of the Original Waqf Act, the Board was empowered to collect information regarding any property which it had reason to believe to be a waqf property and if any question arises as to whether a particular property was a waqf property or not, the said question could be decided by the Board after making such inquiry as it deemed fit. It was further provided that the decision of the Board subject to modification, if any, by the Tribunal was to be final.

112. A provision similar to that made in sub-section (3) of Section 27 of the 1954 Act with regard to a property of any trust or society registered under the *Indian Trusts Act, 1882*, or under the *Societies Registration Act, 1860*, or under any other Act, was also made under sub-section (3) of Section 40 of the Original Waqf Act. Further, a provision similar to Section 28 of the 1954 Act can be found in Section 41 of the Original Waqf Act with a change that the Waqf Commissioner has been replaced with the Board.

113. Section 61 of the Original Waqf Act provided for penalties. It will be relevant to note that sub-section (2) of Section 61 of the Original Waqf Act provided for imprisonment of a Mutawalli if he omitted or failed to, with a view to concealing the existence of a waqf, apply for registration under the said Act in the specified period or furnished any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect was liable to be punished with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees. This provision is in tune with the report of the Wakf Enquiry Committee referred to hereinabove, which recommended bringing a similar provision as existed in the *Bombay Public Trusts Act, 1950*.

114. It is relevant to note that the Original Waqf Act also had a provision by virtue of Section 87 which provided a bar on the institution of any suit, appeal or other legal proceedings on behalf of any waqf which had not been registered in accordance with the provisions of the said Act. Again, this provision was on the lines recommended by the Wakf Enquiry Committee and on the basis

of which Section 55E was sought to be brought into the statute by *Wakf (Amendment) Act, 1984*. However, it is to be noted that by way of *Wakf (Amendment) Act, 2013*, Section 87 of the Original Waqf Act came to be deleted.

iii. Consideration of the provisions of the impugned Act

115. In this historical perspective, we will have to consider the question as to whether the impugned Act deserves to be stayed or not.

116. The scope of grant of interim stay of a statute or any of its provision(s) has been crystalized in the Constitution Bench judgments which we have already referred to hereinabove.

117. It has consistently been held that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It is quite well settled that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination is based on adequate grounds. Equally, it is

settled that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest. It has also been held that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

118. It has also been held that a statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. In doing so, the Court must be able to hold beyond any *iota* of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared invalid. It has also been held that in order to declare a law unconstitutional, the Court has to come to a conclusion that the violation of any of the provisions of the Constitution is so evident that it leaves no manner of doubt.

119. The grounds on which a legislation can be declared invalid is with regard to the legislative competence of legislature or that such a legislation is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution or that it is manifestly arbitrary.

120. In the light of this legal position, we will have to examine as to whether the petitioners have made out a strong *prima facie* case to stay the entire statute i.e., the impugned Act.

121. For doing so, we will be required to consider the legislative history right from 1923 up to the enactment of the statute under challenge.

122. A perusal of the Statement of Objects and Reasons of the *Mussalman Wakf Act, 1923* would reveal that, for several years passed, there had been a growing feeling amongst the Mahomedan community, throughout the country, that the numerous endowments which have been or are being made daily by pious and public-spirited Mahomedans are being wasted or

systematically misappropriated by those into whose hands the trust may have come in the course of time.

123. As early as in 1923, it was noticed that instances of such misuse of trust property were unfortunately so very common that a wakf endowment had now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. The legislature found that some steps should be taken in order that incompetent and unscrupulous Mutawallis may be checked in their career of waste and mismanagement. Furter, as early as 1923, the legislature found that it was necessary to have a system of compulsory registration requiring a Mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the Mutawalli, but also the nature and extent and other incidents of the endowment. It was also noticed that even where a wakf is well-known and Mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post because of the cumbrous procedure laid down in the Code of Civil Procedure.

124. It can further be seen that the provisions with regard to compulsory requirement of registration of every waqf also continued under the 1954 Act.

125. Finding that even the 1954 Act had not served the purpose, the Central Government appointed a Wakf Enquiry Committee consisting of three eminent persons and that too from Muslim community. The said Committee found that a provision similar to the one provided in Section 31 of the *Bombay Public Trusts Act, 1950* was required to be incorporated in the 1954 Act. It recommended the insertion of a provision to the effect that no Mutawalli who has failed to have wakfs registered as required under the 1954 Act should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. It, therefore, recommended insertion of Section 55A in the 1954 Act.

126. It is further to be noted that in order to give effect to the recommendations of the Waqf Enquiry Committee, the 1954 Act was sought to be amended by *Wakf (Amendment) Act, 1984* by

inserting Section 55E, but, for various reasons, it could not be brought into effect.

127. It is further to be noted that though the 1954 Act was further amended in 1959, 1964, 1969 and comprehensive amendments were made thereafter in 1984 based on the recommendations of the said Committee, however, a large number of persons from the Muslim community opposed various amendments sought to be brought by the *Wakf (Amendment) Act, 1984* including the one by which Section 55E was brought into the statute.

128. Coming next to the Original Waqf Act. Section 36 thereof provided for registration of a waqf. A perusal of sub-section (4) of Section 36 of the Original Waqf Act would reveal that every application for registration was required to be accompanied by a copy of the waqf deed or if no such deed had been executed or a copy thereof could not be obtained, then the application was required to contain full particulars, as far as they are known to the applicant, about the origin, nature and objects of the waqf. It can thus be seen that even in case of a "Waqf by

User", an application could have been made for registration even if no waqf deed was executed by giving the details, which were known to the applicant, about the origin, nature and objects of the waqf.

