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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.

CIVIL APPEAL NO. 10770 OF 2016; FEBRUARY 07, 2022 W I T H CIVIL APPEAL NO. 10738 OF 2016 CIVIL APPEAL NO. 10768 OF 2016 CIVIL APPEAL NO. 10769 OF 2016 CIVIL APPEAL NO. 10773 OF 2016 CIVIL APPEAL NO. 10775 OF 2016 CIVIL APPEAL NOS. 10776-10777 OF 2016 CIVIL APPEAL NO. 10771 OF 2016 CIVIL APPEAL NO. 10772 OF 2016 AND CIVIL APPEAL NO. 10774 OF 2016

STATE OF ANDHRA PRADESH (NOW STATE OF TELANGANA)
VERSUS
A.P. STATE WAKF BOARD & ORS.

Wakf Act, 1995 - Section 32 and 40 - The Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry pre-supposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. (Para 146)

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 - The land dedicated for pious and religious purpose is not immune from its vesting with the State. (Para 196)

Constitution of India, 1950- Article 226 - The State Government, as a juristic entity, has a right to protect its property through the writ court, just as any individual could have invoked the jurisdiction of the High Court. (Para 125)

Wakf Act, 1995- The Wakf Board is a statutory authority under the 1954 Act as well as under the 1995 Act. The Official Gazette had to carry any notification at the instance of the Wakf Board. The State Government is not bound by the publication of the notification in the Official Gazette at the instance of the Wakf Board only for the reason that it has been published in the Official Gazette. The publication of a notice in an Official Gazette has a presumption of knowledge to the general public as an advertisement published in a newspaper. Therefore, mere reason that the notification was published in the State Government gazette is not binding on the State Government. (Para 132)

Wakf Act, 1995- Section 32 and 40 - The power of the Board to investigate and determine the nature and extent of Wakf is not purely an administrative function- The power to determine under Section 32(2)(n) is the source of power but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of

information collected finds that the property in question is a wakf property- There cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property. The finding of the Wakf Board is final, subject to the right of appeal under sub-section (2). Thus, any decision of the Board is required to be as a reasoned order which could be tested in appeal before the Wakf Tribunal. (Para 145)

Wakf Act, 1995- Section 40(3) Proviso - If a trust or society is already registered but the Board finds it to be Wakf, the statute contemplates notice to the authority. It does not mean that such trust or society is not required to be heard. The hearing to Trust or Society would also be as per the principles of natural justice. (Para 147)

Words and Phrases- Scope and meaning of the word "errata" discussed- "Errata" is a term of French origin which means a thing that should be corrected. It means a mistake in printing or writing - Errata is a correction of a mistake. Hence, only arithmetical and clerical mistakes could be corrected and the scope of the notification could not be enlarged by virtue of an errata notification, (Para 153-154)

Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952 - The Jurisdiction of the Atiyat Court would be limited to the disputes relating to Atiyat grants as defined in the Enquiries Act. (Para 165)

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J U D G M E N T

HEMANT GUPTA, J.

CIVIL APPEAL NOS. 10770 OF 2016, 10738 OF 2016, 10768 OF 2016, 10769 OF 2016, 10773 OF 2016, 10775 OF 2016 AND 10776-10777 OF 2016

1. The present appeals are directed against an order passed by the High Court of Judicature at Andhra Pradesh on 3.4.2012 (2012 SCC On Line AP 704) whereby the writ petitions challenging the Errata Notification dated 13.3.2006, published in the Official Gazette of the State of Andhra Pradesh on 6.4.2006 on behalf of Andhra Pradesh Wakf Board (For Short "Wakf Board"), were dismissed. The said notification reads thus:

"THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY
HYDERABAD, THURSDAY, APRIL 6, 2006

Part-I Notifications by Government Heads of Departments And other Officers

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ERRATA NOTIFICATION OF DARGAH NZT HUSSAIN SHAH VALI, MANIKONDA (V), RAJENDARANAGAR (M), R.R. DISTRICT

F. No. M1/69/PROT/RR/04 – In the Notification published in A.P. Gazette No. 6-A, dated 9-2-1989 at page No. 262 under Sl. No. 3057, 3058 and 3059 the service Inam lands attached to the subject institution were not notified. Hence the following addendum is notified.

ADDENDUM

For Column No. 10, 11 and 12	Read Column No. 10, 11 and 12
(10) Sy. No. –	(10) Sy. No. 59, 65, 71, 102, 185, 186, 187, 188
(11) Extent Dry ---	189, 190, 191, 192, 193, 194,
(12) Extent Wet -	196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 231, 232, 233, 234, 235,

236, 237, 240, 241, 242, 244, 246, 247, 249, 250, 251, 252, 254, 256, 256, 257, 248, 258, 259, 260, 263, 264, 265 and 266 of Manikonda (V) Rajendranagar (M) RR District attached to D. Hazrath Hussain Shah Vali (11) Total Extent Ac:- 1654.32 Gts

Hyderabad
13-3-2006

(Sd/-)
Chief Executive Officer"

2. The above Errata notification was challenged by the then State of Andhra Pradesh, now State of Telangana (For short, "the State") and the Andhra Pradesh (now Telangana) Infrastructure Development Corporation (For Short, "the Corporation") by filing Writ Petition No. 23578 of 2007 before the High Court. Civil Appeal No. 10770 of 2016 herein is preferred by the State against the order passed by the High Court in the said writ petition whereas the Corporation as transferee from the State of Andhra Pradesh in 1995 has filed Civil Appeal No. 10769 of 2016.

3. Civil Appeal Nos. 10776-10777 of 2016 have been preferred by a university to whom the State had transferred 200 acres of land situated in the village Manikonda on 18.3.1998 for the purpose of setting up of a University. Civil Appeal No. 10773 of 2016 is filed on behalf of transferee M/s Emaar Hills Township P. Ltd inter-alia on the ground that on 6.11.2002, the appellant and the Corporation had signed a Memorandum of Understanding setting out the principal terms and structure for the development of the Integrated Project situated at Manikonda village. The possession of land measuring 535 acres was handed over to such appellant on 29.11.2005 on which the appellant has developed a township. Writ Petition No. 4515 of 2008 was filed by Lanco Hills Technology Park Pvt. Ltd and Civil Appeal No. 10768 of 2016 arises out of the said Writ Petition. Civil Appeal No. 10768 of 2016 and Civil Appeal No. 10775 of 2016 have been filed on behalf of transferees of the Corporation. Civil Appeal No. 10738 of 2016 and Civil Appeal Nos. 10776-10777 of 2016 are directed against an order passed by the High Court in exercise of its revisional jurisdiction against an interim order passed by the Andhra Pradesh Wakf Tribunal (For Short, the "Wakf Tribunal").

4. The High Court vide the order under challenge also decided Writ Petition Nos. 17192, 20372 and 20614 of 2007 filed in public interest challenging the alienations made by the State or the Corporation. The High Court gave liberty to these writ petitioners to approach the Wakf Tribunal wherein suit filed by the Dargah Hazrath Hussain Shah (For Short, the "Dargah") is pending consideration. The Dargah had challenged the alienations made by the Corporation before the Wakf

Tribunal. The present appeals are thus filed by the State, the Corporation and the assignees from the State and/or Corporation.

A. Background of Hyderabad State and its Administration immediately prior to accession and soon thereafter.

5. At the time of Independence, the British gave rulers of the Princely States an option to join either of the two countries, India or Pakistan or to remain independent. His Exalted Highness "The Nizam of Hyderabad Mir Osman Ali Khan" (For Short, the 'Sovereign') declared his unwillingness to participate in the Constituent Assembly of both the countries on 11.6.1947. Thereafter, "Operation Polo" was initiated by the Indian Army which commenced on 13.9.1948. The Sovereign ultimately surrendered on 17.9.1948. The State of Hyderabad thereafter became part of the Union of India. Major General J.N. Choudary, the General Officer Commanding in Chief Southern Army was appointed to be the Military Governor for the Hyderabad State. The Sovereign issued a Farman (Also Firman - the "Royal order") on 19.9.1948 investing the Military Governor with the authority to administer the State which was published in the Extra-Ordinary Gazette on Aban 20, 1357 Fasli, i.e., 20.9.1948. On 7.8.1949, by another Farman, the Sovereign clarified that all authorities for the administration of the State would now vest with the Military Governor and that said authority included the authority to make Regulations as well. Such Farman reads thus:

"19.9.1948

Whereas the General Officer Commanding in Chief Southern Army has appointed Major General J.N. Choudary, O.B.E., to be the Military Governor for the Hyderabad State and whereas all authority for the administration of the State now vests in him, I hereby enjoin all the subjects of the State to carry out such orders as he may deem fit to issue from time to time. I appeal to all officers of the State administration and subjects of the State to render faithful and unflinching obedience to the Military Governor and conduct themselves in a manner calculated to bring about the speedy restoration of law and order in the State."

"7.8.1949

With reference to my farman dated 19-9-1948, in which I referred to the fact that all authority for the administration of the State now vests in the Military Governor, I hereby declare that the said authority includes and has always included authority to make regulations."

6. Subsequently, on 1.12.1949, another Farman was issued by the Sovereign appointing Mr. M.K. Vellodi, I.C.S. to be his Chief Minister and all the powers of

administration which were vested in the Military Governor before the said date were exercisable by the Chief Minister. The said *Farman* reads as under:

"1.12.1949

Whereas the General Officer Commanding in Chief Southern Army has as from 1st December, 1949, terminated the appointment of Major General Choudary, O.B.E., to be the Military Governor, for the Hyderabad State;

And whereas it is necessary to make other arrangements for the administration of the State as from the said date;

Now, therefore, I hereby appoint as from the said date Mr M.K. Vellodi, C.I.E., I.C.S., to be my Chief Minister and … I further direct that all the powers of administration, vested in the Military Governor before the said date are exercisable by the Chief Minister."

7. The Military Governor in exercise of authority vested on him by the Sovereign introduced the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (For Short, the 'Abolition Regulation) to abolish jagirs and to provide commutation and for payment of interim allowance to Jagirdars and Hissedars. The statute titled as Regulations was published in the Extra-Ordinary Gazette on 15th Mehir 1358 Fasli, i.e., 15.8.1949 AD. Later, the Chief Minister as Sovereign introduced the Andhra Pradesh (Telangana Area) Jagirs (Commutation) Regulation, 1359 Fasli (For Short, the 'Commutation Regulation') i.e. 25.1.1950 to determine the terms of commutation of jagirs after the termination of interim allowance payable under the Abolition Regulation. The President certified two Regulations, namely, Abolition Regulation and the Commutation Regulation under Article 31(6) of the Constitution, as then existed, by a notification published in the Gazette of Union of India. On 18.6.1951, Articles 31-A and 31-B and Schedule IX were incorporated and the Abolition Regulation and the Commutation Regulation were included in the Schedule IX. Thus, the above two Regulations shall not be deemed to be void or ever to have become void on the ground that the Regulations were inconsistent with or took away or abridged any of the rights conferred by any of the provisions of Part III of the Constitution.

8. The Hyderabad State had its last Nizam, His Exalted Highness Mir Osman Ali Khan as Rajpramukh from 26 January 1950 to 31 October 1956. The General Elections were held in Hyderabad State on 27.3.1952 after the adoption of the Constitution of India on 26.1.1950. It was thereafter that an elected Chief Minister took over on 6.3.1952 from Mr. M.K. Vellodi. The elected Chief Minister held the office till the creation of the State of Andhra Pradesh on 1.11.1956 by the States Reorganisation Act, 1956, when the Telugu-speaking region of the State of Hyderabad was merged with Andhra State, Marathi speaking region of Hyderabad

State was merged with Bombay State and Kannada speaking region with the Mysore State.

9. The validity of the Abolition Regulation and the Commutation Regulation also came up for consideration before a Constitution Bench of this Court in a judgment reported as **Sarwanlal** v. **State of Hyderabad (Now Andhra Pradesh) & Ors.**, AIR 1960 SC 862 wherein this Court held as under:

"11. Though by the delegation of authority, the Military Governor was invested with all authority of His Exalted Highness the Nizam in the matter of administration of the State in all its departments, the sovereignty of His Exalted Highness the Nizam was, by this act of delegation, undoubtedly not extinguished. It was open to him, notwithstanding the delegation, to issue orders or regulations contrary to those which were issued by the Military Governor, and also to withdraw the authority of the Military Governor. There is, however, no evidence on the record to show that after 19-9-1948, and before the Abolition Regulation was promulgated, the authority of the Military Governor was withdrawn or that His Exalted Highness the Nizam had issued any order or regulation inconsistent with the Abolition Regulation. The authority of the Military Governor was withdrawn in December 1949, and the Chief Minister was invested with the same authority of administration including expressly the power of legislation, and it was in exercise of that authority that the Chief Minister issued the Commutation Regulation.

12. The authority of His Exalted Highness the Nizam as the sovereign ruler to resume the jagirs and to extinguish the interests of the jagirdars being by delegation vested in the Military Governor, the legality of the action of the latter was not open to challenge on any test of legislative competence. Assuming that no opportunity had arisen for exercise of the sovereign authority in the matter of resumption of jagirs or extinction of the jagirdars' interests before the promulgation of the Abolition Regulation, an inference cannot therefrom arise that His Exalted Highness the Nizam had irrevocably placed a restriction on his sovereignty, or that the delegation to the Military Governor of the sovereign authority was subject to an implied restriction that the interests of the jagirdars in the jagirs could not in exercise of the authority be extinguished.

13. The authority of the Military Governor, being unrestricted, so long as it enured, his action in issuing the Abolition Regulation could not be challenged on the plea that it was a colourable exercise of legislative authority. The doctrine of invalidity of legislative provisions enacted in colourable exercise of authority applies to legislatures whose powers are subject to constitutional restrictions. When such a legislative body seeks, under the guise or pretence of complying with the restrictions, in enacting a statute, to evade or elude them, it is but a fraud on the Constitution, and the statute is liable to be declared invalid on the ground that the enactment is in colourable exercise of authority, the statute being in truth beyond the competence of the body. But a statute enacted by a legislative authority whose powers are not fettered by any constitutional or other limitations, cannot be declared invalid as enacted in colourable exercise of its powers.

14. The authority of the Chief Minister under the Farman dated December 1, 1949, in its amplitude, was as extensive as that of His Exalted Highness the Nizam and the Commutation

Regulation was not liable to be challenged on the ground of want of legislative competence or colourable exercise of legislative authority, the power exercised by him being the legislative power as the delegate of the Sovereign."

10. This Court also held that the two Regulations are exempted from any challenge on the ground that they are inconsistent with or violative of Part III of the Constitution. Thus, the Abolition Regulation and the Commutation Regulation are statutory, having been issued under the Farman of the Sovereign before the Constitution came into force on 26.1.1950.

11. A Constitution Bench of this Court in a judgment reported as **Sikander Jehan Begum v. A.P. State Govt,** AIR 1962 SC 996**.** held that Military Governor had all the authority for administration of the State and that such authority delegated to him included and shall always be deemed to have included the authority to make Regulations. The Military Governor exercised his delegated powers of legislation as in-charge of the administration of Hyderabad State on behalf of the Sovereign. This Court held as under:-

"6. It appears that after the Military Governor was put in charge of the administration of the State of Hyderabad, the Nizam issued a firman on 19-9-1948, delegating to the Military Governor all the authority for the administration of the State. Subsequently, by another firman he made it clear that the authority delegated to the Military Governor included and shall always be deemed to have included authority to make Regulations. This latter firman was issued on 7-8-1949. In due course, the Chief Minister took the place of the Military Governor and the Nizam issued a firman on 1-12-1949, whereby all the powers of administration delegated by him to the Military Governor were as from the date of the notification terminated and the said powers were delegated to the Chief Minister. That is how the Chief Minister was vested with all the powers of administration which the Nizam possessed.

7**.** When the Military Governor was in charge of the administration of Hyderabad State, he exercised his delegated powers of legislation and promulgated several Regulations. One of these was the Hyderabad (Abolition of Jagirs) Regulation, 1358-F. This Regulation came into force on 15-8-1949. Broadly stated, the effect of this Regulation was that all jagir lands were incorporated into State lands as from the appointed day and their administration stood transferred to the jagir Administrator who was to be appointed by the Government. The Regulation made necessary provisions for making cash payments out of the net income of the jagirs to the Jagirdar or Hissedars or maintenance holders. This arrangement was intended to serve as an interim arrangement pending the final disposal of the question about the commutation to be paid for the Jagirs. This Regulation was followed a few months later by the Hyderabad jagirs (Commutation) Regulation, 1359-F which came into force on 25-1-1950. By this Regulation, provision was made for the payment of compensation by way of the commuted value of the Jagir which had to be determined by the Jagir Administrator in accordance with the relevant provisions of the Regulation."

12. Thus, we reiterate that the Military Governor and subsequently the Chief Minister had all the legislative and executive powers as the Sovereign had prior to his surrender on 19.9.1948, till the Constitution came into force on 26.1.1950.

