



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

LPA No.210 of 2015, CR Nos.159 of 2003, 26 of 2005,  
115 of 2012 & 134 of 2015, RFAs No.343 of 2008, 265 of  
2011, CMPMO Nos.213, 284 and 285 of 2012

Reserved on : 27.10.2016

Pronounced on: **November 16, 2016.**

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**1. LPA No.210 of 2015**

Mumtaz Ahmed .....Appellant.

**Versus**

State of H.P. and others .....Respondents.

**2. CR No.159 of 2003**

Harjinder Singh .....Petitioner.

**Versus**

Himachal Wakf Board and others .....Respondents.

**3. CR No.26 of 2005**

Punjab Wakf Board .....Petitioner.

**Versus**

Harjinder Singh and others .....Respondents.

**4. CR No.115 of 2012**

Nanhe Khan .....Petitioner.

**Versus**

H.P. Wakf Board and another .....Respondents.

**5. CR No.134 of 2015**

H.P. Waqf Board .....Petitioner.

**Versus**

Khwaja Khallilula and another .....Respondents.

**6. RFA No.343 of 2008**

Kamla Mohini .....Appellant.

**Versus**

Himachal Pradesh Wakf Board and another .....Respondents.

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**7. RFA No.265 of 2011**

**Maulana Abdul Subhan Khan**

.....Appellant.

**Versus**

**Himachal Pradesh Wakf Board**

.....Respondent.

**8. CMPMO No.213 of 2012**

**His Holiness The Dalai Lama & another**

.....Petitioners.

**Versus**

**H.P. Wakf Board**

.....Respondent.

**9. CMPMO No.284 of 2012**

**Noor Mohammad & another**

.....Petitioners.

**Versus**

**H.P. Wakf Board**

.....Respondent.

**10. CMPMO No.285 of 2012**

**Nayab and others**

.....Petitioners.

**Versus**

**H.P. Wakf Board**

.....Respondent.

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**Coram**

**The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.**

**The Hon'ble Mr.Justice Sandeep Sharma, Judge.**

***Whether approved for reporting? Yes.***

**LPA No. 210 of 2015**

For the appellant:

Ms. Seema K. Guleria, Advocate,  
vice Ms. Anjana Khan, Advocate.

For the respondents:

Mr. Anup Rattan & Mr. Romesh  
Verma, Additional Advocate  
Generals, and Mr. J.K. Verma,  
Deputy Advocate General, for  
respondent No. 1.

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Ms. Jyotsna Rewal Dua, Sr. Advocate with Ms. Charu Bhatnagar, Advocate, for respondents No. 2 and 3.

**CR No.159 of 2003**

For the petitioner: Mr. Bhupender Gupta, Sr. Advocate with Mr. Himanshu Sharma, Advocate.

For the Respondents: Mr. B.C. Negi, Senior Advocate, with Mr. Pranay Pratap Singh, Advocate, for respondent No. 1.  
Mr. Ajit Jaswal, Advocate, for respondents No. 3 and 4.  
Nemo for other respondents.

**CR No.26 of 2005**

For the Petitioner: Ms. Jyotsna Rewal Dua, Sr. Advocate with Ms. Charu Bhatnagar, Advocate.

For the respondents: Mr. Bhupender Gupta, Sr. Advocate with Mr. Himanshu Sharma, Advocate, for respondent No.1.  
Nemo for other respondents

**CR No.115 of 2012**

For the Petitioner: Mr. Bhupender Gupta, Sr. Advocate with Mr. Himanshu Sharma, Advocate.

For the respondents: Ms. Seema Guleria, Advocate, vice Ms. Anjana Khan, Advocate.

**CR No.134 of 2015**

For the Petitioner: Mr. B.C. Negi, Senior Advocate, with Mr. Pranay Pratap Singh, Advocate.

For the respondents: Mr. Arvind Sharma, Advocate.

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**RFA No.343 of 2008**

For the appellant: Ms. Seema Guleria, Advocate, vice  
Ms. Anjana Khan, Advocate.

For the respondents: Ms. Jyotsna Rewal Dua, Sr. Advocate  
with Ms. Charu Bhatnagar, Advocate,  
for respondent No.1.  
Respondent No. 2 already ex parte.