129. It can further be seen that under sub-section (7) of Section 36 of the Original Waqf Act, on receipt of an application for registration, the Board was required to make an inquiry as it deemed fit with regard to the genuineness and validity of the application and correctness of any particulars therein.

130. It can further be seen that under sub-section (8) of Section 36 of the Original Waqf Act, every application for registration, in the case of auqaf created before the commencement of the said Act, was required to be made within 3 months from the date of commencement and in case of auqaf created after such commencement, within 3 months from the date of the creation of the waqf. Insofar as the auqaf which were already in existence, in view of the *proviso* thereto, an application could have been made within a period of 3 months from the date

of establishment of the Board where there was no Board at the time of creation of the waqf.

131. It is further to be noted that though the Original Waqf Act provided a detailed procedure for registration, it also provided under Section 87 a bar on the enforcement of rights on behalf of unregistered waqfs. Though this provision, which provides a bar on the rights on behalf of the unregistered trusts, was in existence from 1995 till 2013, it was removed with effect from 1st November 2013.

a. Section 4(ix)(a) of the impugned Act

132. One of the sections which is sought to be challenged by the petitioners is amendment to Section 3(r) of the Original Waqf Act by virtue of Section 4(ix)(a) of the impugned Act. It would be appropriate to refer to Section 3(r) of the Amended Waqf Act, which reads thus:

> "**3. Definitions:**
>
> In this Act, unless the context otherwise requires,-
>
> xxxx xxxx xxxx
>
> (r) "waqf" means the permanent dedication by any person showing or demonstrating that he is practising Islam for at least five years, of any movable

> or immovable property, having ownership of such property and that there is no contrivance involved in the dedication of such property, for any purpose recognised by the Muslim law as pious, religious or charitable and includes
>
> ...."

133. It is contended by the petitioners that the condition which requires that a waqf can be created only by a person showing or demonstrating that he is practicing Islam for at least 5 years is totally discriminatory and arbitrary. It is further contended that the restriction which provides that only property owned by such a person can be donated is also arbitrary. It is lastly contended that the bar on dedication of any property which is not owned by such a person is arbitrary.

134. We will first deal with the first part of the provision that requires a person dedicating a property to show or demonstrate that he is practicing Islam for at least 5 years.

135. *Prima facie*, we are of the view that such a provision cannot be said to be arbitrary or discriminatory.

136. As discussed by us hereinabove that as early as in 1923, the legislature had noticed that it was common that a waqf

endowment had come to be regarded by the public as only a "clever device" to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. Therefore, the possibility of any person not belonging to Muslim community, converting to the Islamic religion only in order to take benefit of the protection of Waqf Act so as to defeat creditors and evade the law under the cloak of a plausible dedication cannot be ruled out.

137. As has been observed by us hereinabove, the Constitution Bench of this Court in the case of ***Shri Ram Krishna Dalmia*** (supra), while considering the challenge to the validity of a statutory provision, held that the Court is entitled to take into consideration the matters of common knowledge, matters of common report and the history of the times.

138. It will, therefore, not be out of place to mention that many persons, who, under the relevant personal laws, are not entitled to marry with a second woman during the subsistence of their first marriage and who are liable to be prosecuted for the

offence of bigamy in such a case, in order to avoid the rigour of criminal offence, convert themselves into Islamic religion.

139. A perusal of the Statement of Objects and Reasons of the *Mussalman Wakf Act, 1923* would reveal that as early as in 1923, the misuse of the trust property was found to be so common that a waqf endowment had come to be regarded by the public as only a "clever device" to tie up the property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. As such, the provision which has been enacted with a view to ensure that only persons who are genuinely professing Islamic religion and have not converted themselves to Islam only in order to evade the clutches of law cannot be said to be arbitrary.

140. We are, therefore, *prima facie* of the view that such a provision which requires a person practicing Islam for 5 years for creating a waqf cannot be said to be arbitrary. As already discussed hereinabove, it cannot be said that it has no nexus with the object sought to be achieved. However, we are of the considered view that since no mechanism or procedure has been

provided as of now for ascertaining as to *whether a person has been practicing Islam for at least 5 years or not*, such a provision cannot be given effect to immediately. We are, therefore, of the considered view that unless the rules are made by the Central Government by exercising its rule-making power under Section 109 of the Amended Waqf Act, the provision of Section 3(r) of the Amended Waqf Act requiring a person to show or demonstrate practice of Islam for at least 5 years in order to dedicate a movable or immovable property for the purpose of creating a waqf cannot be given effect to.

141. The second question is with regard to the validity of that part of the provision which requires that the property which is to be permanently dedicated as a waqf should only be a property which is owned by the person dedicating it.

142. It is to be noted that paragraph 176 of the Treatise *"Principles of Mahomedan Law (20th Edition)"* by Mulla would show that only an "owner" of a property can create a waqf. Further, from the *Key Quranic Verses* specifically by Surah Al-Baqarah, it can be seen that the very concept of creation of waqf

is based on charity i.e., to spend one's own wealth in the way of Allah. In any case, to do charity a person will have to do charity of his own property or the money owned by him. A charity cannot be done by a person of a property or money owned by a third person or a property owned by the Government. In that view of the matter, we are of the *prima facie* view that such a requirement cannot be held to be arbitrary.

b. Section 4(ix)(b) of the impugned Act

143. The next challenge is with regard to the deletion of the clause concerning "Waqf by User" i.e., clause (i) of Section 3(r) of the Original Waqf Act.