B. Background of Jagirs, Jagirdars and the Jagir Abolition Regulation.

13. The Hyderabad State was facing heat by insurgents on one hand and forces loyal to Sovereign on the other hand, even before 'Operation Polo' was conducted. The insurgency began in 1944-1945 in Nalgonda and Warangal districts known as the Telangana area, in the east of Hyderabad State. The Sovereign appointed a Royal Commission under the chairmanship of Sir Albion Rajkumar Banerji sometime in 1945 or 1946. One of the terms of reference was "the rights and obligations of Jagirdars vis-à-vis the State and the Ruler's subjects residing within their jagirs". In Chapter IV, the Commission dealt with the classification of Jagirs and their nature. The Jagirs were of four kinds according to the status of the holders and their powers of administration such as Paigahs; Ilaqas of the Premier Nobles; Samasthans; and Other Jagirs. The first three category of jagirs are not relevant for the purpose of present appeals.

1. In order to address the terms of reference, the Royal Commission suggested codification of the Atiyat (A grant, stipend, or an allowance) Law to decide all disputes relating to succession in case of a deceased Jagirdar by special courts called Atiyat Courts. It was thereafter, the Abolition and Commutation Regulations were enacted by the Military Governor and Chief Minister respectively under the authority of the Sovereign.

2. The other jagirs as mentioned in the Royal Commission were of two kinds such as the exempted (Mustasna) and non-exempted Jagirs (Ghair Mustasna). A Mustasna jagir was exempted from the Diwani jurisdiction. The power to declare a jagir as an exempted one or to take away the privileges from an exempted Jagir rested with the Sovereign. The Mashruti (conditional) and Ghair Mashruti (un-conditional) Inams were regarded as traditional jagirs. The conditional grants were usually conditioned by some service "Khidmat" or other, whereas the unconditional grants were those which were conferred as personal honors in recognition of merit or past services rendered by the grantee or his family.

3. The jagirs according to their nature fall in eight categories. The one that is relevant for present appeal is Madad Mash (personal grants conditioned by maintenance), intended for the maintenance of the holder and his family. The jagirs were either given in perpetuity or for the lifetime of the grantee. After the death of each holder, an inquiry was conducted to determine the next successor.

All disputes relating to succession of a deceased jagirdar were decided by Atiyat Courts. A Gashti (Circular) No.19 of 1332 Fasli (19.3.1923) constituted a Directorate of Atiyat (crown grants) to enquire and speedily dispose of disputes according to the procedure in the courts of law under the revenue department. But revenue department continued to discharge its respective duties for the rest of the work. The judicial matters which raised serious issues between the parties involving the legal rights were to be taken out of the hands of the administrative machinery and had to be dealt by the Directorate of Atiyat under judicial procedure. Subsequently Circular No. 10 of 1338 F (1928) was issued which was repealed by Section 15 of the Atiyat Enquiries Act (Source- AIR 1956 SC 319).

14. One of us, Justice V. Ramasubramanian as a Judge of the Andhra Pradesh High Court traced the history of questions relating to land disputes in a judgment **Raj Kishan Pershad and Ors.** v. **Joint Collector-I and Ors.**, (2018) 6 ALT 79 (DB)**.** The High Court noted that the Abolition Regulations were enacted in the year 1949, but they did not provide solace to the peasants. Therefore, an Agrarian Reforms Committee was set up in 1949 to examine the problem and to suggest remedies. It was held as under:

"93. The lands in the erstwhile Hyderabad State (part of which has now become Telangana), were broadly divided into two groups namely (1) lands under the direct management of the Government, the revenue from which went to the Government treasury (these lands were called Diwani or Khalisa lands); and (2) the lands, the revenue of which was wholly or partially assigned for some special purpose.

94. The lands of the second category were further sub-divided into (i) Sarf-e-Khas lands, which formed part of the Nizam's property and which merged in Diwani in February, 1949 and (ii) lands that were the subject of State grants and the revenue from which has been assigned wholly or partially as Jagir or Inam in favour of some persons.

101. The Agrarian Reforms committee made its recommendations, which were accepted by the Government headed by Mr. M.K. Vellodi and an Act known as Hyderabad Tenancy and Agricultural Lands Act, 1950 was passed. This Act was described by some economists and policymakers as having taken the lead in Land Reforms in independent India……."

15. The Abolition Regulation came into force on 15.8.1949 when it was published in the Official Gazette. Section 4 abolished Jagirdars on commencement of the Act whereas the transfer of jagir to Government for administration of jagirs was contemplated by Section 5 of the Act. The jagirdar was to handover the management of the jagirs to the Jagir Administrator under sub-section (2) of Section 5. In terms of Section 6 of the Act, the jagir shall be included in the Diwani from the appointed day and all powers, rights and liabilities of the jagirdar in relation to the jagirs would cease to be exercisable and enforceable by or against

the Jagirdar and could only be done by/against the Jagir Administrator. The relevant provisions of the statute as part of agrarian reforms read thus:

"THE A.P. (T.A.) (ABOLITION OF JAGIRS) REGULATION, 1358 F.
No. LXIX of 1358 F

PART – I
PRELIMINARY

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(f) Jagir" includes a Paigah, Samasthan part of a jagir, village Muktham village Agrahar, Umli and Mukasa whether granted by a Ruler or a Jagirdar, and, as respects the period commencing on the date appointed for a Jagir under Section 5, means the estate therefore constituting a Jagir.

(g) "Jagir Administrator" means the Jagir Administrator appointed under sub-section (1) of Section 3 and, subject to the rules under this Regulation referred to in sub-section (2) of Section 3. All references to the Jagir Administrator shall be read as including a reference to an Assistant Jagir Administrator;

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3. **Appointment of Jagir Administrator** :-- (1) The [Government] shall appoint a Jagir Administrator and as many Assistant Jagir Administrators as he considers necessary for the due administration of this Regulation.

xxx xxx xxx

4. Appointment of Jagirdars to cease: - After the Commencement of this Regulation, no person shall be appointed to be, or be recognised as, a Jagirdar whether in succession to a deceased Jagirdar or otherwise.

PART – II
TRANSFER OF ADMINISTRATION AND THE CONSEQUENCES THEREOF

5. Appointment of dates for transfer of Administration: - (1) As soon as may be after the commencement of this Regulation; the Government shall appoint a date for the transfer to the Government of the administration of jagirs and may appoint different dates for different jagirs.

(2) On the date so appointed any jagir (hereinafter referred to as the appointed day) the Jagirdar shall make over the management of the jagir to the jagir Administrator and shall furnish him with an account of the revenue received and expenditure incurred on account of the jagir in the current, or, if Jagir Administrator so requires, in the immediately proceeding year of account, in so far as such revenue and expenditure are attributable to that year.

xxx xxx xxx

6. Powers, rights and liabilities as from the appointed day: - As from appointed day-

(1) The jagir shall be included in the Diwani and unless and until included in a district constituted under [the Andhra Pradesh Telangana Area Land Revenue Act, 1317 F] shall be administered by the Jagir Administrator;

PART – IV
MISCELLANEOUS

xxx xxx xxx

16. Special provision for Jagirs granted to temples, etc: - The provisions of this Regulation shall apply so far as may be to any jagir granted to a temple or mosque or to any institution established a religious or public purpose.

Provided that in the case of such jagir-

(a) the percentage of the gross revenue to be paid to Government shall, notwithstanding anything contained in Section 8, be such percentage not exceeding ten as the Government may by notification in the Official gazette direct either generally or in respect of a particular jagir or a particular class of jagirs:

(b) the distribution or application of the net income shall be effected in accordance with the rules made under this Regulation which shall be so framed as to respect so far as possible the wishes of the grantor and to be in consonance with custom and usage."

16. The Commutation Regulation came into force on 25.1.1950 providing commutation of the amount of maintenance after termination of the interim allowance payable in terms of Section 14 of the Abolition Regulation. The relevant extract from the said statute reads thus: -

"THE A.P. (T.A.) JAGIRS (COMMUTATION) REGULATION, 1359 F.
NO. XXV OF 1359 F.

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10. Special Provision for jagirs granted for the support of service of Religious and Charitable institutions.

(1) The provision of this Regulation shall apply so far as may be, to any jagir granted-

(a) in the name or for the support of any religious or charitable institution; or

(b) to any person for the purposes of any service or, charity, such service or charity being of a public nature connected with any religious or charitable institution.

(2) The Government shall pay to the institution every year commencing from the 1st April 1950 for the service of the institution, so long as it exists-

(i) in the case mentioned in clause (a) of subsection (1) an amount equivalent to 90 percent of the gross basic sum referred to in Section 4; and

(ii) in the case mentioned in clause (b) of subsection (1) an amount equivalent to 50 percent of the gross basic sum referred to in Section 4.

The person referred to in clause (b) of sub-section (1) shall thereupon stand release of the liability to render any service or charity, but shall be entitled to receive a commutation sum as may be determined under this Regulation.

(3) The application of the amounts paid to a religious or charitable institution under sub-section (2) shall be effected in such manner as may be prescribed.

Explanation :-- In this section-

(a) "religious institution" means any religious establishment such as temple, shrine, mosque, darga or the like with a specific location and known address which is dedicated to, or used as of right by, the general public or any community or section thereof as a place of public religious worship;

(b) "charitable institution" means by charitable establishments, with a specific location and known address which is dedicated to, or for the benefit of, or used as of right by, the general public or any community, or section thereof, for any pious, charitable or philanthropic purpose.

17. Thus, by the Abolition Regulation, all jagir lands were incorporated into the State lands and the administration of all the jagirs was to be transferred to a Jagir Administrator who had to be appointed by the Government (as per Sections 5 and 6). The statute provided for interim maintenance allowance until commutation for jagirs was determined (Section 14). From that date, the Jagirdars or Hissedars or maintenance holders were only to get cash payments out of the net annual income of the jagirs worked out in accordance with the provisions of that Regulation (Section 6). It was specifically provided that if a Jagirdar or Hissedar dies, his share in the net income shall devolve in accordance with his personal law (Section 6(8)), abrogating thereby the previous law that the succession to the jagir depended entirely on the recognition or regrant thereof by the Nizam. Such share however was not alienable without previous sanction of Government (Section 6(7)). Thus, in effect, the original jagir tenure as such was abolished and under these Regulations, a hereditary but inalienable personal right to receive a portion of the net income thereof by way of interim maintenance was substituted.

C. The Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952

18. The Hyderabad Atiyat Enquiries Act, 1952 (For Short, the "Enquiries Act") was published in Gazette No. 21 on 14th March 1952. Later, some amendments were carried out by the Hyderabad Atiyat Enquiries (Amendment) Act, 1956 (Act No. XXVIII of 1956). Such amending Act was published on 5th September 1956. The title of the Act now stands as The Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952. The relevant provisions for the purpose of the present appeals read thus:

"(1) In this Act unless there is anything repugnant in the subject or context-

(a) "Atiyat Court" means a Court or authority competent to make Atiyat enquiries and enquiries as to claims to succession to and any right, title or interest in Atiyat grants and matters ancillary thereto;

*[(b) “Atiyat grants” mean-

(i) in the case of jagirs abolished under [the Telangana (Abolition of Jagirs) Regulation, 1358F.] the commutation sums payable in respect thereof under [the Telangana Jagirs (Commutation) Regulation, 1359 F.];

(ii) inams to which [the Telangana Abolition of Inams Act, 1954] is not applicable;

(iii) in the case of inams abolished under [the Telangana Abolition of Inams Act, 1954] the compensation payable under that Act;]

xxx xxx xxx

(c) “Muntakhabs and Vasiqas” means documents issued by competent authorities as a result of Inam or succession enquiries held under the Dastoorul- Amal Inams or other Government orders on the subject and issued by way of continuance or confirmation of Atiyat grants;

(d) “Holding an Atiyar grant” means the enjoyment of the Atiyat grant on the basis of a Muntakhab, a Vasiqa or any order of a competent authority;

General Provisions as to Atiyat Grants.

2. All Atiyat grants shall, subject to provision of [the Telangana (Abolition of Jagirs) Regulation, 1358F.], the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952) and [the Telangana Abolition of Inams Act, 1954], continue to be held by the holders thereof subject to the conditions laid down in the Muntakhabs or Vasiqas, if any, relating thereto and to the provisions of this Act.

3. *[Continuance of Atiyat grants:- All Atiyat grants shall, subject to the provisions of the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358 F., the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952) and the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1954 continue to be held by the holders thereof subject to the conditions laid down in the Muntakhabs or Vasiqas, if any, relating thereto and to the provisions of this Act.

3-A. (1) In the case of Atiyat grants specified in subclause (i) of clause (b) of sub-section (1) of section 2, Atiyat enquiries and enquiries as to any right, title or interest therein shall, notwithstanding anything contained in [the Telangana (Abolition of Jagirs) Regulation, 1358 F.], be held in Atiyat Courts in accordance with the provisions of this Act, and in the course of such Inquiries, Atiyat Courts shall also be competent to enquire into claims to succession arising in respect of such grants:

Provided that claims to succession arising after the completion of Atiyat Enquiry of any such grant shall not be entertained in any Atiyat Court and all such claims shall be filed in and decided by the competent Civil Court.

(2) In the case of Atiyat grants specified in subclauses (ii) to (vi) of clause (b) of sub-section (1) of section 2, all Atiyat enquiries, enquiries as to claims to succession to, or any right, title or interest therein and matters ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act.]

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Constitution of Atiyat Courts, their jurisdiction and procedure.

12. *[(1)] In so far as questions of succession, legitimacy, divorce or other questions of personal law are concerned, the final decision of a Civil Court shall be given effect to by the Atiyat Court established under this Act on the decision being brought to its notice by the party concerned or otherwise irrespective of whether the decision of the Atiyat Court was given before or after the decision of the Civil Court.

[(2) If in the course of any Enquiry as to claims to succession, any dispute arises involving questions of succession, legitimacy, divorce or other questions of personal law, the Atiyat Court shall direct the parties to get the dispute decided in the competent Civil Court. On the production of the final decision of the Civil Court, the Atiyat Court shall give effect to such decision.]

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*[16. The provisions of this Act, shall cease to be applicable-

(a) to an Atiyat grant specified in sub-clause (i) of clause (b) of sub-section (1) of section 2 when the commutation sum has ceased to be payable;

(b) to an Atiyat grant specified in sub-clause (iii) of clause (b) of sub-section (1) of section 2, when the compensation has ceased to be payable;

(c) to an Atiyat grant specified in sub-clause (v) of clause (b) of sub-section (1) of section 2, when such grant has ceased to continue;

(d) to an Atiyat grant specified in sub-clause (vi) of clause (b) of sub-section (1) of section (2), when the compensation has ceased to be payable].

* Substituted by Act No. XXVIII of 1956 ”

22. This Court in **Raja Ram Chandra Reddy & Anr.** v. **Rani Shankaramma & Ors.**, AIR 1956 SC 319 was considering the question of title to the grant or recognition by the Sovereign according to Atiyat Law of Hyderabad. It was held that the original jagir tenure was abolished and from the time of commencement of the Abolition Regulation, the Jagirdars or Hissedars or maintenance holders were only to get cash payments out of the net annual income of the jagir worked out in accordance with the provisions of Section 6. The share of Jagirdar or Hissedar after his death, shall devolve in accordance with his personal law, abrogating thereby the previous law that the succession to the jagir right depended entirely on the recognition or regrant by the Nizam. The question examined therein was as to whether the order of Chief Minister was protected by sub-clause (2) of Section 13 of the Enquiries Act having been passed by the Sovereign under his authority. This Court held as under:

"5. The police action in Hyderabad took place in September, 1948. After its termination a series of legislative measures were enacted by the Military Governor by virtue of power conferred on him by a Firman of the Nizam dated 20-9-1948.

One of these measures is the Hyderabad (Abolition of Jagirs) Regulation, 1358F. (Regulation No. LXXIX of 1358 F.) which came into force on 15-8-1949. By this Regulation, broadly speaking, all Jagir lands were incorporated into State lands as from the appointed day and the administration of all the Jagirs was to stand transferred to a Jagir Administrator to be appointed by the Government (Sections 5 and 6).

From that date the Jagirdars or Hissedars or maintenance holders were only to get cash payments out of the net annual income of the Jagirs worked out in accordance with the provisions of that Regulation (S. 6). This was to be by way of interim maintenance allowance until commutation for Jagirs is determined (S. 14).

It was specifically provided that if a Jagirdar or Hissedar dies, his share in the net income shall devolve in accordance with his personal law (S. 6(8)) abrogating thereby the previous law that the succession to the Jagir right dependent entirely on the recognition or regrant thereof by the Nizam. Such share however was not alienable without previous sanction of Government (S. 6(7)).

