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The words any dispute, question or other matters relating to **Wakf** of **Wakf** property under S.85 are wide enough to take in within its sweep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act but also any dispute, question or any other matter relating to any **Wakf** or **Wakf** property since those powers have also been conferred on the Tribunal by the **Wakf** Act itself. On examining the scheme of the Act and various provisions we are of the view that the intention of the Legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is, the **Wakf** Tribunal and not by the Civil Courts in the State. (para. 12)

2002 (3) KLT 742

Overruled

1999 (1) KLT 794

Affirmed

AIR 2001 Mad. 431

Dissented from

1999 (3) ALD 646

Referred to

*C. Khalid, T.V. Kunhammed,**T.H. Abdul Azeez, T.P.M. Ibrahim Khan,**S.K. Balachandran & Anitha Menon*

For Appellants

*P.K. Aboobacker (Edathala), P.R. Roshna,**T.V. Kunhammed & A.A. Abul Hassan*

For Respondents

JUDGMENT**K.S. Radhakrishnan, J.**

We are in these cases concerned with the jurisdiction and powers of the **Wakf** Tribunals constituted in the State of Kerala by the **Wakf** Act, 1995. A learned single Judge of this Court, C.S. Rajan, J. in *Pookoya Haji v. Cheriyaakoya* (1999 (1) KLT 794) took the view that the **Wakf** Tribunal has been constituted by the Government under

S.83(1) of the **Wakf** Act so as to decide any dispute, question or other matter relating to a **Wakf** or **Wakf** property. Learned Judge held under S.83(2) of the Act any *mutawalli* or any other person aggrieved by an order made under the **Wakf** Act or Rules may make an application to the Tribunal for the determination of any dispute, question or other matter relating to the **Wakf**. Judgment of the learned single Judge, C.S. Rajan, J. is appealed against in W.A.2273/99. P.R. Raman, J. another learned Judge of this Court in *Abdul Rahiman Musaliar v. Muhammed Sahib* (2002 (3) KLT 742) while interpreting Ss.83 and 85 of **Wakf** Act took the view that only those matters which are required by or under the **Wakf** Act to be determined by a Tribunal the bar under S.85 would apply and for the rest of the matter Civil Court's jurisdiction is not ousted. In view of the apparent conflict between the two decisions referred to above these matters have been placed before us on a reference made by Padmanabhan Nair, J.

2. Large number of cases are now pending before the **Wakf** Tribunals and also before the Civil Courts for determination with regard to the nature of the disputes to be resolved by the Tribunals or by the Civil Courts. In fact a direction was given in the administrative side of the High Court as per O.M. No.D3/B1/49951/97 dated 16.3.2001 to the District Judges of Manjeri, Kozhikode, Kalpetta, Thalassery and Kasaragod to take steps to transfer the cases under the provisions of the **Wakf** Act pending before their respective districts to the **Wakf** Tribunal, Kozhikode. It is therefore necessary to resolve the apparent conflict between the two decisions for the proper disposal of the cases pending before the Civil Courts as well as before the **Wakf** Tribunals.

3. The **Wakf** Act, 1995 (Act 43 of 1995) was enacted by the Parliament and was brought into force throughout the country except the State of Jammu & Kashmir with effect from 1.1.1996. It repealed the **Wakf** Act, 1954 and the **Wakf** (Amendment) Act, 1984. One of the important changes made in the **Wakf** Act, 1995 was the Constitution of the **Wakf** Tribunal for resolution of disputes relating to **Wakf** and **Wakf** property and such other matters which are required by the Act to be resolved by the Tribunal. Though an amendment was brought in to provide for Tribunals under the **Wakf** (Amendment) Act, 1984 the same was not enforced. The entire scheme for resolution of **Wakf** litigations by Tribunals has been provided under Ss.83 to 95 of the Act.

4. We may before examining the scope of the judicial proceedings enumerated in Chap.VIII of the Act generally survey the scheme of the Act. The word "**Wakf**" has its origin in the Arabic Verb, Waqafa. **Wakf** Act, 1995 has given a statutory meaning to the word "**Wakf**" under S.3(r) of the Act which reads as follows:

"**Wakf**" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes:

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

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

(iii) a **Wakf-al-al-aulad** to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;

and '**Wakf**' means any person making such dedication.

The definition clause has used the expressions "**Wakf** by user". A **Wakf** by user is one which is not expressly dedicated as **Wakf** but has been in long use as such, then by virtue of such long use such property is deemed to be **Wakf** by user. A **Wakf** normally requires express dedication, but if land has been used from time immemorial for a religious purpose, then the land becomes a **Wakf** by user, although there is no evidence of an express dedication. **Wakf-al-al-aulad** refers to dedication of property as **Wakf** and for the welfare of **Wakf**'s own family or his children or children of his children. A **Wakf** can be created by the execution of a will which is called testamen tary **Wakf**. A valid **Wakf** can be created only for a lawful object and it should be recognised by Muslim law as pious, religious or charitable. There are three types of **Wakf** recognised as under:- (i) **Wakf** by user, (ii) **Wakf** *Mashrut-ul-Khidmat* and (iii) **Wakf-al-al-aulad**. For making a valid **Wakf** a person should be of sound mind and that he should be a major person. Therefore, neither a minor, nor a guardian on behalf of the minor can make a **Wakf**. The first essential condition for creating a valid **Wakf** is that the declaration of dedication should be made contemporaneously with the act of dedication and the person must divest himself of the ownership of the property. Physical delivery of the property is not essential, but such possession as is possible must be given. The three essential features of a valid **Wakf** are: (i) perpetuity, (ii) irrevocability and (iii) inalienability. A **Wakf** can also be created through a testament

containing the desire of the **Wakf** to take effect after his death. One of the most beautiful Wakfs in India is regarded as the Eighth wonder of the world, namely, Taj Mahal. A **Wakf** can also be created by a non-muslim. For creation of **Wakf** it is not necessary that the settler should be a Muslim.