**RFA No.265 of 2011**

For the appellant: Ms. Seema Guleria, Advocate, vice  
Ms. Anjana Khan, Advocate.

For the respondents: Mr. B.C. Negi, Sr. Advocate with Mr.  
Pranay Partap Singh, Advocate.

**CMPMO No.213 of 2012**

For the petitioner: Ms. Nishi Goel, Advocate.

For the respondent: Mr. B.C. Negi, Sr. Advocate with Mr.  
Pranay Partap Singh, Advocate.

**CMPMO Nos.284 & 285 of 2012**

For the petitioners: Mr. Satyen Vaidya, Sr. Advocate with  
Mr.

Vivek Sharma, Advocate.

For the respondents: Mr. B.C. Negi, Sr. Advocate with Mr.  
Pranay Partap Singh, Advocate

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**Mansoor Ahmad Mir, C.J.**

Common question – Whether the instant cases are maintainable in the present form - is involved in all these cases, therefore, the same were clubbed and are taken up together.

2. Before the above question is determined, let us have a brief glance of the facts of the each case as under.

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**LPA No.210 of 2015**

3. This appeal is directed against the judgment, dated 27<sup>th</sup> October, 2015, passed by a learned Single Judge of this Court, in CWP No.3635 of 2015, titled Mumtaz Ahmad vs. State of H.P. and others, whereby the writ petition filed by the petitioner (appellant herein) came to be dismissed, (for short the impugned judgment).

4. The writ petitioner was appointed as Immam of Boileauganj Mosque, submitted his resignation on 22.7.2003 reserving his right to continue as voluntary Immam and to keep residential accommodation allotted to him, resignation was accepted on 31<sup>st</sup> July, 2003.

5. Vide Annexure P-3 (resolution dated 5<sup>th</sup> February, 2007), it was resolved by the writ respondents to discontinue the voluntary immamt of the writ petitioner and all facilities. The writ petition filed representations, but of no avail.

6. Thereafter, on 22.6.2007, writ respondents filed a civil suit before the Wakf Tribunal, Shimla for possession of the accommodation provided to the writ petitioner as well as for occupation and recovery of use and occupation charges against the petitioner, which was decreed. Writ petitioner filed Regular First Appeal, being RFA No.484 of 2011, before this Court, which was dismissed on 25<sup>th</sup> August, 2014.

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7. The writ petitioner filed the writ petition for quashing Annexure P-3 i.e. resolution and for declaring entire proceedings initiated on the basis of Annexure P-3 as null and void. The writ petitioner also prayed that the respondents be directed to allow the petitioner to continue with honorary Inmamt with all facilities provided to him.

8. The writ petition came to be dismissed vide the impugned judgment, hence the instant appeal.

**CR No.159 of 2003**

9. This Civil Revision Petition has been filed by the petitioner under Section 83 of Wakf Act, 1995 against the judgment and decree passed by Wakf Tribunal, Kangra, Hamirpur, Kullu, Una, Lahaul and Spiti, and Chamba at Dharamshala in Civil Suit No.2-D/1/2002/(1994), dated 25.3.2003, whereby the suit of the plaintiff/respondent herein was decreed.

10. Plaintiff-Punjab Wakf Board, (now Himachal Wakf Board), filed a suit for possession and for demolition of the structure, being owner of the suit property the description of which has been given in the plaint. The Tribunal decreed the suit of the plaintiff (respondent No.1 herein), sale deed dated 14.2.1984 and 23.1.1984 executed in favour of defendant No.1 (appellant herein) by the mother of defendant No.2 were declared to be null and void and

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illegal. Accordingly, defendant No.1 was restrained from changing the nature of the suit land. Hence the instant revision petition.

**CR No.26 of 2005**

11. This petition has been filed by the plaintiff under Section 83(9) of Wakf Act, 1995 against the judgment and decree passed by Wakf Tribunal in Civil Suit No.2-D/1/2002/(1994), dated 25.3.2003, (also subject matter of CR No.159 of 2003 supra), whereby the plaintiff has challenged the impugned judgment on the sole ground that the Tribunal has not granted the relief of possession by demolishing the structure standing on the suit land.