144. It would be appropriate to refer to Section 3(r)(i) of the Original Waqf Act as it existed prior to amendment, which reads thus:

> "**3. Definitions.-**
>
> .....
>
> (r) "waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes -

> (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
>
> ……..
>
> and "waqif" means any person making such dedication;"

145. It is contended by the petitioners that "Waqf by User" is a concept which is recognized under the Muslim law and the deletion of the said provision is arbitrary. *Per contra*, it has been contended by the learned Solicitor General that the amendment to Section 3(r)(i) of the Original Waqf Act would only have a prospective effect.

146. It can be seen that Section 36 of the Original Waqf Act required every waqf created before or after the commencement of the said Act to be registered.

147. As has also been observed by us hereinabove, right from 1923, in all the enactments we have referred to, there was a requirement of registration of waqfs. We are, therefore, of the view that if Mutawallis for a period of 102 years could not get the waqf registered, as required under the earlier provisions, they cannot

claim that they be allowed to continue with the waqf even if they are not registered.

148. It is sought to be contended by the learned Senior Counsel for the petitioners that in many cases there would be no waqf deeds available. However, it is to be noted that under the Original Waqf Act, for filing an application for registration, the accompaniment of a copy of the waqf deed was not mandatory. Under the Original Waqf Act, it was provided that if no such deed has been executed or a copy thereof cannot be obtained, the application could have been made by giving full particulars as far as they are known to the applicant with regard to the origin, nature and objects of the waqf.

149. We are, therefore, of the view that if for 30 long years, the Mutawallis had chosen not to make an application for registration, they cannot be heard to say that the provision which now requires the application to be accompanied by a copy of the waqf deed is arbitrary. Further, if the legislature, on noticing misuse of the waqf properties, finds that after the enactment of the impugned Act all such applications should be accompanied

by a copy of the waqf deed, the same cannot be said to be arbitrary.

150. Not only that, but we are also of the view that if the legislature, in 2025, finds that on account of the concept of "Waqf by User", huge government properties have been encroached upon and to stop the said menace, it takes steps for deletion of the said provision, the said amendment, *prima facie*, cannot be said to be arbitrary.

151. It may not be out of place to mention that noticing that the Andhra Pradesh Waqf Board had notified thousands of acres of land belonging to the Government as waqf property, the State of Andhra Pradesh was required to move the High Court of Judicature at Andhra Pradesh challenging the said notification. The said High Court had *dismissed* the said petition. Challenging the same, the State of Andhra Pradesh had filed an appeal by way of special leave before this Court which came to be decided by judgment and order in the case of ***State of Andhra Pradesh v. Andhra Pradesh Waqf Board*** (supra). The appeal filed by the State was *allowed*. While setting aside the judgment and order of

the High Court, this Court quashed and set aside the notification under challenge and held that the lands in question vest with the State and/or Corporation.

152. After noticing such instances of misuse, if the legislature finds that the concept of "Waqf by User" has to be abolished and that too prospectively, in our view, the same cannot *prima facie* be said to be arbitrary. In any case, as submitted by the learned Solicitor General, the deletion of clause (i) of Section 3(r) of the Original Waqf Act would come into effect from the date on which the impugned Act has come into effect. The said provision would, therefore, not apply retrospectively. Therefore, the contention of the petitioners that the lands vested in the waqfs would be grabbed by the Government *prima facie* holds no water.

c. Section 5 of the impugned Act (Section 3C of the Amended Waqf Act)

153. Another provision which is sought to be challenged is Section 3C of the Amended Waqf Act, which reads thus:

> "**3C. Wrongful declaration of waqf**.— (1) Any Government property identified or declared as waqf

> property, before or after the commencement of this Act, shall not be deemed to be a waqf property.
>
> (2) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate on Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:
>
> Provided that such property shall not be treated as waqf property till the designated officer submits his report.
>
> (3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.
>
> (4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."

154. What has been provided under sub-section (1) of Section 3C of the Amended Waqf Act is that any Government property identified or declared as waqf property, before or after the commencement of the Act, shall not be deemed to be a waqf property.

155. It cannot be gainsaid that the property of the Government is a property of the public i.e., the citizens of India.

The Government holds the property in trust for its citizens. Any person who has wrongful possession of such property cannot be permitted to claim the same as his own property.

156. Under sub-section (2) of Section 3C of the Amended Waqf Act, what has been provided is that if any question arises as to whether any such property is a Government property, the State Government may, by notification, designate an Officer above the rank of Collector, who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government. Further, as per the *proviso* to sub-section (2) of Section 3C of the Amended Waqf Act, such property shall not be treated as waqf property till the designated officer submits his report in that regard.

157. As already observed by us hereinabove, a Government property is a property of the citizens of India which the Government holds in trust for its citizens. Accordingly, we are of the considered view that a provision to determine the question as to whether any property is a Government property or not by

designating a Senior Officer above the rank of Collector, who shall submit his report to the State Government on the same, *prima facie* cannot be held to be arbitrary. However, at the same time, we are of the considered view that the *proviso* to sub-section (2) thereof, is, at least, *prima facie* not sustainable in law.

158. We are of the view that a provision, by way of which even before an inquiry is conducted by the designated officer as to whether any property is a Government property or not and even before the designated officer submits his report to the State Government, providing that such a property cannot be treated as waqf property *in the interregnum*, is, at least, *prima facie* arbitrary. If a property is already identified as a waqf property or is declared as waqf property, then without determination of the question as to whether such a property is a Government property or not and treating the said property not as a waqf property, in our *prima facie* view, is arbitrary.

