

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 29th OF MAY, 2024

CIVIL REVISION NO.840/2003

BETWEEN:-

1. **SMT. RUBAB BAI, AGED ABOUT 52 YEARS,
D/O MULLA SAJJAD HUSSAIN, W/O ZAKI
HUSSAIN, R/O SAIFIA COLLEGE ROAD,
BHOPAL (M.P.)**
2. **SMT. SHIRN BAI (DEAD) THROUGH LRS**
 - (a) **MOHSIN ALI, S/O MULLA SAJJAD
HUSSAIN, AGED 65 YEARS, R/O HOUSE
NO.4, CHOWKI IMAM BADA, DISTRICT
BHOPAL (M.P.)**
 - (b) **SADIQ HUSSAIN, S/O MULLA SAJJAD
HUSSAIN, AGED ABOUT 45 YEARS, R/O
HOUSE NO.C-34, B.D.A. COOLN DISTRICT
BHOPAL (M.P.)**
3. **SMT BILQEES BAI, DEAD -
REPRESENTED BY-**
 - (a) **SHRI QAMRUL HASAN, AGED ABOUT 43
YEARS,**
 - (b) **SHRI MISBAHUL HASAN, AGED ABOUT 41
YEARS,**
 - (c) **SHRI ZIAUL HASAN, AGED ABOUT 40
YEARS,**
 - (d) **SHRI HAKEEMUDDIN, AGED ABOUT 29
YEARS,**
 - (e) **SHRI MAHBOOB HASAN, AGED ABOUT 38
YEARS,**

- (f) **SHRI NOORUL HASAN, AGED ABOUT 70 YEARS,**
- NO.(a) TO (e) ARE SONS AND NO.(f) HUSBAND OF LATE SMIT BILQUEES BAI, ALL R/O FAIR CHEMIST JUMERATI, PURANA KABAD-KHANA, BHOPAL (M.P.)**
4. **SMT. ZOHRA BAI – DEAD – THROUGH LRS-**
- (a) **SAIFUDDIN, S/O LATE YUSUF ALI, AGED 58 YEARS, R/O FAIR CHEMIST, JUMERATI, DISTRICT BHOPAL (M.P.)**
- (b) **SIRAUDDIN, S/O LATE YUSUF ALI, AGED ABOUT 52 YEARS, R/O FAIR CHEMIST, JUMERATI, DISTRICT BHOPAL (M.P.)**
5. **NEW VALLABH GRIHA NIRMAN SAHAKARI SAMITI MARYADIT, BHOPAL THROUGH CHAIRMAN, SHRI B.B. SHARMA, S/O SHRI B.H. SHARMA, R/O 357-A, SHAKTI NAGAR, B.H.E.L. BHOPAL (M.P.)**
6. **M/S SHIVAM BUILDERS THROUGH SHRI JAYANARAYAN CHOKSE, SHRI SURESH KUMAR CHOKSE, BOTH SONS OF SHRI C.L. CHOKSE, R/O D-701, PUSHPA NAGAR ROAD, BHOPAL OFFICE AT 30 HAMIDIA ROAD, BHOPAL.**
7. **SMT POONAM, DIRECTOR, SHIVAM BUILDERS, BHOPAL.**

.....APPLICANTS

(BY SHRI R.K. SANGHI – ADVOCATE AND SHRI SIDDHARTH KUMAR SHARMA – ADVOCATE AND SHRI ASHISH GIRI - ADVOCATE)

AND

1. **MADHYA PRADESH WAKF BOARD, BHOPAL THROUGH ITS SECRETARY, OFFICE OF M.P. WAKF BOARD, MOTI MASJID, PEER GATE ROAD, BHOPAL (M.P.)**
2. **THE STATE OF MADHYA PRADESH THROUGH THE CHIEF SECRETARY,**

GOVERNMENT OF M.P. VALLABH BHAWAN,
BHOPAL (M.P.)

3. THE COMMISSIONER, BHOPAL DISTRICT
BHOPAL (M.P.)
4. THE COLLECTOR, BHOPAL, DISTRICT
BHOPAL (M.P.)
5. THE JOINT DIRECTOR, TOWN & COUNTRY
PLANNING DEPARTMENT, BHOPAL (M.P.)
6. THE MUNICIPAL CORPORATION, BHOPAL
THROUGH ITS COMMISSIONER, OFFICE
OF MUNICIPAL CORPORATION BHOPAL
(M.P.)
7. BHOPAL DEVELOPMENT AUTHORITY
THROUGH THE CHIEF EXECUTIVE
OFFICER, OFFICE BDA, M.P. NAGAR,
BHOPAL (M.P.)
8. BHOPAL CO-OPERATIVE CENTRAL BANK
LTD, H.NO.24-25, NEW MARKET, T.T.
NAGAR, BHOPAL THROUGH SHRI R.K.
DUBEY, MANAGING DIRECTOR, BHOPAL,
CO-OPERATIVE CENTRAL BANK, 24-25,
NEW MARKET BHOPAL (M.P.)

