

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No.2618 of 2024

Between:

KALIMELA KIRAN KUMAR,, S/O SOWRI, CHRISTIAN, AGED ABOUT 47 YEARS. FLAT NO. 108, VIJAYA SAI APARTMENT, CHENCHUPETA, TENALI-522202, GUNTUR DISTRICT.

... PETITIONER

AND

THE STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL SECRETARY, MINORITY WELFARE DEPARTMENT, AP SECRETARIAT, VELAGAPUDI, AMARAVATI AND 3 OTHERS.

... RESPONDENTS

DATE OF ORDER PRONOUNCED : **16.06.2025**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

JUSTICE SUBBA REDDY SATTI

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**
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... RESPONDENTS

! Counsel for Petitioner	: Sri Eluru Sesha Mahesh Babu
^ Counsel for Respondents	: Sri Shaik Khaja Basha
	Sri S.M.Subhani

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2007 SC 1447
- 2) 2014 (6) ALD 411
- 3) AIR 1955 SC 233
- 4) AIR 1967 SC 1274
- 5) (1994) 3 SCC 357
- 6) (2003) 8 SCC 134
- 7) (2008) 9 SCC 306
- 8) W.P.No.42457 of 2017 dated 06.05.2025

This Court made the following:

APHC010044982024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

**MONDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 2618/2024

Between:

Kalimela Kiran Kumar,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.ELURU SESA MAHESH BABU

Counsel for the Respondent(S):

1.GP FOR SOCIAL WELFARE (AP)

2.MSALEGAR HIDAYATHULLA

3.S ARIFULLAH (SC FOR AP WAQF BOARD)

4.SHAIK KHAJA BASHA

The Court made the following:

ORDER

The 12th defendant in O.S.No.3 of 2024 on the file of Andhra Pradesh Wakf Tribunal at Kurnool, filed the above writ petition seeking writ of prohibition.

2. a) Averments in the affidavit, germane, for consideration, are that the petitioner purchased the agricultural land of an extent of Ac.1.64 cents in S.No.249/1B1B, old S.No.54 of Guntupalli village, Ibrahimpatnam Mandal, NTR District. The land has been owned by the vendors since 1938. The revenue authorities updated the name of the petitioner in the Records of Rights and issued the Pattadar Pass Book. The petitioner sold an extent of Ac.0.28 cents to Devireddy Anjaneya Reddy and an extent of Ac.0.20 cents to Koneti Nagarani in the year 2017. The respective vendees also got Pattadar pass books. The agricultural land was converted into non-agricultural land. The petitioner is developing the land for commercial purposes.

b) The 4th respondent filed the suit as mentioned above, by suppressing the material facts and the earlier suit O.S.No.151 of 1975 on the file of the Subordinate Judge, Vijayawada. The suit filed by the 4th respondent is hit by Section 7 of the Wakf Act, 1995. The findings recorded in O.S.No.151 of 1975 on the file of the Subordinate Judge, Vijayawada, became final.

3. a) A counter-affidavit was filed on behalf of the 2nd respondent. It was contended, *inter alia*, that the writ petition filed by the petitioner is not maintainable. The 4th respondent, Mazlum Shah Darvesh Takia & Masjid-Wakf, represented by its Mutavalli, filed suit O.S.No.3 of 2024 against the writ petitioner and others for a declaration of title in respect of Ac.45.32 cents in R.S.No.249/1B1B of Guntupalli village. The property was recognised, as per the Survey Commissioner Report, on the survey of wakf dated 07.12.1955, as wakf property and notified in the Gazette. The Wakf tribunal directed the parties to maintain the *status quo* by its

order dated 19.01.2024. The writ petitioner, instead of filing a written statement, filed the above writ petition.

b) In the counter affidavit, it was further pleaded about the British Regime; amendment to Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956. However, those averments are not extracted it being a legal aspect. It was further pleaded that the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 does not apply to the lands belonging to the State and Central Government. The petitioner suppressed the facts and secured the Pattadar Pass Book. The suit O.S.No.151 of 1975 was filed for recovery of possession from the defaulting tenants. The issue of title was not decided in the said suit. The scope and nature of suit O.S.No.151 of 1975 and O.S.No.3 of 2024 are different, and hence, Section 7 of the Wakf Act, 1955 has no application. The judgment passed in contravention of the statute is non-est in the eye of the law. No individual can set up adverse possession to the Wakf property. Section 108-A of the Wakf Act had an overriding effect on other Acts. The petitioner has an efficacious and alternative remedy under Section 83 (2) of the Wakf Act and eventually prayed to dismiss the writ petition.