159. We will now consider sub-sections (3) and (4) of Section 3C of the Amended Waqf Act.

160. Sub-section (3) of Section 3C provides that in case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government. Sub-section (4) thereof provides that the State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate corrections in the records.

161. Though we have *prima facie* upheld the provisions of Section 3C(1) and 3C(2) of the Amended Waqf Act, we find that the question with regard to determination of title of a property being entrusted to a revenue officer would not be in tune with the *principle of separation of powers* enshrined in our Constitution. The question of determination of the title of a property will have to, in our considered opinion, be resolved by a judicial or quasi-judicial authority.

162. At this stage, it would be appropriate to refer to Section 83 of the Amended Waqf Act, which reads thus:

> "**83. Constitution of Tribunals, etc.**.—(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:

Provided that any other Tribunal may, by notification, be declared as the Tribunal for the purposes of this Act.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf:

Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of

the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of three members—

(*a*) one person, who is or has been a District Judge, who shall be the Chairman;

(*b*) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government—member;

(*c*) one person having knowledge of Muslim law and jurisprudence—member:

Provided that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed:

Provided that tenure of the Chairman and the member shall be five years from the date of appointment or until they attain the age of sixty-five years, whichever is earlier.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised

by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) Any person aggrieved by the order of the Tribunal, may appeal to the High Court within a period of ninety days from the date of receipt of the order of the Tribunal."

163. Under sub-section (1) of Section 83 of the Amended Waqf Act, the State Government is required to constitute as many Tribunals for the determination of any dispute, question or other matter relating to a waqf or waqf property. It can further be seen that the jurisdiction of a Tribunal, so constituted, is wide enough to decide the issues even with regard to eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property. It can also be seen from sub-section (4) of Section 83 of the Amended Waqf Act that the Tribunal is a body

consisting of three Members. One of them is a person who is or has been a District Judge, who shall be the Chairman. The second one is a person who is or has been an officer equivalent in the rank of Joint Secretary to the State Government, who shall be a Member. The third one is a person having knowledge of Muslim law and jurisprudence, who shall also be a Member.

164. It is further to be seen from sub-section (9) of Section 83 of the Amended Waqf Act that any person, aggrieved by the order of the Tribunal, may appeal to the High Court within a period of 90 days from the date of receipt of the order of the Tribunal. It is, therefore, clear that the issue with regard to determination of the title of the property, as a Government property or not, can be finally decided by the Tribunal and any person aggrieved by the order of the Tribunal may file an appeal to the jurisdictional High Court.

165. We are, therefore, of the considered view that the provision in sub-section (3) of Section 3C of the Amended Waqf Act which provides that after the designated officer, on an inquiry in terms of sub-section (2) of Section 3C of the Amended Waqf

Act, determines the property to be Government property, necessary corrections in revenue records be made and a report be submitted in that regard to the State Government and the provision in sub-section (4) of Section 3C of the Amended Waqf Act mandating the State Government, on receipt of the report of the designated officer, to direct the Board to make appropriate correction in the records is *prima facie* arbitrary.

166. As already discussed hereinabove, the revenue officer cannot be entrusted with the work of determination of the title of a property keeping in view the *principle of separation of powers*.

167. We are, therefore, of the considered view that the provision which permits the necessary corrections to be made in the revenue records after conclusion of the inquiry and the provision enabling the State Government to direct the Board to make appropriate corrections in the revenue records on receipt of the report are *prima facie* arbitrary and liable to be stayed. However, to balance the equities and to protect the valuable Government properties, it is also imperative that pending such a determination by the Tribunal, the Mutawallis of such of the

waqfs do not create any third-party rights in respect of such properties for which the proceedings in accordance with Section 3C of the Amended Waqf Act are initiated, until the final adjudication by the Tribunal is made.

d. Section 5 of the impugned Act (Section 3D of the Amended Waqf Act)

168. The next issue is with regard to the validity of Section 3D of the Amended Waqf Act, which reads thus:

> "**3D. Declaration of protected monument or protected area as waqf to be void**.— Any declaration or notification issued under this Act or under any previous Act in respect of waqf properties shall be void, if such property was a protected monument or protected area under the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), at the time of such declaration or notification."

169. In this respect, it is pertinent to note that the *Ancient Monuments Preservation Act, 1904* and the *Ancient Monuments and Archaeological Sites and Remains Act, 1958* (collectively referred to as "Ancient Monuments Acts") have been enacted for the avowed purpose of protection of ancient monuments. Such

monuments are a vital part of the cultural heritage of our country and therefore they need to be protected.

170. It is further to be noted that Section 3D of the Amended Waqf Act has been enacted since the ASI appeared before the JPC and pointed out that on account of declaration of monuments as waqfs, they were facing many difficulties. It was stated by them that Mutawallis are not permitting the ASI officials to take steps for the protection and preservation of these monuments. It was also stated that, on account of notification(s) issued under the Ancient Monuments Acts and the notification(s) issued under the various Waqf Acts, the ASI was finding it difficult to carry out its function inasmuch as the Mutawallis were parallelly running the affairs.

171. The argument advanced before us on behalf of the petitioners was that on account of Section 3D of the Amended Waqf Act, the persons practicing Islamic religion would be deprived of performing their religious practices. We, however, are of the considered view that the said argument does not hold water.