.....RESPONDENTS

(NO.1 BY SHRI UTKARSH AGRAWAL – ADVOCATE)

*(NONE FOR OTHER RESPONDENTS, THOUGH NAMES OF COUNSEL ARE
REFLECTED IN THE CAUSE LIST).*

.....
Reserved on: 17.05.2024

Pronounced on: 29.05.2024

*This civil revision having been heard and reserved for orders,
coming on for pronouncement this day, the Court pronounced the
following:*

ORDER

Indeed, the hearing of the matter is scheduled in the list of ‘final hearing cases’. The matter is pending since 2003. With the concurrence of learned counsel for the rival parties, it was heard finally on 17.05.2024 and today the order is being pronounced.

2. By the instant civil revision, the applicants are challenging the judgment/order dated 24.07.2003 passed by the State Waqf Tribunal Bhopal. Earlier, on 06.09.1993, the plaintiff-non-applicant No.1 instituted an action registered as MJC No.19/1993 in the court of VII Additional District Judge, Bhopal claiming the following reliefs-

- (i) Pass a declaratory decree in favour of the plaintiff to the effect that the land bearing khasra No.1196, 1197, 1198, 1199 and 1200 admeasuring 3.14 acres is Qabristan land as such Waqf property.
- (ii) Pass a decree setting aside the mutation, N.O.C. and construction permission wrongly and illegally granted in favour of private persons specially defendants No.6 to 9 and also defendants No.11, 11 [sic.] or any other persons.
- (iii) To restrain defendants No.6 to 11 from making any sort of construction on khasras No.1196 to 1200.
- (iv) To pass a decree for possession of the area encroached upon by defendants No.6 to 11 as shown in the plaint map by demolition of the construction made by the defendants.
- (v) To grant compensation for the use and occupation of the suit land at the rate of Rs.1,000/- per month with effect from the date of filing of the suit till possession of the suit land by the defendants to the plaintiff.
- (vi) To grant cost of the suit in favour of the plaintiff against the defendants.
- (vii) Any other relief under the circumstances of the case to which the plaintiff might be found entitled may also be granted.

3. A succinct venture to the facts of the case reveals that the plaintiff-Board filed a suit for declaration, perpetual injunction, possession and compensation before VII Additional District Judge, Bhopal with regard to the land bearing khasra No.1196 area 0.87 acre, 1197 area 0.75 acre, 1198 area 0.60 acre, 1199 area 0.70 acre and 1200 area 0.22 acre known as Qabristan, Madarwada situated behind building Mulla Seth Sajjad Hussain (Capital Hotel), Tehsil Huzur, District Bhopal.

3.1 The suit property is Qabrastan and is the land of Waqf property. In the suit, the plaintiff sought a decree, setting aside mutation, N.O.C. and the construction permission granted in favour of the private persons specially defendants No. 6 to 9 and also defendants No.11 and 11 or any other person. Further, sought decree restraining defendants No.6 to 11 from making any sort of construction over khasra No.1196 to 1200. The plaintiff further sought a decree of possession of the area encroached upon by defendants No.6 to 11 and also claimed compensation for the use and occupation of the suit land at the rate of Rs.1,000/- per month w.e.f. the date of filing of the suit till possession of the suit land is given by the defendants to the plaintiff.

3.2 As per the claim raised in the suit, the plaintiff averred that the suit property is waqf property being dedicated/donated by His Highness Nawab Mohd. Hamidullah Khan Sahib Bahadur, the Ruler of erstwhile State of Bhopal for the purpose of charity and for burial ground (graveyards) of the Muslims dead-persons and such property has been recorded in the revenue record of Patwari Halka No.41, Tehsil Huzur, Bhopal.

3.3 It was also averred that the suit properties were all Maufi land in Bhopal Riyasat, Marghat and Qabrastan were in Maufi land. In

Qabrastan, this maufi land was held by Fakirs who were known as Takiyadars who took care of these lands. The land was given to Fakirs so that they take care of the trees growing there like Imli, Jamun, Aam, Sharifas and Khajoor and utilize the same for their living.