4. The 4th respondent filed a separate counter-affidavit, reiterating the averments made in the counter-affidavit filed on behalf of the 2nd respondent. Since the averments in the counter affidavit of the 2nd respondent and the 4th respondent are similar, the averments in the counter affidavit filed by the 4th respondent are not specifically extracted herein.

5. Heard Sri K.G.Krishna Murthy, learned senior counsel assisted by Sri Eluru Sesha Mahesh Babu, learned counsel for the petitioner, Sri

Shaik Khaja Basha, learned standing counsel for the 2nd respondent and Sri S.M.Subhani, learned counsel for the 4th respondent.

6. Learned senior counsel for the petitioner would contend that the father of Syed Gulam Gouse, Mutavalli of the 4th respondent, filed the suit O.S.No.151 of 1975 on the file of Subordinate Judge, Vijayawada, against the predecessors in title of the petitioner as well as A.P. Wakf Board, Hyderabad. The said suit was dismissed on merits by judgment and decree dated 30.09.1978. The findings recorded in the said suit became final, and hence, the suit O.S.No.3 of 2024 filed by the 4th respondent in the writ petition is hit by Section 7 of the Wakf Act, 1995.

7. Learned senior counsel relied upon **Saradha Khan Vs Syed Najmul Hassan (Seth)**¹ and **Syed Ammen Vs Andhra Pradesh State Wakf Board, Rep by its Chief Executive Officer**².

8. Sri Shaik Khaja Basha and Sri S.M.Subhani, learned counsel for respondents 2 and 4, on the other hand, would submit that the judgment and decree in O.S.No.151 of 1975 do not take away the jurisdiction of the tribunal in adjudicating the suit filed by the 4th respondent for the declaration of title. The petitioner's vendors are tenants and hence, the tenants can never claim ownership. Taking advantage of the findings in O.S.No.151 of 1975, the tenants sold the properties. The petitioner is one of the vendees, and all other purchasers have been contenting the suit. The petitioner initially filed I.A. to reject the plaint and later, has withdrawn the same.

¹ AIR 2007 SC 1447

² 2014 (6) ALD 411

9. Now, the point for consideration is:

Whether the Wakf tribunal has jurisdiction to entertain and proceed with the suit O.S.No.3 of 2024 filed by the 4th respondent for declaration of the title, for cancellation of the sale deeds etc. and recovery of possession of the property, given the judgment and decree in O.S.No.151 of 1975?

10. Before proceeding further, let this Court examine the scope of the Writ of Prohibition.

11. According to **CRAIG R. DUCAT**, a Writ of prohibition is an order issued by a superior Court to an inferior Court directing it to cease consideration of some matter to prevent it from usurping jurisdiction it did not have³

12. In the words of **Blackstone**⁴, a Prohibition is a writ directed to the judge and parties to a suit in any inferior court commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance, of some other court ... Or, if, in handling matters clearly within their cognizance, they transgress the bounds prescribed to them by the laws of England.

13. The prohibition is an order directed to ... an inferior Court, which forbids that Court to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. ”

³ Craig R Ducat, Constitutional Interpretation, 8th Edition, Glossary

⁴ Durga Das Basu, Commentary on The Constitution of India, 9th edition, Volume 11(1) at Page: 11677

14. In **Corpus Juris Secundum**⁵, "Prohibition" is defined as "a prohibition is that process by which a superior court prevents inferior courts, tribunals, officers or persons from usurping or exercising jurisdiction with which they have not been vested".

15. The Hon'ble Apex Court in **Hari Vishnu Kamath Vs. Syed Ahmad Ishaque & Ors**⁶, held thus:

"15. ... When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings."