172. The fallacy in the argument sought to be advanced by the petitioners can be seen from the provision contained in Section 5(6) of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958.* Sub-section (6) of Section 5 of the said Act permits the citizens to continue with their customary religious practices even if such an area is a protected monument. In that view of the matter, we do not find that any case is made out to stay the said provision.

e. Section 5 of the impugned Act (Section 3E of the Amended Waqf Act)

173. The next challenge is with regard to Section 3E of the Amended Waqf Act, which reads thus:

> "**3E. Bar of declaration of any land in Scheduled or Tribal area as waqf**.—Notwithstanding anything contained in this Act or any other law for the time being in force, no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property."

174. It can be seen that the said provision, which begins with a non-obstante clause, provides that no land belonging to members of Scheduled Tribes under the provisions of the Fifth

Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property.

175. It is to be noted that the Scheduled Tribes in general and, more particularly, those residing in north-eastern areas of the country, to which the Fifth and Sixth Schedules to the Constitution are made applicable, are one of the most marginalized and vulnerable sections of society and they can be easily exploited. The Fifth Schedule itself empowers the Governor to make regulations including regulations of prohibition or restriction on transfer of land from amongst people of Scheduled Tribes in such areas.

176. Not only that but various statutes like *Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956, Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and Karnataka Scheduled Castes and Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978* have been enacted in order to protect the rights of Scheduled Tribes and the Scheduled Castes. The provisions of

such statutes have been upheld by this Court in a catena of judgments including judgments in the cases of ***Amrendra Pratap Singh*** (supra), ***P. Rami Reddy*** (supra), ***R. Chandevarappa*** (supra), and ***Lingappa Pochanna Appelwar*** (supra).

177. It is further to be noted that the JPC noticed that there were numerous cases wherein the declarations as waqf property of the lands in tribal areas falling under Fifth and Sixth Schedules to the Constitution were made. It was further noticed that a declaration of a waqf in these areas was creating a serious threat to the existence of these cultural minorities, whose religious practices are distinct and who do not follow religious practices prescribed under Islamic religion. The JPC, therefore, observed that the protections envisioned by the founding fathers of the Constitution should be upheld at all costs.

178. Accordingly, we are of the considered view that a provision such as Section 3D of the Amended Waqf Act, which has been enacted with the avowed object of safeguarding the interest of one of the most marginalized and vulnerable sections

of our country, i.e., the Scheduled Tribes cannot be said to have no nexus with the object sought to be achieved. Such a provision cannot, therefore, be said to be *prima facie* arbitrary so as to stay the same.

f. Sections 10, 12 and 16 of the impugned Act

179. One of the main challenges raised on behalf of the petitioners is with respect to the provisions contained in Sections 9 and 14 of the Amended Waqf Act, which read thus:

> "**9. Establishment and constitution of Central Waqf Council**.—(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.
>
> (1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).
>
> (2) The Council shall consist of—
>
> (*a*) the Union Minister in charge of waqf— Chairperson, *ex officio*;
>
> (*b*) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(*c*) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(*i*) three persons to represent Muslim organisations having all India character and national importance;

(*ii*) Chairpersons of three Boards by rotation;

(*iii*) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;

(*iv*) three persons who are eminent scholars in Muslim law;

(*d*) two persons who have been Judges of the Supreme Court or a High Court;

(*e*) one Advocate of national eminence;

(*f*) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;

(*g*) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department— member, *ex officio*:

Provided that two of the members appointed under clause (*c*) shall be women:

Provided further that two members appointed under this sub-section, excluding *ex officio* members, shall be non-Muslim.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members

of the Council shall be such as may be prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may *suo motu* call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.

.....

14. Composition of Board.—(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,—

(*a*) a Chairperson;

(*b*)(*i*) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(*ii*) one Member of the State Legislature;

(*c*) the following members belonging to Muslim community, namely:—

(*i*) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(*ii*) one eminent scholar of Islamic theology;

(*iii*) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in sub-clauses (*i*) to (*iii*), additional members from category in sub-clause (*iii*) may be nominated;

(*d*) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;

(*e*) Joint Secretary to the State Government dealing with the waqf matters, *ex officio*;

(*f*) one Member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (*c*) shall be women:

Provided further that two of total members of the Board appointed under this sub-section, excluding *ex officio* members, shall be non-Muslim:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the

Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act, 2025 shall continue to hold office as such until the expiry of their term of office.

(2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.

(3) In case of a Union territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under sub-section (1).

.....

(6) In determining the number of members belonging to Shia, Sunni, Bohra, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

.....

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

180. It is the contention of the petitioners that the provisions of Section 9 of the Original Waqf Act have been amended in such a manner that it now permits the constitution of the Central Waqf

Council where non-Muslim members will be in majority. On the same lines, it is contended that the provisions of Section 14 of the Amended Waqf Act, which pertains to the composition of a Board for a State and the National Capital Territory of Delhi, now permits the majority of members to be non-Muslims. It is, therefore, argued by the petitioners that this would amount to direct interference by non-Muslims in the religious affairs of the waqfs.

181. *Per contra* it is the contention of the learned Solicitor General appearing on behalf of Union of India that the number of non-Muslim members insofar as the Central Waqf Council is concerned cannot exceed 4 and insofar as the Board is concerned, cannot exceed 3. It is also contended by the learned Solicitor General that the functions being exercised by the Council and the Board are largely secular in nature. It is further contended that their powers and duties are not related to day-to-day functioning of the waqfs but only with regard to laying down general policy on non-religious/secular activities. It is, therefore, contended that the provisions of the impugned Act amending

Sections 9 and 14 of the Original Waqf Act will not amount to any interference in religious practices.