**CR No.115 of 2012**

12. This Civil Revision Petition under Section 83(a) of Wakf Act, 1995 is the outcome of the judgment and decree, dated 20.7.2012, passed by the Wakf Tribunal, Shimla in Civil Suit No.6-S/1 of 2008, whereby the suit of the plaintiff/petitioner herein was dismissed, (for short, the impugned judgment).

13. It was averred by the Plaintiff in the plaint that he had been statutory tenant in possession of top floor alongwith attic in Kutub Mosque Subzi Mandi, Shimla under defendant No.1 i.e. H.P. Wakf Board, on rent and paying rent to the Wakf Board. Defendant No.1/H.P. Wakf Board initiated eviction proceedings under Section 54 of the Wakf Act, 1955 against the plaintiff. It was further averred

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that the order dated 28.12.2007 passed by defendant No.1 was wrong, illegal, void and not binding on the plaintiff. Thus, the suit filed by the plaintiff (petitioner herein) for permanent injunction.

14. The Tribunal, vide the impugned judgment, dismissed the suit of the plaintiff and held that the plaintiff was rank trespasser and liable to be evicted.

**CR No.134 of 2015**

15. This Civil Revision Petition under Section 83(9) of Wakf Act, 1995 is directed against the judgment and decree passed by Wakf Tribunal, Shimla in Civil Suit No.19-S/1 of 2008, dated 19.3.2015, whereby the suit of the plaintiff-H.P. Wakf Board has been dismissed, (for short the impugned judgment).

16. The plaintiff-H.P. Wakf Board filed a suit for declaration to the effect that plaintiff-Board was owner of shops in Middle Bazar Shimla, the description of which has been given in the plaint itself, and also prayed that the revenue entries showing defendants/respondents herein to be in possession of the suit property be declared as null, void, illegal and inoperative.

17. The Tribunal, vide the impugned judgment, dismissed the suit of the plaintiff, hence the present petition.

**RFA No.343 of 2008**

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18. The instant Regular First Appeal has been preferred under Section 96 of the Code of Civil Procedure (for short, CPC) by defendant No.1 against the judgment and decree, dated 30<sup>th</sup> August, 2008, passed by Wakf Tribunal, Kangra at Dharamshala, whereby suit of the plaintiff-Wakf Board was decreed, (for short, the impugned judgment).

19. Plaintiff-Board filed a suit for permanent injunction against the defendants, being the owner of the suit property as the same was the property of the mosque. It was averred that the entries reflecting defendant No.1 as owner in possession of the suit land were wrong and illegal.

20. The suit was decreed by the Tribunal, vide the impugned judgment, and the defendants were restrained from raising construction over the suit land or changing nature thereof, hence the present appeal.

**RFA No.265 of 2011**

21. This appeal under Section 96 of the CPC arises out of the judgment and decree, dated 31<sup>st</sup> May, 2011, passed by the Wakf Tribunal, Shimla, whereby the suit of the plaintiff-Wakf Board, for possession and recovery, was decreed, the defendant was ordered to be dispossessed from the suit property and the plaintiff-Board was also held entitled for Rs.1,09,400/- as use and occupation

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charges, (for short, the impugned judgment). Feeling aggrieved, the defendant has filed the instant appeal.

**CMPMO No.213 of 2012**

22. This petition has been filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995, against judgment and decree dated 31.12.2011, passed by the Wakf Tribunal, Kangra at Dharamshala, vide which the suit of the plaintiff/respondent herein was partly decreed inasmuch as the decree for possession was granted, while relief of mandatory injunction by way of demolition was declined.

**CMPMO No.284 of 2012**

23. This petition has been filed under Section 83(9) of the Wakf Act, 1995, read with Article 227 of the Constitution of India, against the judgment and decree, dated 4.6.2012, passed by Wakf Tribunal, Shimla, whereby petition under Section 7 read with 83(2) of the Wakf Act, 1995, was dismissed, hence, the present petition by the petitioners.