16. In **S.Govinda Menon Vs. Union of India**⁷, the Hon'ble Apex Court held thus:

"5. The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or tribunals of inferior or limited jurisdiction within their bounds. It is well settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice (See *Halsbury's Laws of England*, 3rd Edn., Vol. 11, p. 114). It was held for instance by the Court of Appeal in *King v. North* [1927 (1) KB 491] that as the order of the Judge of

⁵ Durga Das Basu, Commentary on The Constitution of India, 9th edition, Volume 11(1) at Page: 11678

⁶ AIR 1955 SC 233

⁷ AIR 1967 SC 1274

the Consistory Court of July 24, 1925 was made without giving the vicar an opportunity of being heard in his defence, the order was made in violation of the principles of natural justice and was therefore an order made without jurisdiction and the writ of prohibition ought to issue. But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well established that a writ of prohibition cannot be issued to a court or an inferior tribunal for an error of law unless the error makes it go outside its jurisdiction (See *Regina v. Comptroller General of Patents and Design* [1953 (2) WLR 760, 765]) and *Parisienne Basket Shoes Proprietary Ltd. v. Whyte* [59 CLR 369] . A clear distinction must therefore be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is *coram non judice* and a writ of prohibition will lie to the court or interior tribunal forbidding it to continue proceedings therein in excess of its jurisdiction.”

17. In **Union of India Vs. Upendra Singh**⁸, the Hon’ble Apex Court held that a writ of prohibition is issued only when a patent lack of jurisdiction is made out.

18. In **Thirumala Tirupati Devasthanams Vs. Thallappaka Ananthacharyulu**⁹, the Hon’ble Apex Court held thus:

“... A writ of prohibition is normally issued only when the inferior court or tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of the rules of natural justice, (c) proceeds to act under law which is itself ultra vires or

⁸ (1994) 3 SCC 357

⁹ (2003) 8 SCC 134

unconstitutional, or (d) proceeds to act in contravention of fundamental rights. ... A writ of prohibition must be issued only in rarest of rare cases. Judicial discipline of the highest order has to be exercised whilst issuing such writs ...”

19. Thus, a conspectus of the above authoritative pronouncements, the superior Court would issue a writ of prohibition, prohibiting/preventing from usurping or exercising the jurisdiction that was not vested in it. It is a negative order intended to preclude future unlawful action or decision. Keeping in the same mind, let this Court examine the issue.

20. The 4th respondent filed suit O.S.No.3 of 2024 against 17 defendants. The prayer sought in the plaint is for a declaration that the plaintiff-wakf is the absolute owner of the plaint schedule property; for cancellation of alleged deeds, 12 in number with consequential relief of recovery of possession and to direct the defendants 14, 15 & 17 to enter the plaintiff-wakf's in the revenue records etc. The extent of the property mentioned as per the schedule is Ac.1.64 cents, out of Ac.45.32 cents in old R.S.No.54, R.S.No.249/1B and present R.S.No.249/1B1B of Guntupalli village and Gram Panchayat, Ibrahimpatnam Mandal, NTR District. Along with the plaint, 51 documents were filed.

21. A perusal of the entire plaint, neither an averment was made regarding the judgment and decree in O.S.No.151 of 1975, nor a copy of the judgment, decree and pleadings in the suit, is made as part of the suit. Of course, this Court is conscious of the fact that it is adjudicating a writ of prohibition, not an appeal arising out of any interlocutory orders passed in the suit.

22. Learned senior counsel for the petitioner emphasised the findings in the judgment and decree in O.S.No.151 of 1975. Learned counsel for respondents 2 and 4 would contend that the judgment and decree in O.S.No.151 of 1975 have no relevance, since the present suit is filed for a declaration of title.

23. The pleadings and judgment in O.S.No.151 of 1975 are made as part of the writ petition, *vide* WPUSR No.68252 of 2024.

24. Section 7 of the Wakf Act 1995, expressly Section 7(5) of the Act, plays a pivotal role, and hence it is profitable to extract the entire section:

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, 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 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 auqaf; and

(b) in the case of the list of 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 re-open 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 the 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.

25. Thus, section 7 of the Act prescribes the power of the Tribunal in deciding the disputes regarding auqaf. While sub-section (1) expressly delineates the jurisdiction, sub-section 5 expressly confines the jurisdiction of the Tribunal to the suits or other proceedings in the Civil Court under Section 6 (1) of the Act, before the commencement of the Act, either instituted or pending, including appeal, revision or review.

26. Section 6 of the Act deals with disputes regarding auqaf. Section 6(1), which is germane, is extracted hereunder:

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 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.

27. Thus, once a civil Court has already adjudicated an issue relating to the property before the commencement of the Act 43 of 1995, the same issue cannot be agitated again. As narrated, the pleadings and judgment in suit O.S.No.151 of 1975 are made available, this Court perused the same cautiously.