182. Though the learned Solicitor General has contended that the non-Muslim members in the Council would not exceed 4, upon a plain reading of Section 9 of the Amended Waqf Act, it, *prima facie,* appears that insofar as the Council is concerned, 12 out of 22 members can be non-Muslims. It can be seen that insofar as categories covered under clauses (a), (b), (d), (e), (f) and (g) of sub-section (2) of Section 9 of the Amended Waqf Act are concerned, they do not provide that the members from these categories should be from amongst Muslims. It will only be under the category covered in clause (c) of sub-section (2) of Section 9 of the Amended Waqf Act, where it is required that the members would be from amongst the Muslims.

183. Similarly, insofar as the Board under Section 14 of the Amended Waqf Act is concerned, *prima facie*, it appears that 7 out of 11 members can be non-Muslims. It can be seen that insofar as categories covered under clauses (a), (b), (d), (e) and (f) of sub-section (1) of Section 14 of the Amended Waqf Act are

concerned, there is no requirement that the members have to be from amongst the Muslim community. It is only the category covered under clause (c) of sub-section (1) of Section 14 of the Amended Waqf Act, where it is required that a member has to be from the Muslim community.

184. We, however, do not wish to go into the question *qua* inclusion of non-Muslim members amounting to interference in religious practices, at this stage, inasmuch as the learned Solicitor General has made a categorical statement that the number of non-Muslim members in the Council as provided under Section 9 of the Amended Waqf Act would not exceed 4 and they will not exceed 3 in the Board as provided under Section 14 of the Amended Waqf Act.

185. However, in order to avoid any ambiguity, we propose to issue a direction that the Central Waqf Council should not have non-Muslim members exceeding 4 in number and 3 non-Muslim members insofar as Board is concerned.

186. The next challenge is with regard to Section 23 of the Amended Waqf Act, which reads thus:

> "**23. Appointment of Chief Executive Officer and his term of office and other conditions of service**.—(1) There shall be a full-time Chief Executive Officer of the Board to be appointed by the State Government and who shall be not below the rank of Joint Secretary to the State Government.]
>
> (2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.
>
> (3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board."

187. Section 23 of the Amended Waqf Act provides for appointment of Chief Executive Officer and his term of office and other conditions of service. Sub-section (1) thereof provides that there shall be a full-time Chief Executive Officer of the Board to be appointed by the State Government and who shall not be below the rank of Joint Secretary to the State Government. Sub-section (3) of Section 23 of the Amended Waqf Act provides that the Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

188. In this respect, it is contended by the petitioners that a person who is a non-Muslim could also be appointed as the Chief Executive Officer of the Board. It is further contended that

permitting a non-Muslim to be the Chief Executive Officer would be permitting him to directly interfere with the religious affairs of the minority community.

189. A perusal of clause (e) of sub-section (1) of Section 14 of the Amended Waqf Act would reveal that one of the *ex-officio* Members of the Board, has to be a Joint Secretary to the State Government dealing with the waqf matters. It can further be seen that the Chief Executive Officer of the Board, who shall also be the *ex officio* Secretary of the Board, would be an officer of the State Government and he would also hold the office of the Joint Secretary to the State Government dealing with the waqf matters. *Ordinarily*, the person occupying the post of the Chief Executive Officer would normally be a person belonging to the Muslim community. In any case, as we have already proposed to direct that in the Board, consisting of 11 Members, only 3 non-Muslim members may be permitted; we are of the view that, even if, the *ex officio* Secretary is a non-Muslim, it would not have any effect on the functioning of the Board inasmuch as the Chief Executive Officer will be discharging his functions and duties under the overall control of the Board. The Board, out of 11 members,

would have 8 or more members belonging to the Muslim community. As such, more than 2/3rd members of the Board i.e., majority of the Board will comprise of Muslim members. We, therefore, do not find that a *prima facie* case is made out for staying the said provision. However, there was an opinion that as soon as possible an endeavour should be made to appoint a Chief Executive Officer who belongs to Muslim community.

g. Section 21 of the impugned Act

190. The next challenge is with regard to the registration of every waqf which is required to be done under Section 36 of the Amended Waqf Act, which reads thus:

> "**36. Registration**.—(1) Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.
>
> (1A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed.
>
> (2) Application for registration shall be made by the mutawalli:
>
> Provided that such applications may be made by the waqf or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.
>
> (3) An application for registration shall be made to the Board through the portal and database and shall contain following particulars:—

(*a*) a description of the waqf properties sufficient for the identification thereof;

(*b*) the gross annual income from such properties;

(*c*) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;

(*d*) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;

(*e*) the amount set apart under the waqf for—

(*i*) the salary of the mutawalli and allowances to the individuals;

(*ii*) purely religious purposes;

(*iii*) charitable purposes; and

(*iv*) any other purposes;

(*f*) any other particulars as may be prescribed by the Central Government.

(4) Every such application shall be accompanied by a copy of the waqf deed.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board shall forward the application to the Collector having jurisdiction to inquire the genuineness and validity of the application and correctness of any particulars therein and submit a report to the Board:

Provided that if the application is made by any person other than the person administering the waqf, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf and shall hear him if he desires to be heard.

(7A) Where the Collector in his report mentions that the property, wholly or in part, is in dispute or is a Government property, the waqf in relation to such part of property shall not be registered, unless the dispute is decided by a competent court.

(8) In the case of auqaf created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqaf created after such commencement, within three months from the date of the creation of the waqf:

(9) The Board, on registering a waqf, shall issue the certificate of registration to the waqf through the portal and database.