3.4 During the pendency of the aforesaid suit, Waqf Act, 1954 (Act No.29 of 1954), a Central Act in application to the State of M.P. was amended by Waqf (M.P. Amendment) Act, 1994, published in Rajpatra, dated 05.05.1995 (Act No.1 to 1995) repealing the Waqf (M.P. Amendment) Ordinance, 1994 (Ordinance No.5 of 1994). Section 55 of the Principal Act (No.29 of 1954) was substituted by Section 6 of Act No.1 of 1995, providing *inter alia*, constitution of Tribunal, powers and jurisdiction. etc. Further by Section 6 of Act 1 of 1995. Section 55A and 55G were inserted to the Principal Act, 1954. Section 55G provided for a statutory transfer of actions pending before any Court or authority upon constitution of Tribunal, named as Waqf Tribunal. Consequently, the civil suit pending in the Court of VII Additional District Judge, Bhopal stood transferred to the Waqf Tribunal, registered as Case No.649/1995.

3.5 The defendants filed their written-statement in rebuttal to the averments made in the plaint and claimed dismissal of the suit. The defendants have also raised objection that only civil suit is maintainable before the civil Court and not before the Tribunal. Defendants No.6 to 12 submitted their joint written-statement before the Tribunal controverting the averments of plaint in its totality. One of the main objections raised by the defendants that the suit preferred by the plaintiff is not maintainable as per Sections 6 and 7 of the Waqf Act, 1995 before the Tribunal. It was also objected that as per Section 82 of M.P. Cooperative Societies Act, 1960, the Waqf Tribunal has no jurisdiction

because defendant No.1 is a Cooperative Society registered under the M.P. Cooperative Societies Act, 1960.

3.6 Thereafter, the Waqf Tribunal has passed the impugned judgment, which has given rise to this civil revision.

4. Much was argued by the learned counsel for the rival parties to reinforce their respective stand. However, to separate the wheat from the chaff, it is imperative to form a question in view of the submissions made by the rival parties. Ergo, the moot question which arises for consideration by this Court is formulated as under:-

“Whether the Tribunal had jurisdiction to decide the suit of the plaintiff in the light of the provisions of Section 7(5) r/w 85 of Waqf Act, 1995 and the suit pending before the civil court which, according to the defendants, was competent court of jurisdiction, was maintainable and could not have been transferred to the Waqf Tribunal after coming into force of Waqf Act, 1995.”

5. Indeed, Shri Sanghi has placed reliance upon a decision of the Supreme Court *in re Sardar Khan and others v. Syed Najmul Hasan (Seth) and others (2007) 10 SCC 727* in which dealing with Section 7(5) and 85, the Supreme Court has observed as under:-

“13. Now coming to the facts of the present case, it is an admitted fact that suit was filed on 19.12.1976 before Addl. District Judge, Jaipur and arguments were heard and judgment was received on 16.12.1995 and the judgment was delivered on 23.12.1996 against which the appeal was filed before the High Court on 1.3.1996. Therefore, from these facts it is clear that the suit was pending since 19.12.1976, i.e., prior to the commencement of the Act, i.e., 1.1.1996. Therefore, by virtue of sub-section (5) of Section 7, the Tribunal will have no jurisdiction to decide the suit or the appeal arising from that suit. In the present

case, the appeal which was filed by the Respondents (herein) arises out of the Judgment and decree passed by the Addl. District Judge, Jaipur on 23.1.1996 in a suit filed on 19.12.1976. Therefore, the appeal which was filed before the High Court against the judgment and decree passed on 23.1.1996 by the Addl. District Judge, Jaipur, will not be governed by this Act. By sub-section (5) of Section 7, a special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not be applicable. In the case of Syed Inamul Hag Shah (supra), the learned Single Judge only considered the effect of Section 85 but did not examine the effect of sub-section (5) of Section 7 and, on the basis of section 85, it was held that all the proceedings which were pending before the Civil Court, the Civil Court will have no jurisdiction. With great respect, perhaps the attention of the learned Single Judge was not drawn to sub-section (5) of Section 7 which specifically provides an exception that this will not be applicable to the pending suits, appeals and revisions. It has purpose behind it that when Act was made prospective, how can it operate retrospectively, therefore, all pending matters were taken out from purview of this Act.