28. Suit O.S.No.151 of 1975 was filed by the Muzlum Shah Darvesh Takia Masjid, represented by its Mutavalli Syed Masoom Shah Khadri, against Guntupalli Bhaskara Rao and others. The 6th defendant in the suit is the Andhra Pradesh Wakf Board. Items No.2 and 3 of the schedule property were sought to be recovered. Item No.1 of the plaintiff schedule property, as per the averments in the plaint, was acquired by the Government. Item No.2 is Ac.2.00 cents is inam dry in D.No.54. Item No.3 is Ac.1.28 cents in the same D.No.

29. A perusal of the averments in the plaint in O.S.No.151 of 1975 would disclose that the plaintiff schedule property belonged to the plaintiff institution. The Commissioner confirmed the grant in favour of the plaintiff in 1860 and issued title deed No.899 in respect of Ac.123.19 cents. One Syed Fasululla, the grandfather of Mutavalli, filed suit O.S.No.560 of 1955 on the file of the District Munsif Court, Vijayawada, against Guntupalli Hanumantharao, the father of the 1st defendant, for recovery of possession and mesne profits in respect of item No.1 of the schedule property. He also filed suit O.S.No.562 of 1955 for recovery of items No.2 and 3. The above suits and other suits filed by the same plaintiff institution in respect of Inam lands were decreed on 28.02.1957. Guntupalli Hanumantharao filed appeals A.S.Nos.63 and 64 of 1957.

Pending the appeals, the named Mutavalli died and Syed Gulam Gouse, father of Syed Masoom Shah Khadri, Mutavalli of the institution, who filed suit O.S.No.151 of 1975 was added as successor Mutavalli. The said Syed Gulam Gouse, a man of weak mind, entered into a compromise with unsuccessful parties, despite judgment in A.S.Nos.410 and 411 of 1943, arising out of suits O.S.Nos.48 of 1940 and 42 of 1941. While the land of similar nature could get 10 bags of paddy a lease amount, fixing two bags of paddy in the compromise is nothing but putting the interest of the institution in jeopardy. The said compromise was entered into without the sanction of the Wakf Board, and the compromise is contrary to the provisions of Section 60 of the Wakf Act. Thus, the plaintiff prayed for profits and possession of items No.2 and 3 etc.

30. The said suit was contested by the defendants. The 1st defendant filed a written statement. It was contended that Hanumantha Rao purchased item No.1 of the schedule property and some property under a registered sale deed from Zamamunnisa Begum and others. The vendors' children, Shamsunnisa Sahiba, who in turn got the same as a part of the property allotted to her in a suit for partition in O.S.No.407 of 1938 on the file of the District Munsif Court, Vijayawada. Before the sale of the property, the vendor's predecessors, including father of vendor, entered into an agreement, in which Ac.9.60 cents in R.S.No.28 of Kondapalli village, in which the vendors had a joint right, was surrendered to one Syed Fasilullah for rendering service to the plaintiff mosque. Consequently, on an agreement, the Guntupalli lands were released from the burden of the service. The 1st defendant's mother purchased items No.2 and 3 of the schedule property on 30.06.1946 from one P.Sitakantham, who in turn appeared to have purchased the

same from Salar Shariff. In respect of items No.2 and 3, the above arrangement was in force. The said agreement was taken note of by the Wakf Board, and the same was evident from the Gazette publication in the year 1962 at Page No.708, wherein it was mentioned that the plaintiff's land in Guntupalli village is only Ac.88.84 cents. The plaintiff schedule properties are not included in the said Gazette. The property in old S.No.28 is shown as property of the mosque.

31. Thus, a plain reading of the pleadings, the plaintiff pleaded title to the property, sought recovery of possession, and the defendants denied the title.

32. The Mutavalli of the institution was examined as P.W.1 and Exs.A1 to A4 were marked. The 1st defendant was examined as D.W.1 and Exs.B1 to B26 were marked.

33. In the suit, 12 issues were framed. The first issue is whether the plaintiff schedule land belonged to the plaintiff institution? Issues 1 to 4 were dealt with commonly.

34. As seen from the narration of the facts and discussion, the schedule properties were purchased by the vendor of the defendants on 05.09.1944 and 30.06.1944 (Exs.B22 and B23). A compromise was entered into by creating permanent tenancy rights in favour of the defendants with a condition that the defendants should pay two bags of paddy for wet land and one bag of paddy for dry land.

