



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

WRIT PETITION NO. 24600 OF 2022 (GM-WAKF)

BETWEEN:

MR.JABIR ALI KHAN ALIAS SHUJA
AGED ABOUT 62 YEARS
SON OF LATE SHAH MOHAMED RAZA ALI SHAH
SHUTTARI, CHISTI, NIZAMIUL KHADRI
10/1 SADAR PATHRAPPA ROAD
BENGALURU-560 002.

...PETITIONER

(BY SRI. G. KRISHNAMURTHY SENIOR COUNSEL FOR
SRI. MOHAMMED ARIF KHAN MAKKI.,ADVOCATE)

AND:

1. KARNATAKA STATE BOARD OF WAKFS
THE DISTRICT WAKF OFFICE
BENGALURU URBAN SOUTH DISTRICT
NO.16 2ND FLOOR, HHS AND HMS COMPLEX
CUBBONPET, BENGALURU-560 002
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER.
2. THE DISTRICT WAQF OFFICER
BENGALURU URBAN SOUTH DISTRICT
NO.16 2ND FLOOR,
HHS AND HMS COMPLEX
CUBBONPET, BENGALURU-560 002.
3. THE KARNATAKA STATE BOARD OF AUQAF
NO.6 CUNNINGHAM ROAD
BENGALURU-560 052
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
4. THE LAW COMMITTEE
KARNATAKA STATE BOARD OF AUQAF AUTHORITY
NO.6 CUNNINGHAM ROAD





BENGALURU-560 052
REPRESENTED BY ITS CHAIRMAN.

5. SRI B N MOHAMMED NAWAB DASTAGIR KHAN
AGED ABOUT 48 YEARS
SON OF LATE B N SARDAR HYDER ALI KHAN
RESIDING AT NO.08, BEHIND K N S COLLEGE
BELHALLI, BENGALURU-560 064.
6. SMT AYESHA SULTANA
AGED ABOUT 49 YEARS
DAUGHTER OF B N MUNAWAR ALI KHAN
RESIDING AT NO.08, 1ST MAIN ROAD
RAHMATHNAGAR,
BENGALURU-560 032.
7. SRI B N AKRAM ALI KHAN ALIAS AMJAD KHAN
AGED ABOUT 71 YEARS
SON OF NAWAB MOHAMMED
MANIK HUSSAIN ALI KHAN
RESIDING AT NO.08, 1ST MAIN ROAD
RAHMATHNAGAR,
BENGALURU-560 032.
8. SMT FATHIMA SULTANA
ALIAS ZAREEN SULTANA
AGED ABOUT 60 YEARS
D/O NAWAB MOHAMMED
MANIK HUSSAIN ALI KHAN
RESIDING AT NO.08
BEHIND K N S COLLEGE, BELHALLI
BENGALURU-560 064.
9. SRI B N JAMSHEED ALI KHAN ALIAS
SHABAZ ALI KHAN
AGED ABOUT 59 YEARS
SON OF NAWAB MOHAMMED
MANIK HUSSAIN ALI KHAN
RESIDING AT NO.28, 5TH CROSS
RAHMATHNAGAR, BENGALURU-560 032.
10. SMT HAMEEDA SULTANA
AGED ABOUT 57 YEARS
DAUGHTER OF NAWAB
MOHAMMED MANIK HUSSAIN ALI KHAN
RESIDING AT NO.26/1, 17TH CROSS



UMAR CROSS, NEAR MADRASA
ASMA UI HUSNA
BENGALURU-560 045.

11. SMT SHAMSHUN SULTANA
AGED ABOUT 53 YEARS
D/O NAWAB MOHAMMED
MANIK HUSSAIN ALI KHAN
RESIDING AT NO.38,
NEW NO.05, 3RDCROSS
NAGWARA MAIN ROAD
BENGALURU-560 045.

12. SRI BENKI NAWAB MUSTHAQUIM ALI KHAN
AGED ABOUT 55 YEARS
S/O NAWAB MOHAMMED MANIK
HUSSAIN ALI KHAN
RESIDING AT NO.10,
BEHIND K.N.S COLLEGE
2ND CROSS, BELHALLI
BENGALURU-560064.