It was also provided after the commencement of the Regulation no person shall be appointed to be, or be recognised as, a Jagirdar whether in succession to a deceased Jagirdar or otherwise (S. 4). *Thus in effect the original Jagir tenure as such was abolished and under this Regulation a hereditary but inalienable personal right to receive a portion of the net income thereof by way of interim maintenance was substituted*. ……"

D. The Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955.

23. The Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (For Short "the Inams Abolition Act") was enacted for abolition of inam lands gifted or given by way of grant by the Sovereign or by a jagirdar etc. Some of the relevant provisions from the Inams Abolition Act read thus:-

"The Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955
(Act No. VIII of 1955)

CHAPTER I
Preliminary

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(c) "inam" means land held under a gift or a grant made by the Nizam or by any Jagirdar, holder of a Samsthan or other competent grantor and continued or confirmed by virtue of a muntakhab or other title deed, with or without the condition of service and coupled with the remission of the whole or part of the land revenue thereon and entered as such in the village records and includes-

(i) arazi makhta, arazi agrahar and seri inam; and

(ii) lands held as inam by virtue of long possession and entered as inam in the village records:

Provided that in respect of former Jagir areas, the expression inam shall not include such lands as have not been recognised as inams by the Government after the abolition of the Jagirs.

(d) "inamdar" means a person holding an inam or a share therein, either for his own benefit or in trust and includes the successor in interest of an inamdar, and (i) where an inamdar is a minor or of unsound mind or an idiot, his lawful guardian;

(ii) where an inamdar is a Joint Hindu family, such Joint Hindu family;

CHAPTER II
Abolition and vesting of inams and the consequences thereof

Section 3. Abolition and vesting of inams and the consequences thereof :--(1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams *[to which this Act is made applicable under sub-section (2) of section 1 of this Act] shall be deemed to have been abolished and shall vest in the State.

*[Omitted by Amendment Act No. 29 of 1985]

(2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting the following consequences shall ensue, namely:

(a) the provisions of the Land Revenue Act, 1317 Fasli relating to inams, and the provisions of the Andhra Pradesh (Telangana Area) Atiyat Inquiries Act, 1952, Act X of 1952 and other enactments, rules regulations and circulars in force in respect of Atiyat grants shall, to the extent, they are repugnant to the provisions of this Act, not apply and the provisions of the Land Revenue Act, 1317 Fasli, relating to unalienated lands for purposes of land revenue, shall apply to the said inams;

[Amended by AP Act IX of 1961]

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(3) Nothing contained in sub-sections (1) and (2) shall operate as a bar to the recovery by the inamdar of any sum which becomes due to him before the date of vesting by virtue of his rights as inamdar and any such sum shall be recoverable by him by any process of law, which, but for this Act, would be available to him.

CHAPTER III
Determination, Apportionment and Payment of Compensation

Section 12. Determination of compensation payable to the inamdar :-- The compensation payable to the inamdar for the inams abolished under Section 3 shall be the aggregate of the sums specified below:--

(i) in respect of inam lands registered in the name of the inamdar and kabiz-e-kadim under Sections 4 and 5, a sum equal to twenty times the difference between land revenue and judi or quitrent;

(ii) in respect of income accruing to the inamdar from the lands registered in the names of his permanent tenant, protected tenant and nonprotected tenant a sum equal to sixty per cent of the premium charged, as the case may be, under Sections 6, 7 and 8.

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Section 15. Payment of compensation:-- (1) The compensation shall be due as from the date of vesting and shall carry interest at the rate of two and threefourths per cent per annum from the date of vesting to the date of payment.

(2) The compensation payable under this Act may, in accordance with rules made in this behalf, be paid in one or more of the following modes, namely:-

(i) in cash in full or in annual instalments not exceeding ten;

(ii) in bonds either negotiable or not negotiable carrying interest at the rate specified in subsection (1) and of guaranteed face value maturing within a specified period not exceeding ten years.

E. Historical background of Wakf in the context of State of Hyderabad.

24. Justice S.I. Jafri in his book "Waqf Laws in India" published in 2015 has explained that a Waqf is an unconditional and permanent dedication of property with implied detention in the ownership of God in such a manner that the property of the owner may be extinguished and its profit may revert to or be applied for the benefit of mankind, except for purposes prohibited by Islam. The following are some of the characteristics of a Wakf:

"4. Essential requisites of a waqf. – Under the Muslim law a waqf means dedication by a person embracing the Muslim faith of any property for any purpose recognised by the Muslim law as religious, pious or charitable. The dedication must be permanent and by the owner of the property who by reason of such dedication of the property should divest himself of such property and hand over the possession thereof to the mutawalli. (Durr., 333; Prince of Arcot Endowments Estate v. Ponnuswami Nattar, A.I.R. 1955 N.U.C. 3924 at p. 3925 (Mad.).; Mofizuddin Howlader v. Abdur Rashid, (1983) 34 Dhaca Law Reports 36 (S.C.)).

It is a settled position of law with regard to the Waqfs that the Waqfs may be divided into two classes, i.e. (1) public and (2) private. A public Waqf is one for a public, religious or charitable object. A private Waqf is one for the benefit of the settlor's family and his descendants, and is called Waqf-alal-aulad. At one time, it was considered that there must be a dedication of the property to constitute a valid Waqf solely to the worship of God almighty him or for religious or charitable purposes. (Mian Sahataz Pir v. Sk. Ahmed, 2013 (1) O.L.R. 898 at p. 904 (Orissa)).

The Waqif got himself divested of the property, the moment waqfnama was executed and registered and named himself as mutawalli as before his death he used to spend money for religious purposes recognised by the Muslim Law, such as, sending persons for Haj, incurring expenditure for burial of poor Muslim persons and also for conversion. (Assam Board of Waqf v. Khaliquor Rahman, 1994 (1) Civil L.J. 684 p. 692 (Gau.):1994(1) G.L.R. 28 at p. 29.)

The property whether movable or immovable must belong to the waqf. A waqf is void for uncertainty. The waqf can be created vivos of by a deed or by a will and if it is created by a deed and the property is immovable, and worth more than Rs. 100/-, it has to be registered. A waqf can be revoked only if it is made by a will and such revocation must be any time before death of a waqif. As soon as the waqf is created, the property at once passes to the God and neither it can be revoked nor the God can be divested from the property and the waqf, even if there is any subsequent breaches of the terms of the waqf or abuse by the mutawalli of his office. It is also immaterial whether provisions of the waqf are carried out or not for that it is a matter of breach of trust only. It is also immaterial whether in case of immovable property whether the property was mutated in the name of waqf or personal name of the mutawalli in the revenue record. (Assam Board of Waqf v. Khaliquor Rahman, 1994 (1) Civil L.J. 684 p. 692 (Gau.):1994(1) G.L.R. 28 at p. 29.)"

25. There was no particular law dealing with Wakf or management of Wakf property prior to enactment of The Wakf Act, 1954 (For Short "the 1954 Act") in the erstwhile area governed by the Sovereign. The Hyderabad Endowment Regulations Endowment Regulations) were sanctioned by the Sovereign on 16th Shahban 1358 Hijri (1349 Fasli and 1940 AD) and the same were also published in the Government Gazette (Volume 71, M 6). The said Regulations were in respect of management and security of endowed property which was included in the duties of the Government. The relevant extract from such Regulations reads thus:

"Whereas the management and security of endowed property is included in the duties of Government therefore it is felt necessary that some principle should be adopted so that these duties may be discharged conveniently and efficiently and the intention of the person endowing the property that humanity should be benefited through the endowed property may be realized. Therefore the following rules are framed:-

1. These regulations will be known as "Endowment Regulations" and will come into force throughout the dominions of H.E.H. from the date of publication in the Gazette (Jarida Alamia).

Definitions.

2. Unless there be something repugnant in the subject or context.

Endowment: With the exception of the property coming under the description of estate subject to the condition of service (Maash Mashruthul Khidmath) every transfer of property which any person may have made for religious purpose or for purposes of charity or public utility will be called "Endowment".

Endowment Property: The property which is transferred in this way will be called "Endowed Property."

Endower: The person transferring the property in this way will be called the "Endower" (Vaqif).

Kitab-ul-Avkhat (Book of Endowment): Means every such register in which all the estates or properties endowed under this Act are entered.

Maash Mashruthul Khidmat (Estate Subject to the condition of service): Means the estate which has been conferred by the Ruling Sovereigns or the Governments of the time for religious purposes or for purposes of public utility and which has been held by Government in the department concerned as subject to the condition of rendering of service.

Kitab Maash hai Mashruthul Dhidmath (sic Khidmat) (book of estates subject to the condition of service): Means the register in which estates subject tit e condition of service under this Act are entered"

26. Rule 445 of the Rules relating to Endowment promulgated and published in the Government Gazette (Volume 77, M 45) in terms of Section 16 of the abovesaid Act reads thus:

"445. Grants subject to the condition of service being royal grants will not be regarded as endowed property nor can proceedings be adopted for registration with regard to them.

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447. The institution connected with the conditional Grant (Mash) to be regarded as endowed

i. Estates subject to the condition of service relating to the Institution connected with the conditional grants (Mash) will he regarded as endowed and proceedings will be adopted in accordance with these rules for entering the said estates in the Book of Endowments.

ii. Whatever other properties there may be connected with the institution they will all be regarded as endowed and proceedings will be adopted according to these rules for their being entered in the book of endowments."

27. Section 69 of the 1954 Act as was originally enacted repealed The Bengal Charitable Endowments, Public Buildings and Escheats Regulations, 1810 (Bengal Regulation XIX of 1810), Section 5 of the Religious Endowments Act, 1863 (XX of 1863), The Charitable Endowments Act, 1890 (VI of 1890), The Charitable and Religious Trusts Act, 1920 (XIV of 1920) and The Mussalman Wakf Act, 1923 (XLII of 1923). Thus, these Acts would not be applicable to any Wakf to which the 1954 Act was made applicable. Sub-section (2) contemplates that if immediately before commencement of the Act, in any State, there is in force any law which corresponds to this Act, such law shall stand repealed.

28. By Central Act No. 34 of 1964, clause (ii) was modified in Section 3(l) of the 1954 Act. The definition of Wakf after such amendment reads thus:

(l) "wakf" means the permanent dedication by a person professing Islam [or any other person] 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;

(ii) grants (including Mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;…"

29. The 1954 Act was then amended in 1984 (Amending Act No. 69 of 1984) but none of the provisions of the said Act were notified to come into force. Hence, the amendments made by such Act never became effective as part of the 1954 Act.

30. The 1954 Act was later repealed by the Wakf Act, 1995 (For Short "1995 Act") and thereafter amended by The Wakf (Amendment) Act, 2013. Since the issues in the present matter pertain to the period prior to 2013, the relevant statutory provisions as were then in existence and as stated to be applicable in the present appeals by the learned counsel for the parties, are reproduced as under:

"3. **Definitions**- In this Act, unless the context otherwise requires-

(c) "Board" means a Board of Wakf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Wakf Board established under section 106;

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(g) "list of wakfs" means the list of wakfs published under sub-section (2) of section 5;

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(k) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes—

xx xx xx

(p) "Survey Commissioner" means the Survey Commissioner of Wakf appointed under sub-section (1) of Section 4 and includes any Additional or Assistant Survey Commissioners of Wakfs under sub-section (2) of Section 4;

(q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of Section 83, having jurisdiction in relation to that area;

(r) "wakf" means the permanent dedication by any person, 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;

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

(iv) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and "wakif" means any person making such dedication;

4. **Preliminary survey of wakfs** – (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of wakfs and as many Additional or Assistant Survey Commissioners of wakfs as may be necessary for the purpose of making a survey of wakf in the State.

(2) All Additional and Assistant Survey Commissioners of Wakf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(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 or any part thereof, to the State Government containing the following particulars, namely:—

(a) xxx xxx

(4) xxx xxx

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

5. Publication of list of wakf. – (1) On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakf or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

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32. **Powers and functions of the Board**. – (1) Subject to any rules that may be made under this Act, the general superintendence of all wakf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

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(h) to take measures for the recovery of lost properties of any wakf;

xx xx xx

(m) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;

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40. **Decision if a property is wakf property**. – (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such enquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under subsection (1) shall, unless revoked or modified by the Tribunal, be final.

(3) xxx XXX

(4) xxx xxx xx xx xx

105. **Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished**.– Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

F. Facts leading to the present appeals.

i) Order of Nizam Atiyat Court

31. In the present matter, one Akbar Husaini sought an inam Inquiry to the maash (Also Mash - "the property or the grant") of Jagir villages including the village Manikonda on 12th Ardibehisht 1333 fasli (17.3.1923). Akbar Husaini again submitted a plaint on 9th Amardad 1336 Fasli (15.6.1926) after Syed Akbar Husaini was asked to submit plaint on 29th Khurdad 1336 F (4.5.1926). Jagir village of

Manikonda was claimed to be a maash land. Nizam Atiyat decided such Inquiry on 31.5.1957 in File No. 2/56. This is the document which is the primary basis of claim of the Wakf Board. The relevant extract from the order reads thus:

"Order

The arguments of the parties and the Government Pleader were heard on 9th April, 1957.

The plaint of Akbar Husaini filed on 9th Amardad, 1336 F claims confirmation of the following mashes as service maash of Dargah of Hazrat Husain Shah Wali:-

1. Gontapalli Village

2. Manikonda Village

3. Rayadurg Village (half) Known as Maoza Dargah Shareef

4. Makhta and Arazi Inam Shekhpet village Survey Nos. 320, 324 acres, 3 guntas

5. Arazi Inam (Khankash in Qila Mohammadnagar 3 acres Rs. 10/-

An Uzardari was filed by Ahmedullah Husaini on 12-2-37 alleging that the maash was not Mashrut, but only zar-khareed and hence the shareholders were entitled to sharaee shares in the maash.

In view of the facts of the case and the pleadings of parties the following issues require a decision:-

1. Is the grant of jagirs and other maash covered by valid sanads and can these be confirmed as Mashrutul khidmat maash in the name of the present claimant (incidentally, it will have to be examined how far the contention of the Hzardars in respect of the nature of the maash, being zar-khareed is tenable).

2. Possession and enjoyment of the claimants over the maash.

3. The relationship of the present claimants and objection petitioners to the original grantee.

4. The relief to which the respective parties are entitled.

ISSUE NO.1: Jagir villages

(a) Gontapalli village ……..

(b) MANIKONDA: The petitioner relies mainly on the marginally noted documents# and orders in support of his claim for this village as a Mashrut Jagir conditional on service to Dargah.

1. Copy of Ehkam of Nawab Mukhtarul-Mulk dated 1249.

2. Letter of H.S. No. 75 dated 14th Azur, 1308F.

3. Letter of Daftar-e-Mal 2 of 13th Azur, 1320F, in verification of the No.1.

4. Ehkam of Nawab Mukhtarul-Mulk dated 16th Rabiul-Awal 1275 H. regarding Guntapalli.

It should also be noted that the inam Enquiry of this village was conducted in Diwani and after completion of proceedings an Inam Statement was prepared by the First Taluqdar on 19th

Amardad, 1320 Fasli for sanction of higher authorities. But on account of controversy between Diwani and S.K.[23] on the question of jurisdiction no final decision was recorded on the statement. *In the Enquiry in Diwani Atiyat Courts this village Manikonda was recommended to be confirmed as a Mashrutul-khidmat jagir for services to the Dargah in the name of the Sajjada of the time, Syed Akbar Husaini. But since the question of confirmation is now before this Court it is necessary to examine the evidence and record with a view to arrive at an independent decision on the question of the nature of maash namely whether it was granted as a Mashrut maash or was a zar-khareed property.*

xxx xxx xxx

..... The Ahkam dated 16th Babul-Awal, 1275 H in respect of the grant of Gontapalli jagir clearly mentions Manikonda Jagir as conditional on Ood-u- Gul[24]. Hence there is no strength in the contention that the Jagir Manikonda was self-acquired property and not an Atiya Shahi grant. Whatever may have been the nature of the maash when it was acquired, it was converted into, and was confirmed as a conditional Atiya Shahi Grant and treated as such by competent Atiyat authorities of the time. Hence, *I entertain no doubt as to the nature of the Jagir Manikonda being a Mashrut atiya shahi grant for the service of Dargah of Husain Shah Wali. The kaifiat jagirdaran mentions this village as conditional jagir*. The Firman of the Nizam dated 14th Azur, 1378 Fasli and 1st 23 "Sarfe Khas- private property of Sovereign" 24 Incense and flowers Ramzan, 33 H also confirmed this jagir as a conditional jagir for the service of Dargah.

The fact that the jagirs were mortgaged to Hasan Bin Mohsin on 1st Rajab, 1296 H with the sanction of Nawab Viqarul-umara Ameer-e-Kabeer[25] also confirms the conditional nature of the maash. Otherwise, no permission of the Madarul Maham was necessary if the property was zar-khareed as alleged.

xxx xxx xxx

As regards the issue no.2 regarding possession over the village of Guntapalli and Manikonda etc. and the lands in Shaikpet and Rayadrug etc. it is established from records since a long time. The jagir villages and other properties have also been the subject of prolonged litigation between the qabiz and hissedars in the civil and Atiyat Courts, ever since the of Mukhtarulmulk Bahadur. In recent years the jagirs were under the supervision of a committee appointed by S.K. from 1343 to 1348 F on the death of Syed Akbar Husaini and thereafter it was under C.W.[26] until it was released from the C.W. only in 1956 through letter No. 545 dated 29-5-56. Hence the maash is confirmed as follows:

1. Villages Manikonda and Guntapally with all items of Revenue inclusive of Excise as conditional on service to Dargah.

2. xxx xxx xxx.