35. Since this Court is dealing with a Writ of Prohibition, some excerpts of the judgment are here extracted:

36. In Paragraph-12 of the judgment, the competent civil Court recorded the following findings:

“I have stated this fact again because Exs.B24 (28.06.1962 – Entry at Page 708 and 709 in Andhra Pradesh Part II Gazette for items 733 and 745 for Columns 1 to 11), the list of wakf’s publication, it is total silence about the schedule property and did not show the schedule property was surveyed. **The fact that the schedule property was not surveyed and that the same was not included in the list of wakf’s are circumstances in favour of the inference that the schedule property is not at all treated as wakf’s property.** It may be due to the fact that it was converted into private property and substituted by another property covered by R.S.No.28 at Kondapalli village and that may be the reason for not including this in the list of wakf’s property. No reason has been placed for not surveying this property. Though the wakf board has been added as party as 6th defendant in the suit, the wakf board did not take any interest either to produce any reliable evidence or documentary evidence to prove the reason why the same was not surveyed and included in the said publication. (emphasis is added)

37. Paragraph-13 of the judgment, it was observed as follows:

“13. ... So as per procedure it is for the wakf board to declare that the schedule property is wakf or not and this decision shall be final unless superseded or modified by a competent civil Court. So first of all, there should be an order of the Board declaring schedule property as wakf property. But unfortunately there is no such order in respect of the schedule property by the Board. When there is no such order, there is nothing for the civil Court to supersede or modify. In such circumstances and in view of the procedure which I have just now mentioned, if the plaintiff is very particular about the

plaint schedule properties, it is his duty to apply to the wakf board to give a finding or decision regarding schedule property as to whether it is wakf property or not and then come to the civil Court questioning the said decision, if he is aggrieved. In the said circumstances, it is not open for the plaintiff to come to the Court directly and file this suit for possession without obtaining the finding of the Board that the schedule property is wakf's property. In the said circumstances, when the schedule property is not included in the list of wakf property, the same has not been registered as wakf's property i.e. the suit filed by the plaintiff for a decision that he said property is the wakf, it not at all maintainable. The right of mutavalli to file a suit for the possession arises only after the declaration of schedule property is wakf's property ... No evidence has been placed before the Court as to on what basis the Board is able to claim that the schedule property is wakf.

A categorical finding was recorded by the civil Court that –

“Moreover I have already said that the service with which the schedule property was burden was taken over and the schedule property was substituted by another property. So the schedule property si not burdened with such service and it is obvious as already stated by me from Exs.B25 and B26 etc., that even right from 1938 the schedule property is being treated as private property free from any service and it was being sold.”

38. In Paragraph-14 of the judgment it was observed that:

“14. In the said circumstances, I am of the view that the plaintiff has no right to file this suit without obtaining the decision of the Board in this regard. So it cannot be said that the schedule property is the wakf property, simply because the plaintiff claims that it is wakf's property. Considering all these aspects and as

matters stand at the stage it cannot be said that the schedule property is wakf property irrespective of the fact that whether the allegation of the plaintiff that this suit property is the wakf property or not, is true or not.”

39. In Paragraphs-21 and 22 of the judgment, the civil Court recorded the following findings:

“21. ... So I hold on issue No.1 that there is no material on record to show that the schedule property is the property of the plaintiff institution. On issue No.2, I hold that the plaintiff is not entitled to possession of items 2 and 3. In this regard, I have to necessarily say at this stage that item No.1 was already acquired and the amount was deposited in the Court and a reference under Section 31 of the Land Acquisition Act was already made and disposed of as revealed by Ex.B21 in which it was held that the defendants should enjoy 3/4th interest on the compensation amount deposited in the schedule property and that the plaintiff should enjoy 1/4th of such interest. The parties are bound by that order regarding item No.2.

22. So far as issue No.3 is concerned, I held that the compromise decree in A.S.63/57 and 64/57 are legal and binding on the plaintiff. So far as item No.1 is concerned the said compromise is not hit by Section 60 of the Muslim Wakf Act.”

40. The Civil Court also framed an issue regarding limitation. While considering the said issue, it was held that Sitaratnam purchased the property in 1944 and 1941 under Exs.B23 and B24. The defendants have perfected their title, and hence, the suit is barred by time.

41. Thus, after considering both oral and documentary evidence, including the Gazette, the Civil Court recorded a finding that the suit schedule property is not wakf property and the suit is also barred by limitation.