...RESPONDENTS

(BY SRI. HANEEF, ADVOCATE FOR R1, R2 AND R4
SRI. MOHAMMED NIYAZ S., ADVOCATE FOR R3;
SRI. MANAMOHAN P.N., ADVOCATE FOR C/R5;
SRI. AYAZ AHMED, ADVOCATE FOR R6 AND R12;
R7- DECEASED, R9 IS SERVED BUT UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH/SET ASIDE
PROCEEDINGS REGISTERED AS KSBA/LCC/01/BNU/2020 INITIATED
BY VIRTUE OF A NOTICE DATED 12.11.2020 BEARING
NO.DWAC/268/CMC/B(U) 2010-11/1364 ANNEXURE D AGAINST THE
PETITIONER ON THE FILE OF RESPONDENTS AT BANGALORE AND
ETC.,.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.G.S. KAMAL



ORAL ORDER

Petitioner is before this Court being aggrieved by the proceedings that are initiated by virtue of notice dated 12.11.2020 produced at Annexure-D issued by the respondent No.2-District Waqf Officer, Bangalore Urban South District of the respondent No.1- Karnataka State Board of Waqfs, by which, the petitioner has been called upon to furnish the records and to give explanation as to why the subject property be not re-registered in the Karnataka State Board of Waqfs and re-notify in the Government Gazette as Waqf property and aggrieved by the subsequent order dated 31.10.2022 produced at Annexure-A by which the Law Committee which was constituted pursuant to the notice as per Annexure-D has allowed an application in I.A.No.3/2021 filed under order 1 Rule 10 of CPC by the respondents 5 to 12 in the writ petition.

2. Brief facts of the case giving rise to present petition are as under;

(a) Subject matter of the property is immovable property bearing No.10/1 situated at Sadar Pathrappa road, Kumbarpete, Bangalore-560002. It appears that the said



property originally belonged to one Shah Mohammed Raza Ali Shah Shuttari, Chisti, Nizamul Khadri. Petitioner herein claims to be his descendant. It appears that on 07.06.1965 a Notification bearing No.MBW/19(1)/64 was issued by the then Mysore State Board of Waqfs, Vidhana Soudha, Bangalore under Section 5(2) of the Waqf Act, 1954 listing the aforesaid property as a Waqf property at Sl.No.147 and 173 along with another property which included a burial ground and that the property was being occupied and enjoyed by the said Shah Mohammed Raza Ali Shah Shuttari. This had resulted in issuance of a show-cause-notice dated 15.02.1975 calling upon the petitioner to explain as to under what authority he was leasing out the said properties/premises to third parties. It appears on 04.04.1975 he had submitted a reply along with certain documents. This resulted in initiation of enquiry on 04.04.1975. Since the said enquiry had not reached to any conclusion, a writ petition in W.P.No.3397/1976 was filed for direction for expeditious conclusion of the enquiry. The said writ petition was allowed directing the Karnataka Board of Waqf, Bangalore, to pass appropriate orders on the said enquiry within a period of one month from the date of the order.



(b) Thereafter the case was registered in L.C.C No.38/1975 and the orders were passed on 26.11.1976 declaring properties listed at Sl.No.166 of the Kitabul Awqaf as private properties of said Shah Mohammed Raza Ali Shah Shuttari. It was further directed to amend/delete the said entries from the kitabul Awqaf. Consequent and pursuant to the said orders, a notification dated 05.03.1977 was issued by the Karnataka State Board of Waqf deleting the said property from the list of Waqf.

(c) Things stood thus, respondent No.2-Karnataka State Board of Waqf issued a show-cause-notice dated 12.11.2020 produced at Annexure-D terming the petitioner as a trespasser/unauthorized occupant and claiming that the property was illegally made over in the name of the petitioner, requiring further enquiry into the matter. Aggrieved by the said show-cause-notice, petitioner had approached this Court by filing a writ petition in W.P.No.661/2021 which was disposed on 13.01.2021 with a direction to the petitioner to submit his explanation to the show-cause- notice and further direction to the respondent No.1 to pass orders in accordance with law. A Law Committee was thus consequently constituted.



(d) Petitioner through his counsel submitted a reply on 12.11.2020 along with documents. When the matter was pending consideration before the Law Committee now constituted, application under order 1 Rule 10 (2) of CPC in I.A.No.3/2021 came to be filed by the respondents 5 to 12 in this petition seeking to implead themselves as respondents before the Law Committee.