5. Under the **Wakf** Act, 1995 as we have indicated considerable power has been given to various officers to deal with the **Wakf** property. Chap.II provides for survey of Wakfs. By virtue of S.4(3) the Survey Commissioner shall, after making such enquiry as he may consider necessary, submit his report, in respect of Wakfs existing at the date of the commencement of this Act in the State. Commissioner is also empowered to get information regarding the number of Wakfs in the State showing Shia Wakfs and Sunni Wakfs separately, the nature and objects of each Wakfs, the gross income of the property comprised in each **Wakf**; the amount of land revenue, cesses, rates and taxes payable in respect of each **Wakf**, the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each **Wakf**; and such other particulars relating to each **Wakf** as may be prescribed. While making such enquiry the Commissioner has the same power as vested in a Civil Court for the purpose

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of summoning and examining any witness, requiring the discovery and production of any document; requisitioning any public record from any Court or office; issuing commissions for the examination of any witness or accounts; making any local inspection or local investigation and such other matters as may be prescribed. On receipt of a report from the Commissioner the State Government shall forward a copy of the same to the Board. The Board shall examine the report forwarded to it and publish in the Official Gazette a list of Sunni Wakfs or Shia Wakfs in the State. 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. The Act further provides that the total cost of making a survey including the cost of publication of the list or lists of Wakfs shall be borne by all the mutawalli of the Wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such Wakfs, such proportion being assessed by the Survey Commissioner. Disputes and differences are on the rise on the question whether a particular **Wakf** is a Sunni **Wakf** or Shia **Wakf** and matters relating to **Wakf** and **Wakf** property.

6. Learned Judge in *Musaliar's* case held that only those matters which are required by or under the Act to be determined by a Tribunal, that the bar under S.85 applies. Learned Judge held that the dispute in that case mainly centres around the right of management of the **Wakf**. Property in *Musaliar's* case was admittedly a **Wakf** property. But learned Judge took the view since the management of **Wakf** as such does not fall within the powers of the Tribunal dispute is not liable to be resolved by the Tribunal. Consequently learned Judge held Civil Court has got jurisdiction. Learned Judge opined that the scheme of the Act would show that jurisdiction of the Civil Court is not completely ousted. Learned Judge also examined the question as to whether the words 'determination of any dispute, question or other matter relating to the **Wakf** or **Wakf** property' is so wide enough to take in a dispute relating to the management of the affairs of a Mosque or **Wakf**. The words "under this Act" according to the learned Judge qualifies the dispute to be adjudicated. Learned Judge also referred to Ss.6, 7, 32(3) and 54(4) which deal with matters where suits can be filed before the Tribunal. We are of the view if the reasoning of the learned Judge is upheld we will be restricting the jurisdiction of the Tribunal considerably, thereby narrowing the scope and ambit of S.83 read with S.85 and other related provisions. Apex Court in *Dhulabhai v. State of M.P.* (1969 SC 78) laid down certain principles regarding the exclusion of jurisdiction of Civil Court. Principles laid down by the Apex Court, which are relevant to us is stated as follows:

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil

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Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

We may examine the scope of Ss.83 and 85 and other related provisions in the light of the above mentioned principles. S.85 is extracted below for easy reference:

85. Bar of jurisdiction of Civil Courts:- No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

S.85 stipulates that no suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any **Wakf, Wakf property**. This is the first limb of S.85. The second limb is that no suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter which is required by or under this Act to be determined by a Tribunal. In the first limb of S.85 we see the words "or other matters relating to" and in the 2nd limb of S.85 also we find the words "or other matter which is required". In other words, in the first limb the emphasis is on the words "relating to" and in the second limb the emphasis is on the words "required by". The **Wakf** Act has conferred powers on the Tribunal to resolve various disputes by way of appeals and applications. Ss.6, 7, 32(3), 54(4) etc. confers powers on the Tribunal to entertain suits. Ss.6 and 7 deals with disputes as to whether a particular property is a **Wakf**, whether it is a Shia **Wakf** or Sunni **Wakf**. S.32(2)(d) enables the **Wakf** Board to settle schemes of management of a **Wakf** and if any person who is interested in the **Wakf** or affected by the settlement or direction may institute a suit before the Tribunal S.54 deals with removal of encroachment from the **Wakf** property. Any person aggrieved by the order passed by the Chief Executive Officer could institute a suit before the Tribunal.

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7. We have pointed out that over and above the powers conferred on the Tribunal to entertain in suit Act also envisages entertainment of appeals by the Tribunal. S.33(4) enables the Tribunal to entertain appeals against the order of the Chief Executive Officer in cases where Mutawalli in performance of his executive or administrative duties has caused any loss or damage to any **Wakf** property. Under S.38(6) the Board has been given the powers to suspend, remove or discharge the Executive Officer, in the event of which he could file an appeal before the Tribunal under S.38(7) of the Act. Ss.51(5), 52(4), 64(4), 67, 69, 73(3) etc. have also conferred appellate powers on the Tribunal.

8. The Tribunal can also entertain applications. S.39(3) empowers the **Wakf** Board to make an application to the Tribunal for recovery of possession of any building or other place which was being used for religious purposes or institution or for charity before the commencement of the Act, has ceased to be used for that purpose. The second proviso to S.51(2) also enables the Tribunal to entertain application concerning alienation of **Wakf** property.

9. The above mentioned and other provisions would indicate that considerable powers have been