42. The said judgment was pronounced on 30.09.1978, and it became final, as per the contention of learned counsel on either side. Thus, the suit filed by the wakf board, represented by its Mutavalli, for recovery of possession of the plaint schedule property, based on the title, was dismissed, and the competent Civil Court recorded the finding that the property doesn't belong to the wakf institution. In fact, a finding was also recorded that the property was not published in the Gazette.

43. When a competent Civil Court recorded a finding in an earlier suit that the property does not belong to the wakf institution, the present suit filed by the wakf institution after a lapse of 4½ decades for declaration of title, in the considered opinion of this Court, is not maintainable given Section 7(5) of the Act. The present Mutavalli, the son of the earlier Mutavalli who lost the suit on an earlier occasion, woke up from deep slumber and filed the present suit after 4½ decades.

44. Once Section 7(5) of the Act comes into action, the Tribunal, at no stretch of imagination, can continue the suit on its file for further adjudication. The corollary would be that the tribunal lacks jurisdiction, and hence, a writ of prohibition can be issued in the facts of this case.

45. At the hearing, the learned counsel appearing for the 2nd and 4th respondents would contend that, given Section 107 of the Act, the suit filed by the institution is maintainable. The answer to the said question is no longer *res integra*.

46. The Hon'ble Apex Court in **T.Kaliamurthi Vs Five Gori Thaikkal Wakf and others**¹⁰ considered whether Section 107 of the Wakf Act is retrospective in operation or whether it can have the effect of reviving barred claims and held that it cannot revive a dead claim. Paragraphs 42, 43 and 58, relevant are extracted:

“42. From the above, it is clear that the right of action, which is barred by limitation at the time when the new Act comes into force, cannot be revived by the change in the law subsequently. In *Ram Murti v. Puran Singh* [AIR 1963 Pun 393] , it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act cannot revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in favour of the wrongdoer, it is not revived by that person again getting into possession. There is no remitter to the old title.

43. Let us also see Section 112 of the Wakf Act dealing with repeal and savings. Sub-section (1) repeals the Wakf Act, 1954 and the Wakf (Amendment) Act, 1984. Sub-section (2) provides that notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act. In the present case, there is no specific provision which stipulates that Section 107 has any retrospective effect. If we look at Section 112, it is clear that sub-section (2) is the saving clause and provides validity to the actions taken under the repealed Act. As noted herein earlier, the High Court

¹⁰ (2008) 9 SCC 306

has proceeded on the assumption that a reading of Section 112 of the Act leads to the conclusion that the provisions of the Act are intended to apply to pending proceedings also.

53. In view of the above authorities, we are of the view that in the present case, once it is held that the suit for possession of the suit properties filed at the instance of the Wakf were barred under the Limitation Act, 1908, the necessary corollary would be to hold that the right of the Wakf to the suit properties stood extinguished in view of Section 27 of the Limitation Act, 1963 and, therefore, when Section 107 came into force, it could not revive the extinguished rights. The authorities relied upon by the learned counsel for the respondents in this regard in *Sree Bank Ltd. v. Sarkar Dutt Roy & Co.* [AIR 1966 SC 1953 : (1965) 3 SCR 708] , *Dhannalal v. D.P. Vijayvargiya* [(1996) 4 SCC 652 : 1996 SCC (Cri) 816] , *New India Assurance Co. Ltd. v. C. Padma* [(2003) 7 SCC 713 : 2003 SCC (Cri) 1709] and *S. Gopal Reddy v. State of A.P.* [(1996) 4 SCC 596 : 1996 SCC (Cri) 792] have no application to the facts of the case because in these cases, unlike the present case, there was no extinguishment of the rights.”

47. This Court, indeed, dealt with a rather analogous issue, in **Valluri Siva Prasad Vs the District Registrar, Registration Stamps, Guntur and others**¹¹, wherein it was held that the judgment in a suit between a private individual and Wakf Board, which became final, would operate as *res judicata* and hence the wakf institution cannot request the revenue authorities to keep the property in dispute register under Section 22-A of the Registration Act. This Court also held that the wakf institution, being

¹¹ W.P.No.42457 of 2017 dated 06.05.2025

an instrumentality of the State, cannot overreach the judgment passed by the Civil Court.

48. Thus, given the discussion *supra*, the writ petition filed by the petitioner stands allowed. The Wakf Tribunal, Andhra Pradesh, had no jurisdiction to adjudicate the suit O.S.No.3 of 2024, given Section 7(5) of the Wakf Act, 1995.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

PVD