(e) Statement of objections to the said application was filed by the petitioner. By order dated 31.10.2022, Law Committee allowed the said application permitted the respondent Nos. 5 to 12 to come on record as respondents. Being aggrieved by the said order, petitioner is before this Court.

3. Sri. G.Krishna Murthy, learned Senior counsel appearing for the counsel for the petitioner taking this Court through the records enclosed therewith submits that the determination of the nature of the Waqf has taken place as far as back as in the year 1976, about four decades ago and same cannot be re-opened at this belated period of time. He further submits that apart from adjudication of the matter, a



notification had also been issued deleting/excluding subject property from the list of Waqfs as on 05.03.1977, as such he submits that issue has attained finality. He further submits that the very constitution of the Law Committee to enquire into the matter is illegal and contrary to the law. In that referring to the document enclosed with the statement of objections filed by the respondent-Waqf Board he submits, the reasons assigned for the very constitution of Law Committee itself indicate a pre-disposed mind of the respondent No.1-State Board of Waqf in holding proceedings of the year 1975-76 to be illegal. He submits the said opinion has been expressed in the meeting of the Board that was conducted on 17.06.2020 which was participated by the very members of the Law Committee and consequent to proceedings of the said meeting, very same members who had expressed such opinion in the said Board meeting have been assigned with the task of enquiring into the matter. He submits that such procedures run contrary to the principles of natural justice and same is tainted with bias. He submits that continuing such proceedings further under the circumstances would violate the principles of natural justice and



affect the right conferred thereunder to the petitioner vitiating the entire proceedings.

4. He further submits that the scope of constitution of committee under Section 18 of the Waqf Act, 1995 is limited. Under the provisions of Section 18 of the Act power of this nature determining the character of the property cannot be delegated a Law Committee which otherwise has to be dealt with under the provisions of Sections 6 and 7 of the Waqf Act, 1995. Thus, he submits that very subject matter which is taken up by the Law committee falls outside the purview of having been expressly excluded under the provisions of the Act. He further submits that issue of this nature can only be determined by the Karnataka Waqf Tribunal constituted under Section 83 of the Act.

5. As regards the impugned order at Annexure-A learned Senior counsel submits that the Law Committee which though claimed to be a fact finding committee has indeed expressed its view/ opinion on the very merits of the case requiring to further determination of the case. He submits that no reasons of any nature whatsoever assigned in complying the



requirement of Order 1 Rule 10(2) of CPC enabling the law committee to allow the said application filed by the respondent Nos. 5 to 12. Thus, on these counts, learned counsel seeks for allowing the petition.

6. Learned counsel appearing for the respondent-Waqf Board on the other hand refers to the Section 32(2)(h) of the Act and submits that it is incumbent upon the respondent-Waqf Board to recover its lost properties. He refers to Section 52 of the Act and the Karnataka Waqf Regulations, 2010 to justify the constitution of Law Committee for the purpose of enquiry and necessary action to recover the lost properties. He also refers to Section 107 of the Act to contend that for the purpose of initiating proceeding to recover the Waqf property provisions of Limitation Act would not apply. He, however, categorically submit that any opinion or finding given by the Law Committee is only to be read as fact finding committee and same would not be given effect to. The said fact finding report would be submitted to Waqf Board and the Waqf Board alone which is to take action as contemplated under the Act. Thus, he submits that proceedings before the Law Committee may not be construed as the proceedings determining the rights of



the parties. Hence, seeks to sustain the enquiry initiated pursuant to Annexure-D by the Law Committee.

7. It is further contended that since the subject property is a Waqf property having been notified as far as back on 07.06.1965 it was not open for anyone much less the administrator who has declared the same as private Waqf and since Section 32 of the Waqf Act, 1995 which entrusts the responsibility of management and administration of the Waqf Board besides authorizing the Waqf Board to recover the lost properties, the Law Committee was constituted to enquire into the matter and to submit the fact finding report to the Waqf Board to take further action in accordance with law. Hence, justifying the enquiry initiated, seeks dismissal of the writ petition.

8. Sri. Padmanabha V.Mahale, learned Senior counsel appearing for the legal heirs of respondent No.7 on the other hand submits that if parties are relegated to the Waqf Tribunal reserving liberty to initiate the proceedings in the manner known to law, requirement of ends of justice would be met. He further seeks withdrawal of the memo dated 03.09.2024 which



was filed by the legal heirs of respondent No.7 with liberty to approach Waqf Tribunal.