14. On a conjoint reading of sub-section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996, i.e., coming into force of the Wakf Act, 1995. Therefore, the view taken by the learned Single Judge was not correct in the case of Syed Inamul Hag Shah (supra). Hence, in view of the above discussion, we are of the view that the learned Single Judge has gone wrong in relying on the decision rendered by the Single Judge in the case of Syed Inamul Hag Shah (supra). Consequently, the impugned order passed by the learned Single Judge is set aside and the matter is remitted back to the High Court for deciding the appeal in accordance with law, expeditiously.”

(emphasis supplied)

6. As per Shri Sanghi, in view of the above-cited judgment of the Supreme Court and legal position laid down therein, it is clear that the Tribunal had no jurisdiction to decide the said suit and entertain the proceeding which was transferred to the Tribunal from the civil Court.

Conversely, Shri Agrawal submitted that the Tribunal has rightly decided the suit and the suit from civil court to Tribunal was rightly transferred because as per Subsection (5) of Section 7, the suit which does not fall within the ambit of Subsection (1) of Section 6, can be transferred to the Tribunal and he submitted that from the subject matter of the suit it is clear that the same does not come within the purview of Subsection (1) of Section 6 and therefore the Tribunal had jurisdiction to decide the suit. Shri Agrawal also submitted that as per Section 83 of Waqf Act, 1995, the Tribunal has rightly decided the suit and as such in a civil revision which has limited jurisdiction of interference, the Court cannot interfere in the order passed by the Tribunal. Shri Agrawal also submitted that even on merits, the order of Tribunal can be tested and it can be examined that the Tribunal has rightly decided the issue and the order passed by the Tribunal does not call for any interference as it does not suffer from any illegality or irregularity. Shri Agrawal placed reliance upon a decision of the Supreme Court in the case of **Rashid Wali Beg v. Farid Pindari and others (2022) 4 sCC 414**.

7. After mulling over the submissions made on behalf of rival parties and perusal of record, I am of the opinion that since the learned counsel for the applicants has raised a singular issue before this Court with regard to jurisdiction of the Tribunal relying upon the decision of Supreme Court, therefore, primarily this Court is not obligated to go beyond the issue raised inasmuch as if ultimately it is found that the Tribunal had jurisdiction to entertain the issue, then the matter will be dealt with on merits of the case, conversely if it is found that the Tribunal had no jurisdiction to entertain the suit, in that phenomena, there would be no occasion to venture into the merits of the case and that issue would put a respite to the dispute raised before this Court.

8. For effectively deciding the said issue, it is expedient to Quote Section 7(5) of Waqf Act, 1995, which reads as under:-

“7(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.”

9. On a bare look at the aforesaid provisions, it comes to light that if the subject matter of the suit falls within the ambit of subsection (1) of Section 6 then the Tribunal has no jurisdiction to determine any issue raised in the said proceeding. Ergo, this Court has to see whether the subject matter which was pending before the Civil Court in suit preferred by the plaintiff, falls within the ambit of Subsection (1) of Section 6 of Waqf Act, 1995 or not. It is depicted in the plaint that the suit was filed for declaration, perpetual injunction, possession and compensation and valued at Rs.35,600/-. The relevant portion of the averments made in the plaint is reproduced hereinunder:-

“1. That, the plaintiff is a body corporate under Wakf Act, 1954 (Act.No.29 of 1954) and is empowered to institute and defend suits and other proceedings in the court of law in respect of Wakf properties situated in the State of Madhya Pradesh and to take all such steps necessary for the due control, administration, supervision, maintenance and protection of Wakf properties.

7. That, the Govt. of part C State of Bhopal which was subsequently merged in the present State of Madhya Pradesh had appointed a Wakf Commissioner under Section 4 of the Wakf Act, 1954 for the purpose of making survey of all the wakf properties situated in the former part – C State of Bhopal. The said Commissioner surveyed all the wakf properties and submitted its report together with the survey list of wakf properties to the Govt. of M.P. and the said survey list was published in the official Gazettee of Govt. of M.P. Bhopal dated 10.1.58 and 24.11.61 as required under Section 5 of the Wakf Act

1954. The said Qabrastan finds place in the said list at serial No.79 and survey No.384. The said survey entry published in the official Gazette of Govt. of M.P. has long become final and conclusive and cannot now be challenged in any court of law.

9. That, the ownership of all the wakf properties including Qabrastan is vested in the name of God and cannot be alienated or transferred. A land dedicated for a graveyard will always remain as a graveyard. A dead ones buries cannot be exhumed. A cemetery once granted shall remain to be so for ever.