Issue No.3 :- The Shijra or family tree as filed by the parties in the case and given in the summary of the case above is admitted by all parties. Their respective shares in the 1/3rd

Biradari portion Mashrut-ul- Khidmat maash viz., jagir village of Guntapally and Manikonda shall be worked out separately and form part of the Munkhab to be issued in this case. The rest of the property shall be considered as madud Maush and governed by and the parties shall be entitled to (legal) shares therein according to Siham-e- Sharai. *The claimants Syed Shaha Safirulla Hussaini as Sajjada and the performer of the service to the Dargah Sahrif shall be entitled to 2/3 rd according to Sula-o-Sulsan Rule in the Mashrut-ul-Khidmat jagirs and his sharia share in the other Maqtaas and Inam lands, subject to the Abolition of jagirs and commuta- 25 Minister 26 Court of Wards tion Regulation 1358 F and the Abolition of Inams Act 1954*.

(Emphasis supplied)

xxx xxx xxx"

32. The above order had a reference to an order passed by the Chief Minister, notified on 29.5.1956. The said order reads thus: -

"No. 545

Dated: 29.5.56

BY ORDER OF CHIEF MINISTER

The estate of late Syed Akbar Husaini was taken under supervision of Sarf Khas Court of Wards in 1349F. The sources of this estate were as follows:-

1. Manikonda village | situated in Hyd.

2. Darghah Sharif village | west Taluk

3. Inam lands at Shaikhpet and at Mohd.

nagar fort.

4. Patta lands at illegible village of Bidar Taluk.

5. Patta lands at illegible village of Kalabgore Taluk.

6. Makta illegible (Raidrug village) Hyd. West Taluk.

The village No.1 and 2 have been handed over to the Government due to the abolition of Jagirs. As commutation of the said Jagirs, Jagir Administration's Office was sending amounts to the extent of the share of the dependents of the estate to this office and the rest to the Muslim Waqf Board, towards the service expenses of Darghah known as Hussain shah Wali.

There are several dependents in this estate. Inam and succession Enquiry is pending in the Atiyat Court. The heirs of the deceased Sajjada Syed Akbar Hussaini are as follows:

1. Syed Safiullah Hussaini son.

2. Syed Nademullah Hussaini, son.

3. Fati funnia Begum mother of No.2.

4. Fatima Bi mother of No.1.

5. Mahoob Sahed Bi daughter of No.2

No.2 and 3 have migrated to Pakistan. Apart from the above persons, the other dependents were paid their Guzara from the income of the estate.

The properties were meant for the service of the Darghah Hussain Shal Wali and the maintenance of the late Sajjad's family and the other dependents. The affairs of the Darghah are being managed by Muslim Waqf Board. Until the Inam and succession Enquiry case is decided finally by the Atiyat Court, it cannot be said whether the Inam lands also come under the purview of service Inam or not.

The patta lands can be deemed as personal properties of the late Sajjada, which can devolve on his sons and widows. Syed Safiullah Hussaini has passed the age of majority and he is now 23 years old. He can manage the personal properties and own approach the Atiyat Court to get the Inam and succession case decided.

In view of the above reasons, the estate and person of the Ward No. 1 and released from the Court of Wards supervision. Patta lands are released in favour of Syed Safiullah Hussaini and the maintenance of his mother, niece and others will be a charge on him.

The cash balances of the estate will be kept in deposit with this office pending final decision of the Atiyat in the inams and succession case and pending final settlement of accounts.

As such the estate is released from the Court of Wards supervision on the lines mentioned above, from the date of issue of this notification."

33. This order of Nazim Atiyat was given effect to when a Muntakhab (Document in the nature of decree) was issued as a result of succession Inquiry held under the Atiyat Enquiries Act. The maash in respect of villages Manikonda and Guntapalli was characterized as a conditional grant to Dargah whereas Mukhta land situated in village Raidurg and inam land situated in Shaikpet was described as Madad Mash (Grant in Aid). The final order mentioned in Column 8 reads thus:

"In view of the proof, documents of grant, reports & oral evidence produced by the claimants & in view of the entries of the office of Central Records, Mash (Grant) under this claim as mentioned in Column No.6 of this Muntakhab, the villages of Jagir Manikonda & Guntapalli are hereby declared as crown grant, with all items of income including excise, as conditional service grant of Dargah Hazrath Hussain Shah Vali Rh., & restored with the practice of Suls-e-sulsaan (1/3rd 1/3rd 1/3rd) out of which Syed Safiullah Hussaini as Sajjada service render of the Dargah shall get 2/3rd & in the balance 1/3rd the persons of Bradri (family) mentioined in Column 4 of this Muntakhab shall get their shares are per Shariat.

And the lands of Maqta & Inam situated at Shaikpet & Taluqa Mohammed Nagar & Raidurg (properly known as Dargah Shareef) are proved to be self acquired & in view of long possession & enjoyment are hereby restored as Madad Mash according to their Sharai shares in favour of the persons mentioned in Column No.4 of this Muntakhab.

Conditional service grant shall be governed under the orders of inclusion of Jagirs & Madad Mash shall be governed under the orders of abolition of Inams.

Therefore steps shall be taken for immediate execution.

Sd/- 25-11-1358F"

34. The Nazim Atiyat dismissed the review by an order dated 24.09.1958. An appeal was thereafter filed before the Board of Revenue against the said order in review, which was dismissed on 14.11.1958 as not maintainable. Some of the persons aggrieved against the order passed in review filed a Writ Petition No. 666 of 1959 under Article 226 of the Constitution before the High Court of Judicature at Hyderabad. It was thereafter that the High Court returned the following finding:

"As regards the character of the lands, so far as the jagir villages of Guntapalli and Manikonda are concerned, I have no doubt in my mind that they were rightly held to be villages granted as conditional grants in favour of the Dargah and I am unable to discover any error in respect of that finding. Regard to other properties in Raidurg, Shaikpet and Qull Mohammad Nagar also the Nazim Atiyat has held that they are zarkhareed maktha lands constituting madad mash."

ii) Facts leading to the impugned Notification

35. A Survey Commissioner was appointed to conduct an inquiry in respect of wakfs in the State of Hyderabad in terms of Section 4 of the 1954 Act sometime in the year 1961. Such Survey Commissioner submitted his reports bearing serial number 259- 263 on or about 17.12.1970 / 28.1.1971. The report at serial number 262 had a following note in the remark's column, which reads thus:

"The Dargah is looked after by the Mutawalli. In the past the Jagirs of Manikonda, Dargah Hussain Shah Wali and Gunthapalli were given for the functioning of the Dargah and annual Urs. The particulars of the compensation received used by the Mutawalli are not known. Sd/- R.I. Narsinghi."

36. On the basis of such survey reports, a notification was published on 9.2.1989 in the Andhra Pradesh Gazette declaring 5506 sq. yards i.e., 3165 sq. yards pertaining to Dargah Hazrath Hussain Shah Wali; 1222 sq. yards pertaining to Khanqah with Mosque and well area and house on the north side of Khanqah area admeasuring 1069 sq. yards as wakf land. The notification mentioned Syed Safiullah Hussain as the Mutawalli of the Wakf. The property in question appears at Sl. Nos. 3057, 3058 and 3059. The description of the properties notified as wakf in such notification reads thus:

Serial Number	Name of Taluk or village or Ward	Name and situation of Wakf Sunni or Shia	Area	Name of Mutawalli

3057, 3058 & 3059	Hyderaba d West, Taluk, Dargah Hussain Shah Wali (V)	1.Dargah Hazrath Jussain Shah Wali 2. Khanqa With Mosque and well. 3. House on the North side of Khanqah Area	1. 3165 sq. Yds. 2. 1222 Sq. Yds 3. 1069.5 Sq. Yds. (S) (262, 261 & 260/1)	Syed Safiullah Hussaini

37. A perusal of the documents filed by the Wakf Board before this Court shows that it was on 30.1.2005 that Syed Safiullah Hussaini, the Mutawalli, wrote a communication to the Chief Executive Officer of the Wakf Board to constitute a Managing Committee to protect the Wakf property and the service Inam land to an extent of 1654 acres situated in Manikonda Jagir Village as it had not been notified in the Andhra Pradesh Gazette. The relevant extract from the letter reads thus:

"I, hereby submit the following few lines for kind consideration and favourable immediate action.

I, submit that there is a Darga known as 'Darga Hazrat Hussain-Shah Vali' situated at Hussain Shah Vali Village, Rajendernagar Mandal consisting of Darga, Khankha, Mosque, House notified in A.P. Gazette No. 6-A, dt. 9th February 1989 at Sl. No. 3055, 3057, 3058 & 3059 under the towalliath of the Petitioner herein.

I am performing the duties of Mutawalli by conducting Annual Ceremony without any complaint from the public and devotees.

There is a Muntakhab issued from the Nazime-Atiyat of A.P. in file No. 2/56 Atiyat in the year 1344 Fasli from which it is evident that there is service Inam lands to an extent of 1654 Acres situated in Manikonda Jagir Village, but it has not been notified in A.P. Gazette. There are several share holders to be benefitted from the income of Darga and its attached properties under the rule of Sulse Sulsan as mentioned in the Muntakhab. I further submit that I am in old age having above 80 years and found it difficult to protect the service inam lands now a days due to interference from various corners and without getting any source of income from the said property. As such I am only depend upon the income source of Darga alone which itself found to be very meagre for livelihood and maintenance of the institution."

38. A notification was issued by the Minority Welfare Department, Government of Andhra Pradesh, prior to the aforesaid communication, constituting Second Survey Commissioner on 3.3.2001 inter alia on the ground that the first survey was conducted about 40 years back. Such notification was issued in exercise of powers conferred under Section 4(6) of the 1995 Act. Though the survey was not complete, the Wakf Board sought a copy of the report of the second survey vide

communication dated 2.9.2005 inter alia on the ground that an area of 1654 acres and 32 guntas was held to be a service Inam land in the village Manikonda. Reference was made to the order of Nazim-Atiyat of 31.5.1957 that village Manikonda and Guntupalli with all items of revenue inclusive of excise were conditional grants for service to the Dargah.

39. Such documents filed by the Wakf Board before this Court shows that firstly the Chief Executive Officer of the Wakf Board sought supply of village map of Manikonda Village. It was on 25.3.2005 that Pahani for the year 1950-51 was sought. The Chief Executive Officer of the Board had subsequently written a letter on 2.9.2005 to the second survey commissioner to seek a copy of the Survey Report. The said letter reads thus: -

"This is to state that the Darga Hazrath Hussain Shah Vali situated in Hussain Shah Vali (V) of Rajendranagar (M) is notified wakf in A.P. Gazette No. 6-A dated 09.02.1989 at Sl. No. 3055, 3057, 3058 and 3059.

According to the information furnished by the petitioner/muthawalli the said subject institution has service inam land in Manikonda (V) convering an area of 1654-24 guntas, as per Sanad of 1249. As per the judgment of Nazime-Atiyat dated 31.05.1957 in F. No. 2/56 Inam, Medak of 1344 Fasli, the Village Manikonda and Guntupalli with all items of Revenue inclusive of Excise and conditional on service to Darga declared.

Please furnish the copy of Second Survey Report of the said subject institution together with details of the service inam land attached to the said subject institution early for further follow up action by the Board.

Yours faithfully,
Sd/- xxxxxx
Chief Executive Officer"

40. The second survey report was accordingly sent to the Wakf Board on 30.9.2005. The office noting which led to the issuance of Errata notification, as per the record produced, reads thus: -

"Submitted:-

In this case the Surveyor of Wakf Board collected the copies of Old pahani for the year 1951 and Khasrapahani for the Year 1954-55 in respect of the land relating to D. Hzt. Hussain Shah Vali situated in Manikonda(V) and submitted his report along with copies of said revenue record. It is evident from the entries of revenue record all the Survey numbers shown as **Government land Porombok**. A detailed letter were already sent the Government on 23-5-05 marking copy to the Collector, R.R. District for necessary action. There is no response from the Government as well as Collector R.R. District in this respect.

It is brought to the notice of this office that Sy. Commissioner of wakf have covered the said subject institution during second survey. As such the Sy. Commissioner of wakf may be

addressed to send a copy of Sy. Commissioner's report of Second survey for taking further action. If pleased draft placed below may be approved.

After verification of Sy. Nos. & area from the existing record available in the files in respect of Manikonda Jagir (v) further action can be taken in the matter.

Further the particulars of Service Inamlands situated at Guntapalli of Sanga Reddy (m) in Medak Dist. Quila Mohd. Nagar (v) in Golkonda (m) as well as Hussainsha(v) may be obtained immediately from the concerned Mandal for taking further action.

Sd/- EO 10.10.05	Sd/- CEO 12.10

xx xx xx

Submitted – It is submitted that the Sy. Commissioner of Wakf, AP, Hyd. submitted his 2nd survey report in respect to the subject institution and its attached landed properties.

But present Gazette publication – not shown the Sy. Nos. and its attached properties of the subject institution.

In view of the above a Gazette publication may be published in the Gazette by sending an errata to the Govt. printing press, Hyd.

Submitted for orders.

Sd/- EO. 7.11.05

In the earlier publications, the S.Nos. and area attached to the Institution have not been notified in the Gazette. As per 2nd survey report, an addendum may be issued for publication in the Gazette to the extent of Manikonda Village lands, if pleased.

Pl Put up draft
Sd/-
CEO 9.11

E.O.
7.11.05

3) The Addendum Notification as approved by the S.O., on 8-12-05 may be sent to the Commissioner of Printing Press for publication in the Gazette.

For Orders.

Sd/-

C E O 10.12

xx xx xx

According to the 'Satwar', the total area of each and every Sy. No. comes an extent of AC 1766-04 gts.

The statement is placed below for kind perusal and further orders as deem fit and proper please.

4.1.06 Supdt. E.O.

5.1.05

ANDHRA PRADESH STATE WAKF BOARD

F.NO. M1/69/PROT/RR/04	Dated 13.3.06
From The Chief Executive Officer A.P. State Wakf Board Hyderabad	To The Commissioner, Govt. Printing Press, Chanchalguda Hyderabad.

Sir,

Sub: Wakfs-RR Dist.-Rajendranagar (m) Manikonda (v) Dargah Hazrat Hussain Shah Vali-Eraata to the earlier Gazette Notification-Published-Req-Reg.

Ref.: Gazette Notification No 6-A, Dated 9-2-1989 at page no 262 Under Sl No 3057, 3058 and 3059.

I am sending herewith an addendum notification to the earlier Gazette notification No. 6-A, Dated 9-2-1989 at page no 262 under SL no 3057, 3058 and 3059 of the subject institution.

This may kindly be published in the next issue under intimation to this Office.

Kindly intimate the publication charges immediately for payment.

Encls:- Errata to notification.

Yours faithfully,
CHIEF EXECUTIVE OFFICER
13.3."

41. It was thereafter that the impugned Errata notification was published which has been reproduced in the opening part of this judgment.

42. The records, from the Criminal Court wherein trial of offences under Sections 468, 471, 420, 474, 475, 467 IPC, were requisitioned to examine the original second survey report. A perusal of the said survey report shows that white fluid has been applied over the word 'Nil' in an answer to Col. No. 11 and also over 3-4 lines at page 4 of the report under the heading "remarks" written with hand. The reference to "*for remaining Inam lands, pl. see remarks*" at page 2 is above the column "Gross Income of the property as Rs. 4104.16 ps from Jagir". The response to words "*remarks*" which is mentioned at page 4 states that, "as per letter of Syed Saifullaah Hussani (illegible) dt. 4.2.02, the entire village of Manikonda Jagir is Inam Mashtrul Qidmat attached to Dargah Hussain Shah Vali". The words at page 2 "Inam lands situated at village Guntupalli, Qila Mohd. Nagar, Golconda and

agriculture lands at Dargah Hussain Shah Vali Village" are in different handwriting than the entries made against column numbers 1-10. The handwriting in response to Col. No. 11 on page 1 and page 2 is also different. The second part of remarks at page 4, after the use of white fluid, is that an area of 932 sq. yards is in illegal occupation of five persons is in the same handwriting as response to Column No. 1 to 10.