9. Submission is taken on record.

10. Heard. Perused the records.

11. From the facts narrated above and on consideration of submissions made by the learned counsel for the parties, following points emerged for consideration;

"(1) Whether in the facts and circumstances of the case the Karnataka State Board of Waqf is justified in initiating the proceedings to undo the order dated 26.11.1976 passed by the then Administrator of the Karnataka State Board of Waqf in LCC No.38/1975?

(2) Whether in the facts and circumstances of the case the Karnataka State Board of Waqf or its delegatee namely, the Law Committee which is purportedly constituted in furtherance to provision of Section 18 of the Act read with Regulations 9 of the Waqf Regulations, 2010 is competent to enquire into the nature of Waqf in the light of provisions contained in Sections 6 and 7 of the Waqf Act?.

(3) Whether in the facts and circumstances of this case based on the report to be submitted by the LAW Committee the Waqf Board would be able to exercise its power to recover the "lost properties" as provided under Section 32 (2)(h) of the Waqf Act as sought to be made out in the statement of objections?

(4) What orders?"



12. The order that was passed on 26.11.1976 by the then Administrator of the Karnataka Board of Waqf in case L.C.C No. 38/1975 produced at Annexure-H to the writ petition seek to declare portion of the subject property to be a Waqf property in other words a 'Mashrootul Khidmat and Waqf Alal-Aulad' and other portion of the property as a private property. In furtherance to the said order the portion of the property that was declared as private property was sought to be denotified by the operative portion, which reads as under;

"ORDER

The nature and object of the Waqf in respect of the properties mentioned at Sl. No.147 of Gazette Notification dated 7th June 1965 be and hereby are declared as pious, Mashrootul Khidmat and Waqf Alal-aulad and it is further ordered that the graveyard mentioned at Sl.No.166 of Kitabul AWaqf be and are hereby declared as private property belonging to the petitioner.

It is further ordered that the Kitabul Awkaf be amended accordingly".

(dictated to the stenographer transcript edited and pronounced in the open court this day the 26th November, One Thousand Nine Hundred and Seventy Six)

Sd/-
(Mr. Zarar Ali Khan)
Administrator,
The Karnataka Board of Wakfs

13. The aforesaid order has remained unchallenged untill constitution of the present Law Committee by a meeting held by the respondent No.3- Karnataka State Board of Auqaf



on 02.03.2020 and 17.06.2020 produced at Annexure-R1 and R3 respectively in the statement of objections filed by the respondent No.3- the Karnataka State Board of Waqf. Relevant also to refer the Note produced at Annexure-R2 to the statement of objections purportedly issued by the then Chairman of the Karnataka State Board of Auqaf prompting constitution of the Law Committee, which reads as under;

"KARNATAKA STATE BOARD OF AUQAF

No. KSBA-CM-26-2019-2020, Date:12-03-2020

NOTE

On perusal of the report of Shri. Anwar Manipaddy, the then Chairman, Karnataka State Minority commission, Bengaluru, it is found from the records available in the Board's Office, that a Khabrastan was in existence belonging to Hazrath Nawab Ibrahim Ali Shah Shuttari @ Zinde Wali (Sunni), Kumbarpet, Bengaluru.

The Law Committee of the Board in case L.C.C. No. 38/75, dated: 26.11.1976, recommended for deletion of the entry of the Waqf from the Kitabul Awkaf at Serial No. 166.

And accordingly the Board issued a Notification No. KTW/6004/AGW/MUZ/74, dated: 05.03.1977, which reads as follows;

"Khabrastan belonging to Hazrath Nawab Ibrahim Ali Shah Shuttari @ Zinde Wali (Sunni), Kumbarpet, Bangalore incorporate as such at Sl. No. 166, in the Kitabul Awkaf and correspondingly notified at Sl. No. 173 of list of Waqfs vide Notification No. MSW 19 (1) 64, dated: 7th June 1965, published in the Government Gazette dated: 22nd July 1965, is hereby deleted from the list of Waqf and Kitabul Awaf."