(10) No suit, appeal or other legal proceeding for the enforcement of any right on behalf of any waqf which have not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after expiry of a period of six months from the commencement of the Waqf (Amendment) Act, 2025:

Provided that an application may be entertained by the court in respect of such suit, appeal or other legal proceedings after the period of six months specified under this sub-section, if the applicant satisfies the court that he has sufficient cause for not making the application within such period."

191. As already discussed hereinabove, the requirement of registration has not come for the first time in 2025. Right from 1923, the said requirement has been consistently found in all the

enactments concerning the waqf properties. Now, however, the requirement of registration has been sought to be challenged on account of insertion of sub-section (10) of Section 36 of the Amended Waqf Act.

192. Insofar as the challenge to sub-section (10) of Section 36 of the Amended Waqf Act is concerned, it is to be noted that the Statement of Objects and Reasons of the 1923 Act itself shows how the provisions of the Waqf Acts were being misused so as to deny the claim of creditors and to avoid legal proceedings. Not only that, but the Waqf Enquiry Committee appointed by the Central Government in 1969-70 had also recommended bringing in a provision similar to Section 55E of the *Bombay Public Trusts Act, 1950* so as to prevent the Mutawallis from running away from law. It is further to be seen that a similar provision was sought to be enacted in the 1954 Act by way of the *Waqf (Amendment) Act, 1984*, however, for various reasons, it could not be brought into effect. We, therefore, find that such a provision, rather than being discriminatory, on the contrary, brings parity with regard to suits etc., instituted for the enforcement of rights of waqf on par with other trusts governed by other similar

statutes. It is worthwhile to be noted that such a provision (Section 87 of the Original Waqf Act) was in existence from 1995 to 2013. However, by the *Wakf (Amendment) Act, 2013*, it was deleted. In any case, sub-section (10) of Section 36 of the Amended Waqf Act itself provides a period of 6 months from the commencement of the impugned Act. As such, we are of the considered view that an ample amount of time has been given for the waqfs which are not registered to get themselves registered. Apart from that, the *proviso* to sub-section (10) of Section 36 of the Amended Waqf Act provides that an application may be entertained by the court by way of such a suit etc., after the period of 6 months specified under the said sub-section if the applicant specifies sufficient cause. We are, therefore, of the *prima facie* view that such a provision cannot be held to be arbitrary or discriminatory.

h. Section 43 of the impugned Act

193. Another challenge is with regard to amendment to Section 104 of the Original Waqf Act by which the provisions of

Section 104, which were brought into effect by amendment dated 29th October 2013 w.e.f. 1st November 2013, stands deleted.

194. It would be appropriate to refer to Section 104 of the Original Waqf Act, which reads thus:

> "**104. Application of Act to properties given or donated by persons not professing Islam for support of certain waqf.** – Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a waqf being –
>
> (a) A mosque, idgah, imambara, dargah, khanqah or a maqbara;
>
> (b) a Muslim graveyard;
>
> (c) a choultry or *musafirkhana,*
>
> then such property shall be deemed to be comprised in that waqf and be dealt in the same manner as the waqf in which it is so comprised."

195. It is submitted by the petitioners that any person, not professing Islam and belonging to any other religion was also entitled to create a waqf by giving or donating his property for the support of a waqf for various purposes. It is submitted that on such property being given or donated, the property was deemed to be comprised in that waqf and be dealt with in the same manner as the waqf in which it is so comprised. It is, therefore,

submitted that the deletion of the provision which permits a person not professing Islam to create a trust is arbitrary.

196. In our view, the arguments advanced by the petitioners in this regard are self-contradictory.

197. On one hand, it is the contention of the petitioners that waqf is specific to Islamic religion. If that be so, then the deletion of the provision which permitted the person not professing Islam to give or donate his property for the purpose of waqf cannot be said to be arbitrary inasmuch as even according to petitioners waqf is specific to Islamic religion. In any case, if such a person desires to donate his property, he can do so by giving or donating it to a trust or creating a trust for any of the purposes which were included in Section 104 of the Original Waqf Act. Further, it appears that the said amendment has been brought to make it consistent with the definition of waqf under Section 3(r) of the Amended Waqf Act, which provides that waqf can be created only by a person showing or demonstrating that he is practicing Islam for at least five years. We, therefore, *prima facie* do not find the deletion of Section 104 of the Original Waqf Act to be arbitrary.

i. Section 44 of the impugned Act

198. The next grievance is with regard to Section 107 of the Amended Waqf Act, which reads thus:

> "**107. Application of Act 36 of 1963**.—On and from the commencement of the Waqf (Amendment) Act, 2025, the Limitation Act, 1963 shall apply to any proceedings in relation to any claim or interest pertaining to immovable property comprised in a waqf."

199. Section 107 of the Amended Waqf Act provides that on and from the commencement of the impugned Act, the *Limitation Act, 1963* shall apply to any proceedings in relation to any claim or interest pertaining to immovable property comprised in a waqf.

200. It is the contention of the petitioners that prior to the said provision being amended by the impugned Act, the provisions of the *Limitation Act, 1963* were not made applicable to any suit for possession of any immovable property comprised in a waqf or for possession of any interest in such property. It is, therefore, contended on behalf of the petitioners that such a provision which puts restrictions by way of the *Limitation Act, 1963* being made applicable on institution of any claim or interest

pertaining to immovable property comprised in a waqf is violative of Article 14 of the Constitution on account of it being arbitrary.