43. The overwriting and additions show that total extent of 1654 acres and 32 guntas is in different handwriting and has been added subsequently after applying white fluid. However, since the trial is pending for the offences under Sections 468, 471, 420, 474, 475, 467 IPC in respect of determining who had made such alterations, nothing more is required to be said in the present proceedings.

iii) Facts Leading to the Writ Petitions before the High Court

44. The Errata notification dated 6.4.2006 was challenged by the State along with the Corporation whereas other writ petitions were also filed disputing the said notification. In the said writ petition, it was, inter alia, pleaded that Manikonda is a jagir village and that pursuant to the Abolition Regulations, the said village vested in the State Government under Section 6 of the said Regulation. As per Government Order No.1 dated 03.10.1949, all jagir villages have been taken over by the Diwani (Government) by the end of September, 1949. Thus, there was no wakf property before the enactment of 1954 Act. It was also pleaded that all revenue records from times immemorial show that the land of Manikonda Village has been a government land. The Errata notification published on 6.4.2006 has created a cloud on the right, title and interest of the State over the lands at Manikonda village. It was pointed out that the notification has been issued without following the mandatory provisions of the Act. It was further contended that the second survey report was tampered as was clear from the overwriting/ corrections to the naked eye and even the signatures of Mandal Revenue Officer, Serilingampally and Mandal Revenue Inspector were forged as per their statements. It was pointed out that the survey report has not been submitted to the State Government and the term of the Survey Commissioner was being extended from time to time. Referring to the order passed by Nazim Atiyat, it has been asserted that Manikonda was a jagir village which was originally granted to one Safirullah Hussaini. He had mortgaged the land to Hussain Bin Muqaddam Jung on 1st Rajab 1295 H (20.6.1879). After the death of both of them, mortgagor and the mortgagee, Akbar Hussain, son of Safirullah Hussaini applied to the Sovereign for re-grant which was allowed on 1st Ramzan 1333 A.H. (13.07.1915). The said grant, produced by learned counsel for the Dargah reads thus:

"Farman of Nizam

After looking into the application of Finance department dated 29th Shaban 1333 A.H. in which it is submitted that the properties (Jagirs) of Dargah Shareef of Hazrath Hussain Shah Wali, which are mortgaged with the factory of Hasan Bin Mohsin (under the supervision of the Government) may be released as per the request of the Sajjada of the Dargah.

Order (Farman)

According to the opinion of Finance Minister and Director General of Revenue Department if the Sajjada repays the amount he owes to the factory of Hasan Bin Mohsin the properties belonging to Dargah Shareef may be released under the following conditions.

1) The Sajjada of the Dargah shall regularly the amount of share to the other shareholders who have the right to receive maintenance allowance required for their upkeep and sustenance. If the amounts are not paid, the revenue department shall decide about it.

2) If the Inam Inquiries or inheritance inquiries are required, it shall be done as per the rules and regulations.

Sd/-
Wednesday
1st Ramzan 1333 A.H."

45. Akbar Hussain died on 1st Bahman 1343 Fasli (4.12.1934). His two sons, Syed Nadeemullah and Safirullah Hussaini were minors. Therefore, the management of the estate was taken under the supervision of the Court of Wards in 1349 Fasli (1940). Syed Nadeemullah then migrated to Pakistan. An order was issued in favour of the legal heirs of Safirullah Hussaini by the Nazim Atiyat after detailed inquiry as mentioned above.

46. Since the jagir of Manikonda village stood abolished, the commutation amount under the Commutation Regulation was paid to the legal heirs vide Muntakhab order No.98 of 1958. The order of the Nazim Atiyat itself clarifies that Manikonda jagir and Guntapalli jagir were subject to Jagir Abolition and other properties were subject to Inam Abolition. It was pointed out that grant of jagir as Mashrut-ul-Khidmat was specifically excluded from the purview of the Endowment Regulations. The Sovereign continued to possess the land as title holder but only the usufruct could be used by Muttawali. It was pleaded that grant of such jagir stood abolished under Section 16 of the Abolition Regulation which came into force on 15.8.1949, therefore, Mashrut-ul-Khidmat as part of wakf in 1954 Act or 1995 Act would not apply to the lands in question.

47. It was also pleaded that the order of Nazim Atiyat was passed under the provisions of Atiyat Enquiries Act which specifically provided for and dealt only with the claims of succession relating to the commutation sums in respect of

abolished jagirs/Inams. Thus, the property did not retain any of the characteristics of Mashrut-ul-Khidmat post the abolition of jagirs and that Nazim Atiyat had no jurisdiction to decide the title to this land.

48. In a counter affidavit filed on behalf of the Wakf Board, it has been averred that the Errata notification is in respect of property attached to the wakf institution or Dargah which was granted by the Sovereign and confirmed by the Chief Minister relying upon an order passed by Nazim Atiyat Court. Reference has been made to the report of the First Survey Commissioner that Manikonda and Guntapalli jagir villages were allotted to Dargah for rendering services to the institution. Thus, Errata notification is not a new notification as the requisite details would have to be provided in the original notification itself. It was pointed out that Manikonda was granted to Hazrath Shaik Bade Saheb and was in the list of exempted grants. Therefore, Section 6 of the Abolition Regulation has no application to Manikonda village. The order of the Chief Minister dated 29.5.1956 was referred to contend that the villages of Manikonda and Dargah Sharif have been handed over to the custody of the Government due to abolition of jagirs. The commutation amount sent by the Jagir Administration to the descendants of the holder of the estate and rent to Muslim Wakf Board was towards service expenses of the Dargah. The properties were meant for the service of the Dargah only. The affairs of the Dargah are being managed by the Muslim Wakf Board. In respect of submission of the Survey Commissioner Report to the Government, it was averred that the Government acts as a mere ministerial conveyor of the report.

49. It was further contended that the information furnished by the Survey Commissioner was not treated as a survey report, it was merely an information provided by the Survey Commissioner. The Board has the requisite powers to secure information and take steps on such information received. It was asserted as under:

"A valid title, legally sustainable stand, and true details, cannot be ignored on the ground of procedure not being followed especially when that procedural step complained about is merely that the report reached the Board at its instance directly and not through the government."

50. The order of the Sovereign dated 1st Ramzan 1333 A.H. (13.07.1915) was said to be misconceived as grant was given to Akbar Hussain subject to his doing service to the Dargah. Thus, a grant in the name of an individual doing service or rendering service to any Wakf institution cannot be treated as a grant in the name of any individual but it is the property of the Dargah and falls within the definition

of Wakf. The Endowment Regulations excludes Mashrut-ul-Khidmat as endowment or Wakf. The specific averment in the counter reads thus:-

"In reply to the averments that the order of Nazim Atiyat dated 31.5.57 shows that the said lands were never granted to the Dargah but only granted by the HEH. The Nizam to Akbar Hussain S/o Safiullah Hussaini on 1st Ramzan 1333 Fasli subject to his doing service to the second respondent Dargah is misconceived, because it has been held by the Hon'ble High Court as well as by the Hon'ble Supreme Court of India that "A grant in the name of an individual doing service or rendering service to any wakf institution cannot be treated as a grant in the name of an individual but it is the property of the Dargah and it falls within the definition of Wakf. It is absolutely incorrect to interpret that the grant of Jagir as Mashrutul Khidmat was not treated as endowment or wakf is also clear from the exclusion of such grant i.e. Mashrutul Khidmat from the purview of the Hyderabad Religious Endowment Regulations of 1349 Fasli. It is absolutely incorrect to say that the Ruler Nizam continued to possess the land as title holder only usufruct to the Mutawalli."

51. It was also averred that the concept of Mashrut-ul-Khidmat has been in existence even before the 1954 Act as such grant is recognized by Muslim law as pious, religious and charitable. It thus acquired the character of wakf even before the codification of wakf law.

52. It was submitted that by the Abolition Regulation, jagirs were not abolished but only jagirdars were. The revenue collecting roles of jagirdars was taken over by the Jagir Administrators. When Jagir has been granted as Mashrut-ul-Khidmat in respect of a wakf institution, it is a permanent dedication and the grantor ceases to have any title or ownership of the said property. The object of grantee to offer Oodh-O-Gul is offering Fateha, a religious observance. It was denied that the property did not retain any of the characteristics of Mashrut-ul-Khidmat post the abolition of Jagir.

53. As per the list of dates and factual background along with written submissions on behalf of Telangana Wakf Board submitted to this Court, it has been submitted that as per the official revenue record of the year 1913, the land of Manikonda is shown to be as Government land. It has also come on record that the land in Manikonda village was transferred to the Corporation. It is the stand of the Wakf Board that no objections were filed against the Government memo as the land was wrongly described as Government land. The Corporation issued an advertisement on 22.9.2004 inviting bids of private developers for development of IT Parks and in response, certain private parties submitted their bids. But before issuing allotment letters, a public notice was issued by the State Government on 27.7.2005 inviting objections to the allotments proposed to be made. However, no objections were filed by any person including the Wakf Board. It was thereafter

that the land was allotted on 17.8.2005 to the various private allottees. It is the stand of some of the appellants such as Emaar Hills Township P. Ltd. that the land was allotted to the said appellant in the year 1999 and the construction was raised thereafter.

54. In the counter affidavit filed by the Wakf Board in Writ Petition No. 4515 of 2008, it was submitted that the royal grant as disclosed from the Muntakhab was granted for rendering service to Dargah even though name of the grantee was mentioned therein. When the grant has been for rendering service, even after the death of grantee, the property would never revert back to ruler but shall continue to be in the name of Dargah.

55. The High Court vide common order decided three writ petitions filed in public interest to challenge the alienations made by the State or the Corporation. Writ Petition Nos. 6148 of 2008 and 28112 of 2007 were filed on behalf of alleged pattedars whereas Writ Petition No. 4515 of 2008 was filed by an allotee of land from the Corporation. The High Court examined the three following questions:

"I. What is the effect of Hyderabad (Abolition of Jagirs), Regulations, 1358F and the Hyderabad Jagir (Commutation) Regulations, 1359F and whether the lands vested in the State Government after abolition, of Jagirs?

II. Whether the errata notification dated 06.04.2006 is, ultra vires the provisions of the Wakf Act, 1995?

III. Whether the writ petitions challenging the errata notifications, are maintainable and whether they are barred in view of the effective, and efficacious alternative remedy available under the Wakf Act, 1995?"

56. The High Court, inter alia, held that a wakf is presumed by user and whatever properties are treated as wakf cannot be reversed because it always remains a wakf. The High Court culled down the following principles in respect of wakf property:

"32. At this stage, instead multiplying the authorities, we may reiterate, the well known principles in this regard.

(1) Mohamedan Law of wakf owes its origin to a rule laid, down by the Prophet and means "tying up of property in the ownership, of God and Almighty and the devotion of the profits for the benefit, of human beings".

(2) When a founder dedicates the property for a wakf, the, ownership of the founder is completely extinguished.

(3) When once it is declared that a particular property, is wakf or any such expression is used implying wakf or the document, shows that there is dedication for a pious or charitable or religious, purpose, the right of the person is extinguished and the ownership, is transferred to

the Almighty. The manager of wakf is mutawalli. Though mutawalli is the administrator, governor, superintendent or, curator of the wakf property, he has no right in the property belonging, to the wakf.

(4) The dedication need not specifically be in favour of, a place of worship, khankah, Dargah, cemetery etc. It is enough if, the dedication is made for the purpose recognized by Muslim law as, pious, charitable or religious.

(5) Service inam granted to individuals burdened with service, for the purposes which are pious, religious or charitable, answers, description of all the ingredients of wakf.

(6) Even if the grant of the land is for rendering service, to wakf, the construction of mosque or khankah on the land itself, is sufficient proof of dedication to wakf.

(7) When once the property is held to be wakf, it always, retains its character as a wakf and the grant of patta to service, inamdars and persons in possession, does not in any manner change, its character.

(8) In a case where the inam is service inam for rendering, service in connection with a pious, religious and charitable purpose, the holder of the inam burdened with service does not acquire title, to that property. If the land is resumed from such inamdar for non-performance, of service and regranted to another person in only means that the, wakf is entrusted to another individual to perform service."

57. In respect of post abolition situation, the Court held as under:

"35. There are special provisions in the Abolition Regulation, Rules made thereunder and Jagir Commutation Regulations concerning the grants made to support religious and charitable institutions. As per the proviso (b) to Section 16 of the Jagir Regulations, the distribution of the net income shall be effected as far as possible as per the wishes of the grantor and to be in consonance with the custom and usage. Rule 6 made under said Regulations contains the method of distribution of net income as contemplated under the proviso (b) to Section 16. The principle adumbrated therein is suls-e-sulsan. According to this, one half of the income shall be spent for fulfillment of the object and the remaining half would be distributed equally between the jagirdar, mutawalli or other persons entitled to perform the duties and hissedars (legal heirs of the inamdar). This is further clarified by Regulation 10(2) of the Commutation Regulations, which obliges the Government to pay 90 per cent. of the gross basic sum of commutation to the institution every year commencing from 1st April, 1950 for the service of the institutioa Prima facie, none of these provisions help the Advocate General in sustaining the argument that on payment of commutation, Mashrut-ul-khidmat stands reversed and vests in the sovereign/Government. That being the case, the presumption that the title to the tract of land in the territory always vests in the sovereign in the absence of any claim by others (reiterated in R. Hanumaiah v. State of Karnataka, (2010) 5 SCC 203) is not attracted."

58. Still further, the High Court relying upon the Muntakhab issued by Government of Nizam in 1249 Fasli, the notification from Nazim Court of Wards dated 29.3.1956, the order dated 31.5.1957 of the Nazim Atiyat and consequential

Muntakhab dated 26.11.1958, the provisional commutation award dated 30.09.1952 and the order of the High Court dated 14.12.1961, held as under:

"36. .....The State would like this Court to draw an inference from these documents mat the grant being Mashrut-ut-khidmat and there being no proven dedication, the land vested in the Government after abolition of jagirs. The Wakf Board of Dargah also rely on these documents as well as three comparatively recent documents, which are the Government Memoranda/correspondence between the Secretaries to the Government i.e., Memo dated 25.1.2007, and two letters dated 4.5.2007 and 12.6.2007 to press the submission that from the date of grant, the Manikonda land was Wakf and even after abolition of jagirs and in spite of the payment of commutation amount to legal heirs and hissedars, it retained the character of being the Wakf. In our considered opinion, all these documents need to be clarified and explained by whoever party relying on them. Unless a deeper probe in relation to the contemporaneous circumstances and the contextual events of the period when the ancient documents came into existence (may be by oral evidence or by other documents), it is not possible at all to countenance submission of the Advocate General that the subject land is not Wakf and it was taken over by the Government on abolition of jagirs."

59. The High Court found it to be very doubtful while referring to the Abolition Regulation as to whether the Government can claim any vested right in such Inam. The High Court was not inclined to go deeper into these issues. The following reasons were recorded:

"38. Thus, the Jagir Regulations, Commutation Regulations and Inams Abolition Act treated all the jagirs and inams held for the purpose of support of charitable and religious purposes including the Wakfs differently. Those inams, in law, if proved are to be held as endowments to the charitable and religious institutions like temple or Wakf, and it is very doubtful whether the Government can claim any vested right in such inams. We are not inclined to go deeper into these issues for the reasons infra. We have only considered the submissions with reference to the plain meaning of the provisions to which our attention has been invited. Further, there are also seriously contested questions as to the nature of the Nizam grant to the Dargah and the right claimed by the legal heirs of the gantee. Both the parties have various documents in their armoury, some of which are produced before this Court. All of them call for interpretation and inference subject to further clarifications."

60. In respect of the Errata notification, the High Court found that Sections 4 and 5 of the 1995 Act form one group, Sections 6, 7 and 83 are adjudicatory provisions applicable in the event of a dispute regarding wakfs whereas Sections 40 and 41 read with clause 32(2) of the 1995 Act form another group of provisions. The High Court found as under:

"44. An analysis of the above provision would show that the Wakf Board can itself collect information regarding any Wakf property which it has reason to believe to be Wakf property. This power of the Wakf Board to collect information on its own is not subordinate to the power of the State Government under Section 4(1) to appoint Survey Commissioners. Sections 4 to 8

appear in Chapter II, which deals with survey of Wakfs and Section 4 only speaks of "Preliminary Survey of Wakfs". Chapter V (Sections 36 to 43) deals with the registration of Wakfs. The law requires that every Wakf whether created before or after commencement of the Wakf Act, shall be registered at the office of the Wakf Board. Even if a Wakf is not surveyed or mentioned in the report submitted by the Survey Commissioner under Section 4(3), even then there is an obligation for registration of every Wakf, and as per Section 43, all the Wakfs registered prior to the Wakf Act shall be deemed to have been registered thereunder. In this context, Section 40 assumes significance. Sub-section (3) thereof contains a non-abstante clause. This overrides other provisions in the Wakf Act Notwithstanding anything contained in the other provisions of the Wakf Act, under Section 40(3) the Wakf Board may hold an Enquiry and if it is satisfied that a property is a Wakf property, can issue notice to the Trust or Society and then register under Section 36."

61. The High Court found that a reading of Sections 6, 7 and 83 of 1995 Act leaves no doubt that the question whether a particular property specified as wakf property in the list of wakfs is a wakf property or not has to be adjudicated by the Wakf Tribunal in a suit instituted for the said purpose. It was also held that Section 40 is wide enough to confer powers on the Wakf Board to issue the Errata notification and it is neither necessary for the Government to appoint a Second Survey Commissioner nor for him to submit a report.