10. That the State Govt. officials of Revenue Department, Town & Country Planning Department and Bhopal Municipal Corporation authorities have acted illegally and contrary to the provisions of law in recording the name of private individuals in respect of aforesaid Qabrastan land whereas the said land is inalienable and cannot be transferred The said graveyard existed since 200 years or so as is apparent from persion Kutbas on graves. The said Qabrastan land is being used as Qabrastan at present also. The settlement in Bhopal took place in 1933, 34 and even during that settlement the names of Abdul Majeed Shah and Abdul Waheed Shah Faqirs were recorded and the land was shown as Maufi.

14. That the Rural authorities and competent authorities under urban land ceiling act have also acted illegally in granting N.O.C. and certificate under urban land ceiling Act in favour of defendant No.6 to 9. The diversion of the land in question was also granted without complying with the legal requirements and the use of land was diverted for the commercial purposes.

21. That the plaintiff is entitled to possession of the area encroached upon by the defendant No.6 to 11 and also compensation for the use and occupation of the land in question at the rate of Rs.1,000/- per month from the date of filing of the suit till possession.

22. That the cause of action accrued at Bhopal in the last week of May 1993 when the defendant No.10 encroached upon the Qabrastan land and started digging, but the same was resisted by the residents of locality and members of Qabrastan Tahaffuz Committee. The said Committee and residents of the locality went immediately in writ before the High Court Jabalpur wherein the order to maintain status quo passed, but subsequently it was observed by the Hon'ble High Court vide order dated 5.8.93 that the property belongs to Wakf Board and it is for the Wakf Board to agitate its own right by taking appropriate steps in accordance with law as the petitioners were not found to have locus standi and accordingly the petition was disposed of without going to the merits of the case. This fact came to the knowledge of the plaintiff Board on 16.8.93. The plaintiff Board immediately

acquired necessary documents and resisted the construction through its Inspector, but the defendant No.10 and 11 are bent upon to start construction. This Hon'ble High Court has jurisdiction to entertain and try the suit.”

10. Likewise, the written-statement was filed by the defendants denying the averments made in the plaint. Relevant paragraphs 16 and 21 of the written-statement are reproduced hereinbelow;-

“16. That, it is very respectfully submitted by the answering defendants that the present plaintiff has no locus standi to file the present suit since it has no control, management and any relation with the affairs relating to the land in dispute. In Bhopal, the present plaintiff has a permanent body named and working under the style of ‘Committee Intezamia Aukafe Amma’ Bhopal which has been given the control, management and affairs of the so-called Wakf Properties situated in the city of Bhopal.

21. That, in para No.3 of the plaint, the plaintiff has made an unambiguous statement that the present disputed land which is termed by it as a Kabrastan (Wakf Property) was dedicated by Late His Highness Nawab Hamidullah Khan Saheb Bahadur Ex-Ruler of Erstwhile Bhopal State. As is required under Order 7 Rule 14 of the CPC. The plaintiff has failed to file any document of dedication of the said land by late His Highness Nawab Hamidullah Khan Saheb Bahadur Ex-Ruler of Bhopal State. Not only this, the plaint is further silent and furnishes no particulars about the said dedication by the Ex-Ruler of Bhopal. It is submitted that the answering defendant as back as on 14.9.93 raised the aforementioned objections before the trial Court. The plaintiff in reply to the application filed by the defendants No.6 to 11 under order 7 Rule 14 of the CPC, admitted that the dedication of the land in question was neither express nor written by the said dedicator the Ex-Ruler of Bhopal, as such the very basis and the foundation of the suit has gone with the winds and no suit on presumption, assumption, conjectures and surmises can be entertained by any Tribunal, court or authority as established in India.”

11. Now, Subsection (1) of Section 6 of Waqf Act, 1995 is required to be seen so as to determine whether the subject matter from

the aforesaid pleadings falls within the ambit of respective section or not. It is quoted thus;-

“6(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 Tribunal in respect of such matter shall be final.”