**CMPMO No.285 of 2012**

24. The present petition has been filed under Section 83(9) of the Wakf Act, 1995, read with Article 227 of the Constitution of India, against the order 4.6.2012, passed by Wakf Tribunal, Shimla,

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whereby petition under Section 7 read with 83(2) of the Wakf Act, 1995, was dismissed, (for short, the impugned judgment).

25. Thus, the question to be determined in the present cases is – Whether Regular First Appeal or Civil Revision or petition under Article 227 of the Constitution of India would lie against the order passed by the Wakf Tribunal.

To answer the question framed hereinabove, relevant provisions of the Wakf Act, 1995, (for short, the Act), are to be noticed.

26. In order to settle the disputes qua the Wakf properties, the Act provides for establishment of Wakf Tribunals which have to determine the disputes, as detailed in Sections 6 of the Act. It is apt to reproduce Section 6 of the Act hereunder:

**6. Disputes regarding wakfs** :- (1) *If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein 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 wakfs.*

(2) *Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by*

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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 wakfs 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)."

27. Section 7 of the Act, reproduced below, deals with the powers of the Wakf Tribunal:

"7. Power of Tribunal to determine disputes regarding wakfs :- (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested 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 wakfs 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 wakfs; and

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(b) in the case of the list of wakfs 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 wakf 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 wakfs 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."

28. Thus, Sections 6 and 7 of the Act provides for determination of certain disputes regarding wakf properties

only by the Wakf Tribunal. But the question arises that after determining the dispute by the Tribunal, what remedy is available to the aggrieved party.

29. Before the establishment of the Wakf Tribunal, District Judge was hearing the cases and determining the disputes under the Act. After amendment in the Act, under Section 83 of the Act, Tribunals are constituted having three members i.e. District Judge as Chairman, one person from the State Civil Services of the rank of Additional District Magistrate and one person having knowledge of Muslim Law and jurisprudence, as members. It is apt to reproduce Section 83 of the Act hereunder

**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 wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf 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

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Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf 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 wakf 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 wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf 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 –

*(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a*

*District, Sessions or Civil Judge, Class I, who shall be the Chairman;*

*(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;*

*(c) one person having knowledge of Muslim law and jurisprudence, Member,*

*and the appointment of every such person may be made either by name or by designation."*

(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 Code of Civil Procedure, 1908, while trying a suit, or executing a decree or order.

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

(7) The decision of the Tribunal shall be final and 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 Code of Civil Procedure, 1908.

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose

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of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit."

30. Sub Section 9 of Section 83 of the Act provides that no appeal shall lie against any decision or order whether interim or otherwise, passed by the Tribunal established under the Act. Still, it is astonishing that Writ Petitions and Regular First Appeals are being preferred by the aggrieved parties before this Court challenging the decisions rendered by the Tribunals constituted under the Act. It is also not understandable how such appeals or writ petitions are being entertained once there is specific bar in terms of Section 83(9) of the Act that no appeal will lie against the order of the Tribunal. We were told that it is a practice in this Court and the decisions have been made and such decisions have attained finality.

31. We may make it clear that we are not giving findings viz. a viz. those judgments which have attained finality. It is also made clear that this judgment is prospective in nature and will not, in any way, have retrospective effect.

32. In terms of proviso to Sub Section (9) of Section 83 of the Act, any person aggrieved by the orders of the Tribunals can invoke the revisional jurisdiction of the High Court. Thus, remedy is provided to the aggrieved person by way of filing revision petition and not by the medium of appeal.

The Act contains the mechanism for filing revision petition, thus, providing efficacious alternative remedy to the aggrieved party, rendering the writ petition not maintainable against the orders passed by the Tribunal. This view has been taken by this Court in case titled as **M/s Indian Technomac Company Ltd. versus State of H.P. & others, being CWP No.4779 of 2014, decided on 4<sup>th</sup> August, 2014**, and restated in plethora of judgments.