62. In respect of the third issue as to whether the writ petitions are barred, the High Court held that the Act requires all disputes, questions or any work or other matters whatsoever and in whatever manner which arise relating to a Wakf or Wakf property, are to be adjudicated only by the Wakf Tribunal. After considering various judgments, the High Court held as under:

"73. In view of the binding precedents of the Supreme Court directly on the point as to the bar of writ petitions in relation to dispute, question or any matter relating to Wakf in view of Sections 6, 7, 83 and 85 and also the power of the Wakf Board to cause registration of Wakf or to amend registration of the Wakfs under Section 41, we have no hesitation to hold that this Court cannot entertain writ petitions filed by the State and others to whom either the Government or the APIIC allotted portions of Manikonda lands. To avoid adding to the length of this judgment, it not necessary to refer to various other judgments referred to by the Counsel for the Wakf Board on the question of maintainability of writ petition. We are also not impressed with the submission of the Advocate General that the issue raised in these writ petitions does not involve any disputed question of fact or the issue raised in these writ petitions is beyond the purview of jurisdiction of Wakf Tribunal."

63. The aforementioned findings recorded by the High Court are subject matter of challenge in the present appeals.

G. Arguments of the Appellants

64. Mr. V. Giri, learned Senior Counsel appearing for the State, inter alia, raised various arguments to challenge the order of the High Court. It was contended that no dispute was ever raised regarding alleged exclusion of properties belonging to Dargah in the first notification even though the first survey report was sent to Wakf Board. It was at the instance of the Wakf Board, the errata notification was published after a long delay of 17 years. The impugned Errata notification has been issued without following any procedure as prescribed under the Act on the ground that certain lands were not notified in the notification dated 09.02.1989. Even if the notification excluded certain land claimed to be as wakf land, the Wakf Board could exercise suo motu powers under Section 40 of the 1995 Act. Such inquiry was required to be conducted after compliance with the principles of natural justice, i.e., after granting an opportunity to the affected parties. Since the land was shown as land of the State since 1912-13, the State was the affected party who was entitled to be heard before declaring the land in question to be a wakf property. Still further, no objections were filed against the notice issued by the State on 27.07.2005 within 15 days against the proposed allotment of Government land to the Corporation. Since no objections were received, the Corporation further allotted the land to various private groups. Therefore, the actions of the Wakf Board in suddenly claiming rights over the property spread over a large area of land are not bona-fide. Reference was made to a judgment of this Court reported as **M.P. Wakf Board** v. **Subhan Shah (Dead) By Lrs. and Others**, (2006) 10 SCC 696.

65. It was further averred that the survey report by Second Survey Commissioner constituted vide notification dated 03.03.2001 was never submitted to the State Government as required under Section 5(1) of the 1995 Act. Since the procedure mandated by statute has not been complied with, the Wakf Board could not cause the notification to be published on the basis of report which was never submitted to the State Government. The said survey report had material alterations visible to the naked eye. The report though is subject matter of a trial to determine who has caused the alterations, but such report on the face of it could not be form basis of the notification. The stand of the Wakf Board that the Errata notification is not based upon second survey report is not tenable as the proceedings produced by the Wakf Board show that such report as well as the order of the Nazim Atiyat were the two factors considered which led to impugned notification.

66. It was argued that Manikonda village was a jagir village. The jagirs were granted by the Sovereign for the lifetime of grantee and were not heritable or alienable. After the death of jagirdar, it was the discretion of the Sovereign to re-grant it.

Reference has been made to a judgment reported as **Ahmad-Un-Nissa Begum and Another** v. **The State through the Chief Minister and Others**, AIR 1952 Hyd 163.

67. The Abolition Regulation abolished the jagirdars and vested the jagir land with the State in terms of Regulation 4 of the Abolition Regulation. The jagirdars were to only get commutation value in lieu of the cash payments after the abolition of the jagirs. Regulation 16 abolishes the jagirs granted to a temple, mosque or any institution established for a religious or public purpose. It was argued that if the jagir granted to mosque stands abolished, the land which is a conditional grant for the service of the religious institution shall also stand abolished as a necessary consequence of abolition of jagirs. The order of the Chief Minister dated 29.05.1956 also shows that the Manikonda village has been handed over to the Government due to abolition of jagirs.

68. A perusal of the order of Nazim Atiyat court shows that the grantee is holding conditional grant for the service of the Dargah, and that such grant is subject to the Abolition Regulation and Inams Abolition Act. Therefore, even if the land of the Manikonda village was given as a conditional grant, the same stood abolished by virtue of the Abolition Regulation. The Muntakhab shows that Syed Safiullah Hussaini was given 2/3rd of the conditional grant in view of the practice of Suls-e-sulsaan that is 1/3rd each whereas 1/3rd was to be given to the other family members. Such grant stood abolished with the enactment of the Commutation Regulation consequent to the Abolition Regulation. In terms of the order of Nazim Atiyat, the heirs of Syed Safiullah Hussaini were paid commutation amount vide award dated 05.06.1959. Reference was made to judgment of this Court reported as **Mohd. Habbibuddin Khan** v. **Jagir Administrator, Government of Andhra Pradesh and Others**, (1974) 1 SCC 82 to contend that as the Abolition and Commutation Regulations abolished succession claim in respect of atiyat grants under Section 2 of the said Act and the power and jurisdiction of Atiyat Court was confined to make inquiries as to rights, title or interest in atiyat grants and also holding inquiry into the claim of successions in respect of entitlement to receive such grants. Reliance has also been placed upon Division Bench judgment of the High Court reported as **K.S.B. Ali** v. **State of A.P. and Others**, (2007) SCC Online AP 765. The petitioner had withdrawn the writ petition with permission to seek appropriate remedy in the Special Leave Petition filed before this Court against the judgment of the High Court. The Petitioner filed another writ petition before the High Court. The said writ petition was dismissed. In an appeal again the order passed in the second writ petition, this court in a judgment reported as **K.S.B. Ali**

v. **State of A.P. and Others**, (2018) 11 SCC 277 dismissed the claim of the appellant based upon an order passed by the Atiyat Court.

69. It was submitted that the argument that 'once a wakf always a wakf' would not be applicable on account of statutory abolition of jagirdars and vesting of jagir land with the State including the lands of jagir lands dedicated to temple, mosque and other religious institutions. If the land given to the religious institutions stands abrogated, the conditional grant of service to such religious institutions cannot survive as it is not larger than the jagirdari rights given to religious institutions. Any right in the wakf would not override the right of the Sovereign, who is the repository of all lands within his estate. Hence, the Abolition and Commutation Regulations would supersede any rights in the land including that of conditional grant for service to a religious institution.

70. Mr. Giri further argued that in terms of 1995 Act, the jurisdiction of the Tribunal could be invoked only by a person interested therein apart from Board or mutawalli of a wakf. Though the word 'any person interested therein' has been substituted by 'any person aggrieved' by the 2013 amendment, therefore, on the date of the filing of the writ petition, the State could not have invoked the jurisdiction of the Wakf Tribunal. Referring to judgment of this Court in **Rashid Wali Beg** v. **Farid Pindari & Ors.**, (2021) SCC Online SC 1003 it was argued that the question involved in the said appeal was not validity of the notification or lack of jurisdiction or procedural impropriety, which has arisen for consideration in the present appeals.

71. Mr. C.S Vaidyanathan, learned Senior Counsel appearing for the Corporation submitted that the writ jurisdiction of the High Court cannot be excluded only because there exist alternative statutory remedies. The right to invoke writ jurisdiction is untrammeled by any external restrictions. Reference is made to **Committee of Management and another v. Vice Chancellor**, (2009) 2 SCC 630 and **Addl. Secy. to the Govt. of India** v. **Alka Subhash Gadia (Smt)**, 1992 Supp (1) SCC 496**.** Reference was also made to **K.K. Kochunni** v. **State of Madras**, AIR 1959 SC 725; **Whirlpool Corporation** v. **Registrar of Trademarks**, (1998) 8 SCC 1 and **Balkrishna Ram** v. **Union of India**, (2020) 2 SCC 442.

72. It was argued that even if there was an alternative remedy available, the High Court still has the jurisdiction in the following matters- (1) where the impugned action is in breach of natural justice, (2) where the challenge is to an action which is patently erroneous and ex facie without jurisdiction, (3) or the vires of legislation is challenged, (4) or where the writ petition has been filed for

enforcement of fundamental rights protected by Part III of the Constitution. It was argued that there has been a violation of principles of natural justice as State has been recorded as owner of the disputed land in the revenue records since 1912-13 and that the Wakf Board failed to file objections before the land was transferred in favour of the Corporation in 2005.

73. It was contended that the Wakf Board exercises quasi-judicial jurisdiction under Section 40(1) of the 1995 Act. Such fact is evident from two facts, an inquiry which is required to be conducted and the decision taken after the inquiry, which could be challenged before the Wakf Tribunal. The legal principle as to when an act of a statutory authority would be a quasi-judicial act, is that where (1) a statutory authority empowered under a statute to do any act, (2) which would prejudicially affect the subject, (3) there is no lis or two contending parties and the contest is between the authority and the subject and (4) the statutory authority is required to act judicially under the statute and the decision of the said authority is a quasi-judicial. Reference is made to **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**, (2010) 9 SCC 496. An inquiry could be conducted only after hearing the affected parties. Since the decision is subject to the decision of the Wakf Tribunal, therefore, a reasoned order is required to be recorded by the Wakf Board which could be tested before the Wakf Tribunal. The jurisdiction of the Wakf Tribunal is akin to the remedy of appeal against the order passed by the Board.

74. The Errata notification is alleged to be issued without jurisdiction as no such notification could be issued summarily without conducting any inquiry, only on the basis that Manikonda village is a conditional grant for the service of Dargah. It was further contended that Errata notification could be issued only in limited circumstances where there are clerical and arithmetical mistakes from accidental slip or omission, having parity with Section 152 of CPC. New rights could not be created over a large chunk of land under the guise of Errata notification. The Errata notification rather is in pith and substance, a fresh notification without following procedures prescribed under the 1995 Act. If the Act provides a particular method of doing an act, the act has to be performed in the same manner and all other alternatives stand excluded. It was also argued that power under Section 32(2)(n) was only a step-in aid of a decision to be taken under Section 40 of the Act. Section 32(2)(n) of the Act empowers the Wakf Board to investigate and determine the nature and extent of wakf. The Board is thus competent to investigate and determine the nature of Wakf as a step-in aid for its quasi-judicial decision in terms of Section 40 of the Act. The determination in Section 32(2)(n) has to be read along with Section 40 of the Act. Reference was

made to judgment of this Court reported as **Indian National Congress (1)** v. **Institute of Social Welfare**, (2002) 5 SCC 685.

75. Mr. Ranjit Kumar, learned Senior Advocate appearing for the M/s Lanco Hills Technology Park Pvt. Ltd. submitted that irrespective of the decision on the validity of the Errata notification and the question whether the subject land is a wakf property or not, the rights of the appellant as well as thousands of persons in whose favour rights and interests in the properties have been created are to be protected by the appellant State and/or Corporation in view of the order passed by this Court on 8.5.2012 and in view of the submission of the Wakf Board and the Dargah. Further reference was made to affidavits filed by the Chief Executive Officer of the Wakf Board on 7.11.2010 and on 14.4.2011 regarding claim of monetary compensation.

76. It was argued that no inquiry as envisaged under Section 40 of the 1995 Act was made, no notice was issued and no decision was taken by the Board. There was no document or even an assertion to the effect that the Board invoked Section 40 or took a decision that 1654 acres of land was wakf property. Reliance is placed upon **Subhan Shah** considering pari-materia Section 27 of the 1954 Act with Section 40 of the 1995 Act that the Board could have initiated proceedings under Section 27 of the 1954 Act but in the present case, no suo moto proceedings were initiated by Board and no notice in this behalf was issued to any of the interested parties.

77. It was also contended that Section 40 does not envisage publication of a notification in Official Gazette. The publication of notification is only contemplated under Section 5 of the 1995 Act. Therefore, the argument that Board had exercised powers under Section 40 is absolutely misconceived. It was further contended that the Board was not categorical as to whether the said decision has been taken under Section 40 or under Sections 4 and 5 of the 1995 Act. In fact, the Board tried to justify the adherence to the procedure prescribed under Sections 4 and 5 of the 1995 Act when it is said that the second Survey Commissioner was appointed by the State Government, therefore, it is meaningless to say that no notice was issued by the Survey Commissioner either to the State Government or to the District Collector before including the said land as the lands of Dargah. Therefore, question of issuing notice to the government did not arise.

78. It was also argued that the bar of jurisdiction of the Civil Court is not absolute and it is only confined to only those matters which are required by the Tribunal to be decided under the 1995 Act. The finding of the High Court is contrary to the

judgments in **Ramesh Gobindram** and **Anis Fatima Begum**. It was averred that since the Errata notification was based upon fraud and forgery, it is in breach of Sections 4 and 5 of the 1995 Act. It is also violative of principles of natural justice and was without jurisdiction and therefore null and void.

79. The High Court has quoted the principles laid down by this Court to the effect that a writ would lie even if there is an alternative efficacious remedy if the impugned action is in breach of natural justice or the action is patently erroneous and ex facie without jurisdiction. However, the said principle was not applied in the writ petition before the High Court. A challenge to the validity and legality of a notification issued by the Wakf Board is admittedly not a matter which the Wakf Tribunal is required to determine under the 1995 Act. Reliance has been placed upon **Harbans Lal Sahnia** v. **Indian Oil Corp**., (2003) 2 SCC 107; **Radha Krishan Industries** v. **State of Himachal Pradesh**, (2021) 6 SCALE 78 and **Bal Krishna** v. **Union of India & Anr;** (2020) 2 SCC 442.

80. It was further contended that Manikonda village land was jagir land and subsequent to the commencement of Abolition Regulation, the conditional grants made in favour of the temples, mosques or any other institution established for a religious and pious purposes which includes Dargah, stood abolished. The order of the Nazim Atiyat itself stated that the Mashrut-ul-Khidmat grant would be subject to the provisions of Abolition Regulation. As per the order passed by the Nazim Atiyat, the commutation amount has been paid to the heirs of the Jagirdar as per the Commutation Award dated 5.6.1959. Therefore, the order of the High Court is not sustainable and the appeals deserved to be allowed.

81. In respect of Maulana Azad National Urdu University, it was submitted that the 200 acres of land out of 1654 acres of land was allotted to the University vide order dated 18.03.1998. The appellant is a Central University established by an Act of Parliament. The possession of the land was handed over to the University on 23.07.1998. The University is offering 71 programmes, 19 Departments at under Graduate, Graduate, Post Graduate and Ph.D. levels and 6 Research/Training Centres which has more than 5000 students enrolled. Therefore, the allotment made to the appellant suffers from gross delay and laches.

H. Arguments of the Respondents

82. Mr. Huzefa A. Ahmadi, learned senior counsel appearing for the Wakf Board inter alia contended that the question raised by the appellants whether the subject land is Wakf property and whether the said property has been wrongly included in the list of Wakfs falls within the exclusive jurisdiction of the Wakf

Tribunal relying upon Sections 6, 7, 83, 85 and 88 of the 1995 Act. The intention of the legislature is evident from the scheme of the Act. The reference is made to the judgments reported as **Rajasthan Wakf Board** v. **Devki Nandan Pathak & Ors.**; (2017) 14 SCC 561; **Haryana Wakf Board** v. **Mahesh Kumar**; **Board of Wakf,** (2014) 16 SCC 45; **West Bengal & Anr.** v. **Anis Fatma Begum & Anr.;** (2010) 14 SCC 588; **Punjab Wakf Board** v. **Sham Singh Harike,** (2019) 4 SCC 698; **Telangana State Wakf Board & Anr.** v. **Mohamed Muzafar**; (2021) 9 SCC 179 and **Rashid Wali Beg** v. **Farid Pindari & Ors;** 2021 SCC OnLine SC 1003 in support of such argument.

83. It was also submitted that the question as to whether a particular property is a Wakf property or not cannot be decided in a writ jurisdiction in view of the judgment of this Court in **Anis Fatma Begum & Anr**. It was contended that the writ court does not decide the question of title which is a disputed question of fact. Reference was made to the judgments reported as **Union of India v. T.R. Varma** and **Union of India & Ors.** v. **Ghaus Mohammad,** AIR 1961 SC 744. It was stated that such questions have been exclusively included in the domain of jurisdiction of the Wakf Tribunal under the Act.

84. On merits, it was argued that the order passed by the Nazim Atiyat on 31.5.1957 has recorded the following findings:

i. Manikonda village was in the list of exempted jagirs.

ii. The Second Taluqdar in his opinion had stated that Village Manikonda may be continued in the name of Akbar Hussaini subject to the service of the Dargah. This opinion was confirmed by the First Taluqdar.

iii. Manikonda Village was a Mashrut Atiya Shahi grant for the service of the Dargah.

iv. While passing the final order in respect of all the villages, the Village Manikonda and Guntapally were not made subject to Abolition of Inams Act, as was done in respect of the other villages.