12. In view of the aforesaid provisions, it is clear that the basic dispute and issue in the civil suit was whether the property which was subject matter of the suit is Waqf property or not and therefore as per the law laid down by the Supreme Court in the case of **Sardar Khan** (supra), it is clear that the Special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not be applicable. There is no scintilla of doubt for this Court to say that the subject matter of the suit falls within the purview of Subsection (1) of Section 6 and in a pending proceeding, in which, the said issue was involved, the record could not have been transferred to the Tribunal as the Tribunal had no jurisdiction to determine the issue in the pending suit. This court takes strength from the observations made by the Supreme Court that in view of Subsection (5) of Section 7, the Act will not be applicable to the pending suit or proceeding or appeal or revision which have commenced prior to 01.01.1996 i.e. coming into force of Waqf Act, 1995. As such, the Tribunal could not have decided the suit which was transferred to Tribunal because the Waqf Act, 1995 was not applicable in the said pending proceeding and the Tribunal should not have decided the suit having no jurisdiction. However, before the Tribunal, the objection with regard to its jurisdiction has been raised by

the defendants and as such the Tribunal framed the issue as issue No.9, which is reproduced hereinbelow:-

9- क्या न्यायधिकरण को इस प्रकरण की सुनवाई का क्षेत्राधिकार प्राप्त है

This issue has been decided by the Tribunal in affirmative. It has been dealt with by the Tribunal from paragraph 18 onward in its judgment and decree. The Tribunal in fact has taken note of Section 85 of amended Act, 1994, which reads as under:-

“85. Bar of jurisdiction of civil courts;- No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other statute which is required by or under this Act to be determined by a Tribunal.”

Although, Section 85 provides a specific bar of jurisdiction for the civil court but the Tribunal has lost sight to see the implication of Section 85 and also of the provisions of Act, 1995. Said embargo upon the jurisdiction of the civil court is in respect of the dispute arises after implication of the Act, 1995. It is not in dispute that the dispute between the parties which has been dealt with by the Tribunal arose much prior to implication of Waqf Act and the matter was pending before the civil court and after enforcement of Waqf Act, 1995, the record was transferred to the Tribunal and then suit was decided by the Tribunal. It is also not in dispute that the Tribunal itself has observed that the basic dispute involved in the suit was whether the suit property related to waqf or not but the Tribunal has not considered the impact of Subsection (5) of Section 7 of Waqf Act, 1995.

13. Learned counsel for respondent No.1 tried to establish that the issue involved in the case does not fall within the ambit of Subsection (1) of Section 6 and as such Subsection (5) of Section 7 is not applicable, but in view of the discussion made hereinabove and also the finding given by the Tribunal in paragraph 21 of the judgment holding that the basic question involved in the case was “whether the suit property belonged to waqf or not”, as such, the submission made by the learned counsel for the respondents has no substance as it is contrary to the facts of the case. He placed reliance on the decision *in re Rashid Wali Beg* (supra) in which the Supreme Court has dealt with an issue with regard to jurisdiction of Waqf Tribunal to determine any dispute, question or other matter relating to waqf and waqf property. However, in paragraph 36, the Supreme Court has very categorically observed that the case of **Sardar Khan** (supra) is not relevant because Section 7(5) of the Act of Waqf Act, 1995 does not throw any light upon the actual controversy on hand. Meaning thereby, the scope of Section 7(5) of the Act was not that as has been considered in the case of **Rashid Wali Beg** (supra) and relied upon by the learned counsel for respondent No.1. It is imperative to quote paragraph 36 as under:-

“36. It can be seen from the Table given above that the original proceedings from out of which the decisions at Sl. Nos. 1 and 2 (Mohd. Mashur Kunhi Koya Thangal & Sardar Khan) arose, were initiated long before the advent of the Waqf Act, 1995 and hence the ratio laid therein the basis of Section Section 7(5) of the Act does not throw any light upon the actual controversy on hand.”

(emphasis supplied)

14. Thus, I am also of the opinion that in view of the facts and circumstances and law laid down by the Supreme Court in the case of **Sardar Khan** (supra) and finding given thereof, it is clear that the judgment and decree passed by the Tribunal and issue No.9 decided by

the Tribunal was illegal as it was contrary to law laid down in **Sardar Khan** (supra) and also contrary to the provisions of Statute i.e. Waqf Act Section 7(5). As such this Court has no scintilla of doubt in saying that the impugned judgment and decree passed by the Tribunal on 24.07.2003 in Case No.649.1995 is without jurisdiction and therefore it is not sustainable in the eyes of law and accordingly it is set aside. More precisely, the instant revision is allowed only to the point of jurisdiction because other findings given by the Tribunal having no jurisdiction to decide the lis would automatically be considered as illegal.

15. The civil revision is **allowed**. As a consequence, the record be sent to the civil court from where the record was transmitted to the Tribunal. If the plaintiff is still desirous to prosecute the matter, can do so by approaching the civil court.

(SANJAY DWIVEDI)
JUDGE