In a similar case, the High Court of Andhra Pradesh in case titled as **Mohd. Abdul Kareem And Anr. vs. Andhra Pradesh State Wakf Board, 2004(2) ALD 345**, held that the jurisdiction of the High Court in disputes pertaining to Wakfs can be invoked by way of filing revision petition and not by the medium of a writ petition. It is apt to reproduce paragraph 13 of the said decision hereunder:

*"13. As seen from the above, the jurisdiction of the High Court in disputes relating to Wakfs can be invoked only when an aggrieved party files a revision petition under Sub-section (9) of Section 83 of the Act and a writ. petition would not be maintainable. In view of the binding precedents, this Court is not inclined to go into the merits of the contentions on other two questions raised by the learned Counsel for respective parties. These are left open to be decided at an appropriate stage in appropriate proceedings."*

33. In view of the above discussion, the question supra is answered accordingly.

34. Next question, which arises for determination is whether a suit for eviction and recovery of use and occupation charges against a person, who, admittedly, is a tenant, will lie before the Wakf Tribunal or before the Civil Court.

35. This point was neither raised before us by any of the parties nor arguments were addressed. However, we may observe that Sections 6 and 7 of the Act, reproduced above, nowhere encompasses the disputes relating to eviction of a tenant occupying the wakf property. Therefore, such disputes are triable by the civil court and not by the Tribunal established under the Act.

36. Our this view is fortified by the judgment rendered by the Apex Court in **Faseela M. vs. Munnerul Islam Madrasa Committee and another, 2014 AIR SCW 2503**, wherein it was held by their Lordships that suit for eviction from wakf property is triable by a civil court and not by the Wakf Tribunal since the Act does not provide determination of dispute of eviction by the Tribunal. It is apt to reproduce paragraphs 12 to 17 of the said judgment hereunder:

"12. The Court in para 35, page 738 held as follows:

"35. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal."

13. Mr. Renjith Marar, learned Counsel for Respondent No. 1, submits that in a subsequent decision in *Bhanwar Lal and Anr. v. Rajasthan Board of Muslim Wakf and Ors.*, 2013 11 SCALE 210, this Court has taken a different view. According to him, Section 85 of the Act leaves no manner of doubt that the Waqf Tribunal has jurisdiction to decide the suit for eviction. It is so because one of the questions for determination is whether the suit property is waqf property or not.

14. The Court in *Bhanwar Lal & Anr V/S Rajasthan Board Of Muslim Wakf & Ors*, 2013 11 SCALE 210 considered the decision in at quite some length. Besides *Ramesh Gobindram (Dead) Through LRs V/S Sugra Humayun Mirza Wakf*, 2010 8 SCC 726, the Court in *Bhanwar*

Lal & Anr V/S Rajasthan Board Of Muslim Wakf & Ors, 2013 11 SCALE 210 also considered two other decisions, one, Board of Wakf, West Bengal and Anr. v. Anis Fatma Begum and Anr., 2010 14 SCC 588 and two, Sardar Khan and Ors. v. Syed Najmul Hasan (Seth) and Ors., 2007 10 SCC 727. In Anis Board of Wakf, West Bengal and Anr. v. Anis Fatma Begum and Anr., 2010 14 SCC 588, this Court had held that the Waqf Tribunal constituted under Section 83 of the Act will have exclusive jurisdiction to deal with the questions relating to demarcation of the waqf property.

15. Pertinently, the Court in Bhanwar Lal & Anr V/S Rajasthan Board Of Muslim Wakf & Ors, 2013 11 SCALE 210 held that the suit for cancellation of sale deed was triable by the civil court.

16. Bhanwar Lal & Anr V/S Rajasthan Board Of Muslim Wakf & Ors, 2013 11 SCALE 210 follows the line of reasoning in Ramesh Gobindram (Dead) Through LRs V/S Sugra Humayun Mirza Wakf, 2010 8 SCC 726, The decision of this Court in BHANWAR LAL & ANR V/S RAJASTHAN BOARD OF MUSLIM WAKF & ORS, 2013 11 SCALE 210 is not in any manner inconsistent or contrary to the view taken by this Court in Ramesh Gobindram (Dead) Through Lrs V/S Sugra Humayun Mirza Wakf, 2010 8 SCC 726, . We fully concur with the view of this Court in Ramesh Gobindram : (2010) 8 SCC 726, particularly with regard to construction put by it upon Sections 83 and 85 of the Act. In Ramesh Gobindram (Dead) Through LRs V/S Sugra Humayun Mirza Wakf, 2010 8 SCC 726, the Court said:

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

33. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or

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wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal."