201. We, however, fail to understand as to how the *Limitation Act, 1963*, which is otherwise applicable to any other proceedings with regard to any claim or interest pertaining to immovable property, and which is now being made applicable to the claim or interest pertaining to immovable property comprised in a waqf can be said to be arbitrary. On the contrary, we are of the considered view that it, in fact, removes discrimination which was earlier provided in the unamended Act.

202. In that view of the matter, no *prima facie* case of stay has been made out by the petitioners in respect of the said provision.

j. Section 45 of the impugned Act

203. The next challenge is with regard to amendment to Section 108 of the Original Waqf Act, vide which a special provision as to evacuee waqf properties was made, which now stands deleted.

204. It would be appropriate to refer to Section 108 of the Original Waqf Act, which reads thus:

> "**108.** *Special provision as to evacuee waqf properties*.—The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (*f*) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950), which immediately before it became such evacuee property within the said meaning was property comprised in any waqf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—
>
> (*a*) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and
>
> (*b*) authorise such Board to assume direct management of the waqf concerned for so long as it might deem necessary."

205. It can be seen that the said provision was inserted when the *Administration of Evacuee Property Act, 1950* was in

existence. However, now the said Act itself has been repealed. In that view of the matter, Section 45 of the impugned Act deletes Section 108 from the Original Waqf Act inasmuch as after the repeal of the *Administration of Evacuee Property Act, 1950*, the said provision is rendered redundant.

206. The next contention is with regard to omission of the provisions of Section 108A of the Original Waqf Act. It would be appropriate to refer to the said provision, which reads thus:

> "**108-A.** *Act to have overriding effect.*—The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

207. As per Section 108A of the Original Waqf Act, prior to the coming into force of the impugned Act, the provisions of the Original Waqf Act were to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Original Waqf Act. It can also be seen that the said provision was inserted for the first time by the

amendment dated 29th October 2013 which was brought into effect from 1st November 2013.

208. It can thus be seen that in the Original Waqf Act, Section 108A was not in the statute book. It had only been brought in the statute book for the first time by Act 27 of 2013 with effect from 1st November 2013. It can thus be seen that the provisions of Section 108A were in existence only for a short period of around 11 years. In the Original Waqf Act, the said provision did not exist from 1995 till 2013. As the legislature is competent to bring any provision in the statute book, it is also competent to delete the said provision from the statute book. We, therefore, *prima facie* do not find any substance in the challenge in that regard.

CONCLUSION

209. In the totality of the circumstances, we do not find that any case is made out to stay the provisions of the entire statute. The prayer for stay of the impugned Act is, therefore, rejected. However, while doing so, in order to protect the interest of all the

parties and balance the equities during pendency of this batch of matters, we issue the following directions:

(i) The following part of clause (r) of Section 3 of the Amended Waqf Act

> "*any person showing or demonstrating that he is professing Islam for at least five years*"

shall stand stayed until the rules are framed by the State Government for providing a mechanism for determining the question as to whether a person has been practicing Islam for at least five years or not;

(ii) The *proviso* to sub-section (2) of Section 3C of the Amended Waqf Act, which reads thus:

> "*Provided that such property shall not be treated as waqf property till the designated officer submits his report.*"

and the provisions of sub-sections (3) and (4) of Section 3C of the Amended Waqf Act, which read thus:

> "*(3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.*

> *(4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."*

shall stand stayed;

(iii) It is directed that unless the issue with regard to title of the waqf property in terms of Section 3C of the Amended Waqf Act is not finally decided in the proceedings initiated under Section 83 of the Amended Waqf Act by the Tribunal and subject to further orders by the High Court, neither the waqfs will be dispossessed of the property nor the entry in the revenue record and the records of the Board shall be affected. However, upon commencement of an inquiry under Section 3C of the Amended Waqf Act till the final determination by the Tribunal under Section 83 of the Amended Waqf Act, subject to further orders of the High Court in an appeal, no third-party rights would be created in respect of such properties;

(iv) It is directed that insofar as Central Waqf Council constituted under Section 9 of the Amended Waqf Act

is concerned, it shall not consist of more than 4 non-Muslim members out of 22. Equally, insofar as the Board constituted under Section 14 of the Amended Waqf Act is concerned, it is directed that it shall not consist of more than 3 non-Muslim members out of 11;

(v) Though, we are not inclined to stay the provision of Section 23 of the Amended Waqf Act, we direct that as far as possible, an effort should be made to appoint the Chief Executive Officer of the Board who is the *ex-officio* Secretary from amongst the Muslim community; and

(vi) We clarify that what has been observed by us hereinabove is upon our *prima facie* consideration for the purpose of examining as to whether an interim stay should be granted or not to the impugned Act or the provision(s) contained therein. The observations made hereinabove will not prevent the parties from making submissions with regard to the validity of the

provisions contained in the Amended Waqf Act or any of the provision(s) therein.

210. We place on record our deep appreciation for Shri Kapil Sibal, Dr. Rajeev Dhavan, Dr. A.M. Singhvi, Shri C.U. Singh and Shri Huzefa Ahmadi, learned Senior Counsel appearing on behalf of the petitioners. We also place on record our deep appreciation for Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the Union of India as well as Shri Rakesh Dwivedi, Shri Ranjit Kumar, Shri Gopal Sankaranarayanan and Shri Guru Krishna Kumar, learned Senior Counsel appearing for the contesting parties. Most importantly, we place on record our appreciation for all the learned counsel for ably assisting the learned Senior Counsel in advancing their submissions.

.....CJI
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 15, 2025.