85. Subsequently, in a writ petition, the High Court in its order dated 14.12.1961 held that Manikonda and Guntapally Villages were conditional service grants in favour of the Dargah. It was thus argued that once Manikonda village has been held to be Mashrut ul Khidmat, i.e., a conditional grant for the service of Dargah, it falls within the definition of a Wakf. Further, the order of the Chief Minister dated May 29, 1956 only releases Manikonda village from the supervision of the Court of Wards and places it with the Government as an interim arrangement until the Atiyat Court decides the matter. The said order notes the fact that the properties in question (which includes Manikonda Village) were meant for service of the Dargah. It was submitted that Mohammedan Law of Wakf owes its origin to

a rule laid down by the Prophet and means "tying up of property in the ownership of God Almighty and the devotion of the profits for the benefit of human beings". The reference was made to the judgment reported as **Nawab Zain Yar Jung (since deceased) & Ors.** v. **Director of Endowments & Anr.**[47], wherein it is held that once a founder dedicates a property for wakf, the ownership of the founder is completely extinguished. Thus, once it is declared that a particular property is wakf or any such expression is used implying wakf or the document shows that there is dedication for a pious or charitable or religious purpose, the right of the person dedicating the property is extinguished and the ownership is transferred to the Almighty. A Mutawalli is appointed thereafter 47 AIR 1963 SC 985 as manager of the wakf. Though mutawalli is the administrator, governor, superintendent or curator of the wakf property, he has no right in the property belonging to the wakf. The dedication of a property as Wakf need not specifically be in favour of a place of worship, khankah, Dargah, cemetery etc. It is enough if the dedication is made for the purpose recognised by Muslim law as pious, charitable or religious. Service inam granted to individuals tasked with service for purposes which are pious, religious or charitable, meets all the necessary ingredients of a wakf. Even if the grant of land is for rendering services to the wakf, that itself is sufficient proof of dedication of such land as wakf. When once the property is held to be wakf, it always retains its character as a wakf and the grant of patta to service inamdars and persons in possession does not in any manner change its character. In case where the inam is for rendering services in connection with a pious, religious and charitable purpose, then the holder of the inam responsible for performing the services does not acquire title to that property. If the land is resumed from such inamdar for nonperformance of service and is re-granted to another person, it only means that the management of the wakf is entrusted to another individual to perform service.

86. Mr. Ahmadi further relied upon an order of the Andhra Pradesh High Court in **R. Doraswamy Reddy** v. **The Board of Wakf A.P. Hyderabad rep. by its Secretary**, 1978 SCC OnLine AP 117 holding that a service inam could be Wakf. Mr. Ahmadi further relied upon another judgment reported as **Sayyed Ali & Ors.** v. **A.P. Wakf Board, Hyderabad & Ors;** (1998) 2 SCC 642 where a question arose whether a property which had been originally endowed by the Nizam of Hyderabad for support and the services of a Dargah would lose the character of being a Wakf property once patta was granted in favour of Mokhasadars under the Iman Abolition Act. Thus, it was argued that since the Manikonda lands fulfilled the criteria for creation of a Wakf under Muslim law as a Mashrut Atiya

Shahi, and that the village was being used to bear the expenses for the maintenance of the Dargah and for celebration of the annual urs, the dedication was for a purpose recognised by Muslim Law as pious, religious or charitable.

87. It was further submitted that Mashrut ul khidmat has been recognized as pious, religious and charitable purpose even before the 1954 Act was amended in 1964. It was further argued that the facts of the present case and also the order of the Atiyat Court would demonstrate that the land in question was used ever since the issuance of the Farman from times immemorial for performance of oodh u gul and the festival of urs at the Dargah. The said service of the Dargah and meeting of the expenses of urs, flowers etc. have been carried on for almost over a century since the issuance of the Farman. It was argued that without prejudice to what is argued above, even without a formal dedication of the property, usage of the property for religious purpose would clothe the same into the nature of Wakf within the meaning of the 1954 and 1995 Act.

88. It was argued that the submission of the State Government to the effect that no Wakf was created as there was no permanent dedication since title did not pass is ex facie incorrect and misconceived. Firstly, the said submission proceeds on the incorrect premise that the grant of jagirs does not vest title. Referring to the Report of the Royal Commission on Jagir Administration and Reforms, prior to the promulgation of the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358F, there were several different categories of jagirs, some permanent and some temporary. There was nothing to show that Manikonda jagir was temporary. Hence, this being a disputed question of fact could only be determined by the Wakf Tribunal. Secondly, the terms of the grant and its nature, whether permanent or temporary, could only be deduced upon the interpretation of the original Farman which would have to be summoned from the government archives. Thirdly, it was submitted that without prejudice to what has been stated above, the entire premise of the argument that formal title must pass to create a permanent dedication is misconceived. Even in service inams formal title remains with the Government. This Court has interpreted such inams with a condition of service to be Wakfs. Since the permanency of dedication constituting a Wakf exists in relation to the service and the interest in the land, it becomes a Wakf, even if formal title does not pass. In the present case, there is nothing to show that the original Farman which made the dedication for condition of service was not permanent. In fact, the narrative given by the Atiyat Court suggests otherwise.

89. It was also contended that the argument raised by the appellants that since the Atiyat Court did not have jurisdiction to decide the title of the property as it was

only empowered to decide the amount of commutation payable, therefore the observation that the Manikonda lands were Mashrut Atiya Shahi grant for the service of the Dargah ought to be ignored. In this regard, it is relevant to mention that the Manikonda lands have not become Wakf property by virtue of the order of the Atiyat Court, but by virtue of the original grant by the Farman. The order of the Atiyat Court merely reiterates that position and makes an observation as to the nature of the property which has never been contested. Further, if the order dated May 31, 1957 is perused, the issue before the Atiyat Court was that whether the 5 villages mentioned in the order were Mashrut or Zar-Khareed, i.e., conditional service grant for the Dargah or self-acquired property. In this respect, it was held that the Manikonda land was a Mashrut Atiya Shahi grant for the service of the Dargah. This finding was affirmed by the High Court by virtue of its order dated December 14, 1961. The State Government was a party at both stages as it was represented by a government pleader. No objections were raised as to the said factual position or as to the jurisdiction of the Atiyat Court. In fact, in the Writ Petition filed by the State, it has been admitted that the grant was treated as Mashrut ul Khidmat grant. In such circumstances, the findings having attained finality cannot now be allowed to be re-opened or challenged on the basis of an alleged jurisdictional error. This position is further buttressed by a perusal of Section 13 of the Atiyat Enquiries Act, 1952 where finality is attached to the orders passed by the Atiyat Court.

90. Mr. Ahmadi has further submitted that Manikonda Village was not a jagir within the meaning of the Abolition Regulation as the Jagir in terms of Section 2(f) of the Abolition Regulation does not include Mashrut ul Khidmat though it includes several other types of jagirs like paigah, agrahar, umli etc. It was argued that the Report of Royal Commission on Jagir Administration and Reforms mentions about conditional grants and certain other jagirs which were permanently given to the grantee. The Commission had recommended that jagirs intended for religious service should not be resumed. It was further argued that the vesting of jagirs in the government was not automatic in terms of Regulation No. 5 of the Abolition Regulation but different dates for different jagirs were to be notified. No notification pertaining to Manikonda Village has been brought on record to show that the Government notified an appointed date for vesting of the Manikonda Village in the Government. Still further, the Commutation Award dated June 5, 1959 does not show any payment made to the Dargah as stipulated under Regulation No. 10 of the Commutation Regulation. It was submitted that the words, jagir, inam, etc. have been interchangeably used in the present matter, however what is important is that the land in question has been recognised as a

grant for the service of the Dargah, which is a Wakf and would continue to be a Wakf, despite abolition of jagirs.

91. It is submitted that the second survey could be conducted as 20 years had passed from the date of first survey and that the Wakf Board had the powers to summon the report concerning Manikonda Village from the Survey Commissioner under Section 105 of the 1995 Act. It was also submitted that the Wakf Board has the power to issue the Errata notification and Manikonda Village has been correctly included in the list of Wakf properties as the Wakf Board has the power to collect information regarding any property which it has the reason to believe was a Wakf property. It was argued that Sections 4 and 5 form one group whereas Section 32 grants power of general superintendence of all Wakfs on the Wakf Board. Section 32(2) (n) specifically enumerates the power of the Wakf Board to investigate and determine the nature and extent of a Wakf property. Such power is unilateral and not adjudicatory, where the Wakf Board is empowered to conduct its own investigation and determine the nature and extent of a Wakf property. Hence, the Board exercises administrative powers under Section 32(2)(n) of the 1995 Act. Reference was made to the judgment reported as **A.P.A. Rasheed v. N.N. Khalid Haji & Anr.,** 2011 SCC OnLine Ker 4185 of the Kerala High Court. It was argued that the scope of the words "investigate and determine" under Section 32(2)(n) is an independent discernment by the Wakf Board, without requiring the interested persons to be made a part of the process. Reliance has been placed upon the judgment **Attorney General** v. **Hughes**, (1899) 48 Weekly Reporter 150**.** The Wakf Board has power to decide if a property is a Wakf property or not under Section 40 and the said action of the Wakf Board is subject to the decision of the Wakf Tribunal. Such inquiry is not adjudicatory but contemplates inquiries in the course of examination of the records of a particular Wakf and the dedications of property made to such Wakfs. It was pointed out that sub-sections (3) and (4) of Section 40 relate to the properties which are either registered as a property of any Trust or Society. The Wakf Board is empowered to conduct an Inquiry and if it is satisfied that the property is a Wakf property, it will call upon the concerned Trust/Society to show cause as to why such property should not be registered as Wakf property. Thus, prior notice is necessary to the registering authority in such situation contemplated by sub-sections (3) and (4) of Section 40 only. Reliance was placed upon a judgment of the Calcutta High Court in the case of **Amjad Ali Mirza & Ors.** v. **Board of Wakfs & Ors;** C.O. No. 749 of 2018 decided on 20.2.2019. It was argued that the power of Wakf Board to collect information regarding any property which it has reason to believe to be wakf property is not subordinate to the power of the State Government to get a survey conducted under Sections 4 to

6 of the 1995 Act. It was argued that in view of the inherent power of the Wakf Board to issue Errata notification, it cannot be rendered nugatory merely because it has not been issued as per the provisions of Sections 4 to 6 of the 1995 Act. Thus, it was contended that issuance of Errata notification could be traced to Section 32(2)(n) as well as under Section 40(1) of the 1995 Act.

92. Mr. Ahmadi has relied upon judgments of this Court reported as **T.N. Wakf Board** v. **Hathija Ammal (Dead) by LRs & Ors;** (2001) 8 SCC 528 and **Madanuri Sri Rama Chandra Murthy** v. **Syed Jalal**, (2017) 13 SCC 174 dealing with pari materia provisions contained in Section 27 of the 1954 Act to Section 40 of the 1995 Act. Hence, the Wakf Board derived its power to include such property in the list of wakfs either under Sections 4 to 6 or Sections 30 or 40 of the Act. Mr. Ahmadi has referred to the following material to conclude that the Manikonda Village was a Wakf property.

"a) The Manikonda village was a service grant for the Dargah.

b) In Sayyed Ali (supra), this Hon 'ble Court has held that a grant along with service to Dargah is a Wakf and would remain as a wakf irrespective of the Abolition Regulations.

c) In any event, as per the order of the Atiyat Court, the Manikonda village was a Mashrut Atiya Shahi grant for the service of the Dargah. This is also apparent from the Muntakhab issued by the Atiyat Court.

d) Thus, the Manikonda village was a Masl,root ul Khidmat, which fell within the purview of the definition of a Wakf under the 1954 act and has been specifically included within the definition of wakf since 1964.

e) The genesis of the fact that Manikonda lands were Wakf lands can be traced to the first survey report, wherein, in the remarks column it has been noted as follows:- "The Dargah is looked after by the Mutawalli in the pa.st the jagirs of Manikonda Dargah Hussain Shah Valli and Gunthapalli were given for the functioning of the Dargah and annual urs. The particulars of the compensation received now by the mutawalli are not known"

93. It was submitted that while issuing the Errata notification, the Wakf Board took notice of the following documents:

"i. The Shahi Firman

ii. The orders of the then Chief Minister, First Taluqdar, Second Taluqdar and other Officers.

iii. The order of Nazim e Atiyat dated 31.5.1957 as well as 24.09.1958 (rejecting the review petition) iv. The order of the Board of Revenue dated 14.11.1959 v. The order of the Hon'ble High Court in Writ Petition No. 666 of 1959 vi. The Muntakhab No. 98 issued by the Nazim e Atiyat on 26.11.1958 vii. The Report of the First Survey which mentioned in the remarks column that Manikonda and Guntapalli were allotted to the Dargah for rendering services to the institution."

94. It was further argued that the State Government herein is challenging a notification issued in the State Gazette to contend that there is a dispute between the Revenue Department of the State which is claiming that the subject lands are jagir lands whereas the Minorities Welfare Department is of the view that the subject lands are the Wakf properties. Reference was made to a judgment of this Court reported as **Chief Conservator of Forests, Govt. of A.P.** v. **Collector & Ors.**, (2003) 3 SCC 472 to make out a strong case of setting up of similar committees by the State Governments to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such committee shall be binding on all the departments.

95. Mr. Ahmadi rebutted the arguments raised by Mr. Giri that the State Government is precluded from invoking the jurisdiction of the Tribunal as the State Government is a party in the suit filed in the year 2007. It was stated that the Government could always approach the Tribunal under Section 6 or under Section 83 of the 1995 Act.

96. Mr. Ahmadi referred to an order passed by this Court on May 8, 2012 and July 26, 2013 to contend that such orders do not foreclose the right of the Board to recover Wakf lands. However, referring to a judgment of this Court reported as **K.B. Ramachandra Raje Urs (Dead) by Legal Representatives** v. **State of Karnataka & Ors.**, (2016) 3 SCC 422 Mr. Ahmadi has submitted that once it is determined that the possession of the property is contrary to law, the normal relief is to hand over the possession of the entire land to the rightful owner but if construction has been carried out on a part of the land, the rightful owner becomes entitled to receive compensation in terms of the market value of the land which has been utilized for construction and is entitled to recover possession of the remaining part of the land which is vacant. It was further pointed out that the Government illegally allotted 1226 acres and 29 guntas to various parties out of which allotees have utilized 818 acres and 9 guntas. Thus, 428 acres and 3 guntas of land is still lying vacant. The total area which is lying vacant and which belongs to the Wakf thus comes out to be 836 acres and 23 guntas. Hence, a direction has been sought from this Court to direct the Wakf Tribunal to order the appellants in all the matters to handover possession of the vacant part of the

property and to pay compensation to the Wakf Board at the market value for the part of the property utilized in construction.

97. In respect of invocation of writ jurisdiction of this Court, it was contended that the facts of the present case are disputed and contentious. It is well settled that the disputed question of facts cannot be decided in Writ Jurisdiction especially when the Act gives exclusive jurisdiction to the Wakf Tribunal to decide such questions.

98. Moreover, it was argued that Mashrut Ul Khidmat land is specifically excluded from the purview of "Endowment Regulations". It has to be treated as endowed in terms of Regulation 447. It was submitted that grant of condition of service to a non-religious institution is not treated as endowment whereas grant made to religious institution could be considered as endowment. Thus, conditional grant for service of Dargah was an endowment.

99. In the written submissions filed on behalf of Dargah, it was submitted that the Wakf Tribunal should be allowed to proceed with the suit and that 1204 acres have been allotted and built upon whilst the rest of the land admeasuring 450 acres is still untouched. The Farman dated 1st Ramzan57, 1333 A.H. (July 13, 1915) wherein the Nizam has released the grant in favour of Akbar Hussaini, son of Safiullah Hussaini with the direction that the inam and succession Inquiries should be sorted out. The 57 Also Ramadan said issue was decided by the Atiyat Court. The Muntakhab dated November 26, 1958 drawn up after the order the Atiyat Court mentions that the Village Manikonda is a crown grant with items of income including excise, as conditional service grant of Dargah. Columns 6 and 7 would show that total extent of 1898 acres and 18 guntas in Manikonda Village was given as conditional service grant to the Dargah. As per the practice of the 'Suls-e-Sulsan', Saifullah Hussaini as Sajjada was to get 2/3rd and the balance 1/3rd was to be given to the family. Such fact was an input for the decision of the Wakf Board under Section 40 of the 1995 Act. The Wakf Board could have arrived at the decision independently. Since no question arose about the property being wakf, no further inquiry or proceedings were necessary. The Survey Report format is under the authority of the Government and, therefore, cannot be taken to be an independent exercise of the Wakf Board. It was further submitted that the Errata notification is issued under the authority of the Government. It was submitted that Inam means a grant of rent-free land which was hereditable and for perpetual occupation. Inams were categorized as (a) Sanadi Inam and (b) Gaonnisbat Inam. Sanadi Inam was a grant from the ruling power of the time of grant free from all Government exactions, in perpetuity whereas Gaonnisbat Inam was land granted

rent free by the village of its own. Jagir means a grant of land made by the Government to an individual as a reward for special service. It was thus argued that in deciding the wakf character of the Dargah property, the concept of a Jagir and the Jagir Abolition Regulation as also the concept of an Inam and the Inam Abolition Regulation need to be carefully examined as the documents produced have mentioned Jagir village, Inam lands, Mashrut-ul-Khidmat, Crown grant, Jagir conditional on service, exempted Jagir, etc. Both statutes have special provisions for religious and charitable institutions. It was argued that the Commutation Award dated 5.6.1959 was provisional and does not clearly indicate the amounts payable in terms of Regulation 10 which provides 90% of the revenue to be made over to the religious institution. It was submitted that the unique concept of a wakf including permanent dedication to the Almighty has to be kept in mind. Recent legislative clarifications have made Mashrut-ul-Khidmat part of the definition of wakf. Wakf is different from a trust where the legal title of property is held by the trustee but the beneficial title in equity is held by the beneficiary. Furthermore, wakf can be by user in the absence of a deed or declaration and once a property is considered wakf property it remains forever as a wakf property.