The deletion of entry is not legal, there is no impediment for the present Board to annul the decision for deletion of Waqf made by the then Administrator which is illegal and against the provisions of law. It is a settled preposition of law that the list of Waqf (Gazette Notification) is final and conclusive unless the same is set aside by the Decree of Competent



Court of Law. The maxim "once a Waqf is always a Waqf" is applicable to the present Waqf.

A decision by present Board is necessary to the annul the order passed by the Administrator on the recommendation of the L.C.C. de-notifying the Waqf Property referred supra. After annulling the order, steps to be taken to recover the property as per the Act and Rules.

The matter is to be placed before the Board for a decision in this behalf.

[DR. MOHAMED YOUSUFF]

Chairman, Karnataka State
Board of Auqaf Bengaluru.

The Chief Executive Officer,
Karnataka State Board
of Auqaf, Bengaluru."

14. Thus, it is clear what is sought to be revisited by the aforesaid process by constituting the respondent No.4-Law Committee is to review and recall the order that was passed by the then Administrator of the Karnataka State Board of Waqf. The order passed by the said Administrator on 26.11.1976 proceeds on the premise of the portion of the subject property being a private property and not the Waqf Property.

15. Admittedly at the relevant period there was no Board constituted as contemplated under the then Waqf Act, 1954 and the Karnataka State Waqf Board was under the management and control of the State through its Administrator.



Needless to state that an administrator was invested with the power and authority to discharge the functions of the Board pertaining to the affairs of the Waqf institutions as provided under the Wakf Act, 1954. The board under the provisions of the Act is empower to discharge both administrative and quasi judicial functions. Apparently, in discharge of such functions the then Administrator of Karnataka State Waqf Board had initiated the proceedings in LCC No.38/1975 as produced at Annexure-H to the petition which was well within the power and authority of the Administrator. If any action taken or order passed by the said Administrator was required to be reversed or annulled, same may have to be done in the manner known to law and under the relevant express provisions of the Act.

16. The proceedings in LCC No.38/1975 that was initiated and conducted by the Administrator was in exercise of quasi judicial function of the Karnataka State Waqf Board. Thus, the order passed by the Administrator is akin to the order passed by the Board. Any order thus passed is amenable for appeal or review or revision as the case may be as provided under the law. Unless a specific provision is provided under the Waqf Act, the authority which has passed the order whether the



Board or the Administrator in this case, cannot recall or review its own order. Nothing is pointed out regarding any such power or jurisdiction being vested with the Karnataka State Waqf Board under the scheme of Waqf Act, 1995, enabling it to recall or review its own order.

17. It is settled position of law that the authority which passes an order determining the rights of the subjects in exercise of its quasi judicial jurisdiction in the absence of any specific provision can recall or review its order only if such an order is obtained by playing fraud, misrepresentation or misleading the authority and on no other grounds inasmuch as fraud vitiates the entire act and consequences thereof.

18. In the instant case respondent - Karnataka State Waqf Board has proceeded to constitute the present Law Committee to annul the order passed by the Administrator on the premise of the principles "once a waqf is always a waqf" and not on the allegation of any fraud, misrepresentation or misleading.

19. Necessary at this juncture to note that assuming even if the order passed by the Administrator is a nullity and



void-ab-initio, until and unless the same is set aside by an order of a court of competent jurisdiction, the same continuous to be in force. Apposite here to refer to judgment of the Apex Court in the case of STATE OF PUNJAB AND ANOTHER VS. GURUDEV SINGH AND ASHOK KUMAR AIR 1992 SC 111 wherein at paragraph 5 , 6 and 7 the Apex court has held as under;

"5. For the purpose of these cases, we may assume that the order of dismissal was void inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In *Smith v. East. Elloe Rural District Council*, [1956] AC 736 at 769 Lord Redcliffe observed:

" An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its fore- head. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

7. Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: *Administrative Law* 6th Ed. p. 352). Prof. Wade sums up these principles:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary



remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another." (Ibid p. 352).

It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him.

20. From the above, it is clear that the order dated 26.11.1976 has been passed by the Administrator of the Waqf Board who was having all powers and authority to discharge his function of the Board and in exercise of *quasi judicial* functions of the Board had passed the said order which in the absence of any specific provisions cannot be recalled or reviewed or set at naught except by a competent court of law /Tribunal. Therefore, the proceedings dated 12.03.2020 by the respondent-State Board of Waqf constituting a Law Committee to annul the order of the Administrator is outside the purview of the provisions of the Waqf Act. The reliance placed on by the learned counsel for the respondent -State Board of Waqf to the provision of Sections 18, 32 (2)(h), 52 and 107 of the Waqf Act 1995 are of no avail under the facts and circumstances of the case.