34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded."

17. The matter before us is wholly and squarely covered by Ramesh Gobindram (Dead) Through LRs V/S Sugra Humayun Mirza Wakf, 2010 8 SCC 726, . The suit for eviction against the tenant relating to a wakf property is exclusive triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act."

37. Thus, it is held that the suit for eviction against the tenant in regard to wakf property is triable by the Civil Court.

38. In view of the above findings, let us take the instant cases one by one and settle whether they are maintainable in the present form or not.

#### **RFA Nos.343 of 2008 & 265 of 2011**

39. These regular first appeals have been filed by the appellants against the impugned judgments passed by the

Wakf Tribunal. Since we have held above that no appeal against the orders of the Wakf Tribunal will lie, therefore, these appeals merit to be dismissed and the same are dismissed accordingly. However, the aggrieved party may seek appropriate remedy, if any, available in terms of the Act. It is made clear that in case any party resort to appropriate proceedings, the time spent in pursuing these appeals is to be excluded while computing the period of limitation.

**LPA No.210 of 2015:**

40. This appeal has been filed by the appellant/writ petitioner against the impugned judgment passed by the learned Single Judge, whereby the writ petition filed by the petitioner came to be dismissed. It is worthwhile to record herein that earlier the Wakf Board had filed a civil suit, which came to be decreed. Feeling aggrieved, the writ petitioner filed RFA No.484 of 2011, which was dismissed by this court vide judgment dated 10<sup>th</sup> September, 2014. Thereafter, the writ petitioner filed the writ petition giving rise to the instant appeal. In fact, the writ petition was filed for the same relief, which already stands determined by the Wakf Tribunal and

upheld by this Court in regular first appeal supra. As we have held above, though regular first appeal against the order of the Tribunal was not maintainable, however, since the judgment rendered by this Court has attained finality, therefore, we are not going into the said question.

41. Thus, the writ petition on the same cause of action was not maintainable and therefore, the learned Single Judge has rightly held that the writ petition was not maintainable. It is apt to reproduce paragraphs No.13 and 16 of the impugned judgment hereunder:

“13. Be that as it may, the power of this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution is to ensure that rule of law prevails and not to issue directions or writ to perpetuate illegality or to act in disregard to the settled decisions, statutory provisions, regulations and policy decisions etc. and in such situation, this Court can only sympathize with the plight of such students who for no fault of their own are being dislodged. Here, it shall be apt to reproduce the following passage from the judgment delivered by the Hon’ble Supreme Court in K.S. Bhoir vs. State of Maharashtra and others, AIR 2002 SC 444 wherein it was held as under:

“11 ..... In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, the compassion and sympathy has no role to play where a rule of law is required to be enforced.....”

14. ....  
15. ....

16. Even this argument is not available with the petitioner for the simple reason that the findings in this regard on the

...25...

aforesaid issues have already been returned against him in RFA No. 484 of 2011 as is evident from the perusal of para 14 of the judgment (quoted supra) and the same have admittedly attained finality.”

42. Having said so, the instant appeal merits dismissal and the same is dismissed as such.

**CMPMOs No.213, 284 and 285 of 2012**

43. These petitions have been filed by the petitioner(s) under Section 83(9) of the Act. The Registry has wrongly treated these petitions as having been filed under Article 227 of the Constitution of India and has wrongly diarized them as CMPMO, rather they should have been diarized as Civil Revisions. The Registry is directed to diarize these petitions as Civil Revisions.

**CR Nos.159 of 2003, 26 of 2005, 115 of 2012 and 134 of 2015**

44. Keeping in view the discussion made hereinabove, these revision petitions and the revision petitions, after diarizing the CMPMOs supra as Civil Revisions, be listed for hearing before the Division Bench on 01.12.2016.

**(Mansoor Ahmad Mir)**  
**Chief Justice.**

**November 16, 2016.**  
**(Tilak)**

**(Sandeep Sharma)**  
**Judge**