21. The other aspect of the matter is the question whether the property is a Waqf Property or not has to be dealt with in the manner provided under the Waqf Act, 1995. Relevant at this juncture to refer to Sections 6 and 7 of the Act, which reads as under;

"6. Disputes regarding [auqaf].-(1) 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 the mutawalli of the "[waqf] or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of 10[auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of Section 4.]

12[Explanation.-x x x x x.]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of 14[auqaf] shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding [auqaf].- (1) If, after the commencement of this Act, (any



question or dispute] arises, whether a particular property specified as [waqf] property in a list of [auqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [waqf] or a Sunni [waqf], the Board or the mutawalli of the [waqf], 10 [or any person aggrieved by the publication of the list of auqaf under Section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that. -

(a) in the case of the list of 1"[auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of 12 [auqaf]; and

(b) in the case of the list of 13[auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

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

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any [waqf] shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of (auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:



Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]"

22. Perusal of the aforesaid provisions would make it clear should there any question with regard to the nature of the Waqf, it is only Tribunal at the instance of 'Board', or mutawalli of the Waqf or any person aggrieved which is competent to adjudicate the matter and none-else. As noted above contents of the proceedings of the meeting dated 17.06.2020 and the Note issued by the Chairman produced at Annexure-R2 extracted hereinabove touches upon the very aspect of the very nature of property which in considered view of this Court can be dealt only under Sections 6 and 7 of the Act by the Tribunal more particularly in the absence of any power vested with the respondent No.1-Karnataka State Board of Waqf in recalling its order as noted above.

23. Relevant also at this juncture to refer to the reasons assigned by the Law Committee while passing the impugned order on the impleading application in I.A.No.3/2021 wherein at para 17, the law committee has held as under;

"17. The settled principle of law relating to the Waqfs that once the property is listed in the gazette notification (List of



Waqf) remain intact unless the notification is set aside by the competent court of law.

The order of deletion of gazette notification and subsequent deletion of entry in the register of Waqfs is utter illegal act on part of the then administrator of Board, for which the present Board has initiated action for declaring the order passed by the then administrator as a nullity as same does not sustain in the eyes of law".

24. Since the claims and rival claims made in this petition as noted hereinabove would go to the root of the question regarding the nature of the property, continuation of proceedings by the law committee under the guise of power delegated under Section 18 of the Act, cannot be countenanced in view of the expressed provisions contained under Sections 6 and 7 of the Act, extracted hereinabove.

The point Nos.1 to 3 are answered accordingly.

25. In that view of the matter keeping open all the issues and the grounds to be urged by the parties, this court is of the considered view that the respondent-Karnataka State Board of Waqf be directed to approach the Karnataka Waqf Tribunal by instituting the proceedings as contemplated under the Act, within a period of three months from the date of receipt of the certified copy of this order.



26. It is made clear that no opinion is expressed in the order with regard to the merits or otherwise of the claims being made by the parties on any issue whatsoever. This order is restricted only to the extent of jurisdiction of the matter to be dealt with by the Law Committee.

27. For the aforesaid reasons, following;

ORDER

- (1) The petition is allowed.
- (2) Proceedings before the respondent No.3-law committee of the Karnataka State Board of Auqaf, Bengaluru, in the case No.KSBA/LCC/01/BNU/2020, dated 31.10.2022 is quashed. Any order passed thereunder would merge with the order quashed herein, as such no separate orders are required on the interim order that was passed by the Law Committee in I.A.No.3/2021.
- (3) Since it is Waqf Board which has initiated the proceedings pursuant to the notice at Annexure-D this Court has given a specific direction to Waqf Board to approach the Tribunal.



Needless to mention any person interested in subject Waqf may participate in the proceedings.

The assistance rendered by Kum. Subiya Tasneem, Law Clerk cum Research Assistant is appreciated and placed on record.

**SD/-
(M.G.S. KAMAL)
JUDGE**

RU, List No.: 1 SI No.: 8