100. Mr. Nakul Dewan inter alia raised the argument that even if, arguendo, principles of natural justice have been violated, the jurisdiction of the Wakf Tribunal is not ousted. It was further argued that Section 13(2) of the Enquires Act gives finality to an order passed therein.

101. It was argued that the core issue in dispute touches upon the character of the land and cannot be determined by the writ court. That is because, in a nutshell, for the Appellants to succeed, it needs to be proved that the Dargah does not have title on the land. However, such question cannot be comprehensively determined by a Court exercising writ jurisdiction under Article 226 of the Constitution because there are disputed questions of fact and a final binding judgement of the Atiyat Court passed on 31 May 1957, which has confirmed that the land was granted for a religious and pious purpose under Muslim law.

102. It was further argued that the land was a conditional grant for the service of Dargah and would continue to remain a Wakf. In Muntakhab No. 98 issued in the year 1958, the Nazim Atiyat has mentioned the grant of Jagir village Manikonda as crown grant. In terms of Section 13 of the Enquiries Act, the orders passed in cases relating to Atiyat Grants shall not be questioned in any Court of law. It was further argued that the Wakf Tribunal has been statutorily conferred with exclusive jurisdiction to deal with the question as to whether the land was a wakf property or not. The final determination as whether or not the appellants have

been able to make out their principal case that the land is not wakf land, the seven issues were suggested. Thus, the discretion exercised by the High Court to direct all issues to be determined by the Wakf Tribunal does not require any interference by this Court.

103. It was also argued that the judgment in **Whirlpool Corporation** v. **Registrar of Trade Marks, Mumbai & Ors;** (1998) 8 SCC 1 is distinguishable as the High Court can decline to exercise its jurisdiction if it is satisfied that an aggrieved party can obtain relief before an alternative forum. Reference was made to judgment of this Court reported as **Commissioner of Income Tax & Ors.** v. **Chhabil Dass Agarwal**, (2014) 1 SCC 603. In **Whirlpool**, the High Court relegated the parties to the statutory forum without examining the contention but in the present case, the High Court after detailed examination, eventually declined to exercise jurisdiction under Article 226 of the Constitution in view of the alternate statutory remedy available to the parties.

I. Issues to be determined in the present Appeals

104. We have heard learned counsels appearing for the parties at length over few days wherein the detailed arguments were addressed, many documents were referred to and the parties also submitted the written submissions. We find that the following questions arise for consideration by this Court, including the questions suggested by Mr. Nakul Dewan:

"(1) Whether the High Court was justified in relegating the parties to the remedy before the Wakf Tribunal?

(2) Whether the Government was entitled to dispute the validity of errata notification before the Writ Court under Article 226 of the Constitution?

(3) Whether the State is estopped to challenge the notification inter-alia on the ground that Government Pleader was present before the Nazim Atiyat and before the High Court in proceedings against the order passed by Nazim Atiyat and that the notification was published in State Government Gazette?

(4) Whether the notification published at the instance of Wakf Board is in exercise of power conferred under Section 32 read with Section 40 of the 1995 Act?

(5) Whether the second survey report and/or the order of the Atiyat Court could be said to be sufficient material with the Wakf Board to publish the impugned Errata notification in exercise of powers vested in Section 5 of the 1995 Act?

(6) Whether the order of the Atiyat Court deals with the question of succession to receive grants or it is relevant to determine the nature of grant as conditional grant for the service of the Dargah?

(7) Whether the land in question is Mashrut-ul-Khidmat land and thus would continue to be wakf land even though, the Jagir of the village was abolished or that the Land vested in the State under Abolition Regulations or the Commutation Regulations or under the Iman Abolition Act?

(8) Whether, in the event the errata notification is held valid, the Dargah would be entitled to recover possession of the Land or alternatively, whether the Respondents are entitled to recover possession of all vacant portions of the Land and are entitled to compensation in respect of those portions of the Land on which construction has been carried out?"

1. Whether the High Court was justified in relegating the parties to the remedy before the Wakf Tribunal?

105. The High Court in its detailed order has discussed the provisions of law and the documents referred to by the parties. The findings recorded are indicative of the fact that the High Court had not agreed with the arguments raised on behalf of the State which is apparent from the fact that the Writ Petition No. 23578 of 2007 filed by the State and the Corporation was dismissed. Before dismissing the writ petition filed by the State and other aggrieved parties, the High Court did not agree with the arguments advanced by the learned Advocate General that on payment of commutation amount in terms of the Abolition and Commutation Regulations, Mashrut-ul-Khidmat stood reversed and vested in the Sovereign. Therefore, the presumption that the title to the tract of the land in the territory always vested in the Sovereign is not attracted. Though the said finding is said to be prima facie, but having discussed the provisions of the statute, the High Court has in fact returned the finding against the State. Still further, referring to various documents relied upon by the parties, the High Court found that the documents produced needed to be clarified and explained by whichever party who was relying on them. A deeper probe in relation to the contemporaneous circumstances was required to be made and the contextual events of the period when the ancient documents came into existence were required to be examined, may be by oral or other documentary evidence. On perusal of the various documents produced by the parties, the High Court held that it was not possible at all to countenance submission of the Advocate General that the subject land is not Wakf and it was taken over by the Government on abolition of jagirs (Paras 35- 38). Such finding coupled with the conclusion of dismissing the writ petitions shows that the High Court did not find any merit in the writ petition filed by the State, though the High Court was conscious of the fact that interpretation of documents was required to be made.

106. Mr. Ahmadi while raising an argument that there is an alternative efficacious remedy available to the State to seek adjudication from the Wakf Tribunal, was

candid enough to say that the jurisdiction of the Writ Court cannot be said to be barred. It was argued that since disputed question of facts arose for consideration, therefore Writ Court was not the appropriate forum to decide the disputed question of facts. Mr. Ahmadi relied upon the judgments as mentioned in para 85 for supporting such averment.

107. In **K.K. Kochunni's** case, the Constitutional Bench held that mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach - actual or threatened, is alleged and is prima facie established by the petition. It was a case where the constitutionality of an Act was challenged as violative of Article 19(1)(f) or Article 31(1) of the Constitution. The Court held as under:

"12. In other words he maintains that nobody has the fundamental right that this Court must entertain his petition or decide the same when disputed questions of fact arise in the case. We do not think that that is a correct approach to the question. Clause (2) of Article 32 confers power on this Court to issue directions or orders or writs of various kinds referred to therein. This Court may say that any particular writ asked for is or is not appropriate or it may say that the petitioner has not established any fundamental right or any breach thereof and accordingly dismiss the petition. In both cases this Court decides the petition on merits. But we do not countenance the proposition that, on an application under Article 32, this Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground."

108. In **Rashid Wali Beg**, this Court examined all the previous judgments on the question as to whether any property is a wakf property or not is triable exclusively by the Wakf Tribunal but the judgments discussed therein pertained to the invocation of the jurisdiction of the Civil Court or of the Wakf Tribunal. None of the judgments dealt with the invocation of the jurisdiction of the writ court. **Anis Fatima Begum**, is again not a judgment arising out of a writ petition filed before the High Court. It was a case of a suit filed before the Civil Court, though in para 7, there is an observation that all matters pertaining to wakf should be filed in the first instance before the Tribunal and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution. The observation made by this Court in respect of invocation of the jurisdiction of the writ court is clearly obiter as that was not the question arising for consideration. A three judge Bench of this Court in **Director of Settlements, A.P. & Ors.** v. **M.R. Apparao & Anr**; (2002) 4 SCC 638 held that "A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio

decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight." Thus, a judgment is a binding precedent on the question which arises for consideration and not otherwise.

109. The judgment in **T.R. Varma** arises out of an order of dismissal of a government servant under Article 311(2) of the Constitution. It was in these circumstances, it was held that a person who alleges that his services have been wrongfully terminated is entitled to institute any action to vindicate his rights, and in such an action, the Court would be competent to award all the reliefs to which he may be entitled to, including some which would not be admissible in the writ petition. Further, **Ghaus Mohammad** was a case wherein an order passed against the respondent under the Foreigners Act, 1946 was set aside by the High Court. However, these judgments are not indicative of the fact that disputed questions of fact cannot be adjudicated upon in the writ petition under Article 226 of the Constitution of India.

110. In **Committee of Management**, the refusal to grant approval to the proposal of the Managing Committee of the appellant of removal of a member of the teaching faculty was challenged by way of writ petition before the High Court. The petition was dismissed in view of an alternative remedy available with the appellant. This Court held that it is beyond any doubt or dispute that availability of an alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It was held that the High Court may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. It was held that in the case of this nature, where the appellant not only questioned the validity of the Act but also alleged commission of jurisdictional error on the part of the Vice Chancellor in implementing the provisions of a statute, such being an intricate question should ordinarily fall for determination by the High Court itself.

111. In **Alka Subhash Gadia (Smt)**, it was held that there is a difference between existence of power and its exercise. The powers under Articles 226 and 32 are wide and unimpeded by any external restrictions and can reach any executive order resulting in civil or criminal consequences. The Courts have over the years evolved certain self-restraints for exercising these powers in the interest of

administration of justice and for better, more efficient and informed exercise of the said powers.

112. In **Whirlpool Corporation**, dispute was pertaining to registration of the Trademarks. The appellant filed a writ petition challenging suo motu action taken by the Registrar of the Trademark under Section 56(4) of the Trade and Merchandise Marks Act, 1958. This Court held as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

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20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

113. We do not find any merit in the arguments raised by Mr. Dewan that the judgment in **Whirlpool** is distinguishable. In fact, this Court in appeal against the order of the High Court set aside the notice issued by the Registrar of the Trademarks. The triple test reiterated by this Court are where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or when the vires of an Act is challenged. Thus, the order of the Registrar was set aside in a writ petition.

114. The judgment in **Balkrishna Ram** is in respect of transfer of an intra-court appeal to the Armed Forces Tribunal against an order passed by the learned Single Bench of the High Court. Since similar question is not arising in the present appeal, we do not find any help can be taken by the learned counsel for the appellant on the aforesaid judgment.

115. A three-judge bench in a judgment reported as **Babubhai Muljibhai Patel** v. **Nandlal Khodidas Barot and Others**, (1974) 2 SCC 706 held that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. It was held as under:

"9. ……. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition ……."

116. This Court in a judgment reported as **Radha Krishan Industries** v. **State of H.P.**, (2021) 6 SCC 771 examined the question of maintainability of a writ petition before the High Court even when there was an alternative remedy available under the Goods and Services Tax Act, 2017. This Court held as under:

"25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks , (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9- 10, paras 14-15)

"……."

27. The principles of law which emerge are that: 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

117. The reliance of Mr. Dewan on **Chhabil Dass Agarwal** is again not tenable for the reason that challenge in the aforesaid appeal was to the quashing of a notice for assessment under Section 148 of the Income Tax Act. This Court held as under:

"12. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission [AIR 1954 SC 207] , Sangram Singh v. Election Tribunal [AIR 1955 SC 425], Union of India v. T.R. Varma [AIR 1957 SC 882] , State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. ....."

118. It was found that the Income Tax Act provides complete machinery for assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities. The remedy under the statute must be effective and not a mere formality with no substantial relief. Having said so, this Court held that the Writ Court ought not to have entertain the writ petition filed by the assessee wherein the legality of the notice issued under Section 148 of the Income Tax Act alone was subject matter of challenge.

119. We find that the High Court has examined the merits of the contention raised including the documents filed so as not to accept the contentions of the State. Though the High Court has expressed the same to be prima facie view, but in fact, nothing was left to suggest that it was not a final order as far as the State is

concerned with the order of the dismissal of its writ petition. Even otherwise, we find that the questions raised before this Court are the interpretation of the statues, the Farmans issued by Sovereign from time to time and the interpretation of the document to the facts of the present case. It is not a case where any oral evidence would be necessary or is available now. In fact, that was not even the suggestion before this Court. Since the question was in respect of interpretation of the statutes and the documents primarily issued by the Sovereign, the matter needs to be examined on merits as detailed arguments have been addressed by learned counsel for the parties. Thus, we find that the High Court erred in law, in the facts and circumstances of the case, to relegate the parties to the statutory remedy.

2. Whether the Government was entitled to dispute the validity of Errata notification before the Writ Court under Article 226 of the Constitution?

120. Admittedly, the Government is reflected as the owner of the land in question since the year 1912-13. The Government has exercised its rights of ownership as a successor of the Sovereign. Consequent to Abolition Regulation and payment of commutation under the Commutation Regulation, the State Government had transferred land to the Corporation. A public notice was also issued to invite objections, if any, to the allotment of the land but since none were received, the Corporation made further allotment to various corporate entities. The Wakf Board is a statutory authority established under the Act and is a "State" within the meaning of Article 12 of the Constitution. A constitution Bench of this Court in a judgment reported as **Rajasthan State Electricity Board, Jaipur v. Mohan Lal & Ors**; AIR 1967 SC 1857 held "that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".

121. Similar view that an authority created by a Statute is state within the meaning of Article 12 was considered in a judgment reported as **"State of U.P. v. Neeraj Awasthi & Ors;** (2006) 1 SCC 667" when it was held that the U.P. Agricultural Produce Market Board constituted by a statute "UP Krishi Utpadan Mandi Adhiniyam, 1964" is a State within the meaning of Article 12 of the Constitution.

122. Since, the Wakf Board is state, it has act to act fairly and reasonably. This Court in a judgment reported as **Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay**, (1989) 3 SCC 293 held that the action of a statutory

authority must be reasonable and taken only upon lawful and relevant grounds of public interest. This Court held as under:-

"25. Therefore, Mr Chinai was right in contending that every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Reliance may be placed on the observations of this Court ..... . Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. The observations in paras 101 and 102 of the Escorts case [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] read properly do not detract from the aforesaid principles."

123. In another judgment reported as **Shrilekha Vidyarthi (Kumari) v. State of U.P.,** (1991) 1 SCC 212 this Court held that the arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity. This Court held as under:-

"35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind".

124. In another judgment reported as **M.J. Sivani and others** v. **State of Karnataka**, (1995) 6 SCC 289 this court held that fairplay and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hallmarks for good governance under rule of law. It was held as under:-

"31. It is settled law that every action of the State or an instrumentality of State must be informed by reason. Actions uninformed by reason may amount to arbitrary and liable to be questioned under Article 226 or Article 32 of the Constitution. The action must be just, fair and reasonable. Rejection of the licence must be founded upon relevant grounds of public interest. Fairplay and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hallmarks for good governance under rule of law, therefore, when the State, its delegated authority or an instrumentality of the State or any person acts under a statutory rule or by administrative discretion, when its actions or orders visit the citizen with civil consequences, fairness and justness require that in an appropriate case, the affected citizens must have an opportunity to meet the case. Audi alteram partem is part of the principles of natural justice..... "

125. Thus, the State Government, as a juristic entity, has a right to protect its property through the writ court, just as any individual could have invoked the

jurisdiction of the High Court. Therefore, the State Government is competent to invoke the writ jurisdiction against the action of the Wakf Board to declare the land measuring 1654 acres and 32 guntas as wakf property.

126. An argument was raised that the writ petition should not have been filed by the State Government challenging the publication of a notification in the State Gazette and that the dispute between the Revenue Department and Minority Department should be considered by the Secretaries of the State government. The said argument raised was based upon an order passed by this Court as **Chief Conservator of Forests, Govt. of A.P**. wherein the reliance was placed on an earlier judgment reported as **Oil and Natural Gas Commission** v. **Collector of Central Excise**, (1995 Supp (4) SCC 541.

127. The Constitution Bench in a judgment reported as **Electronics Corporation of India Limited** v. **Union of India**, (2011) 3 SCC 404 has recalled the orders passed in the past including the orders passed in **Oil and Natural Gas Commission,** the judgment which was relied upon by the High Court. It was held that the mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. One cannot possibly expect timely clearance by the Committees. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. Therefore, reliance on the judgment in **Chief Conservator of Forests** is not tenable and no such objection survives.

128. It may be noticed that the writ petition was filed by the Chief Secretary of the State when inter-departmental communications of the Revenue and the Minority Welfare Department were at cross purposes. The communications dated 25.1.2007, 4.5.2007 from the Minority Welfare Department are to direct Collector to deliver possession of the balance/vacant and unutilized land whereas the communication dated 12.6.2007 to the Secretary Revenue Department was for a request that Corporation should maintain status quo and not allot or alienate any land unless and until the issue is finalized by State Government. Such letters were forwarded to Wakf Board as well. The Minority Welfare Department was in fact seeking decision by the State Government. These communications are not the orders passed by the Minority Welfare Department of the State Government in respect of nature of land so as to raise the bar of invocation of writ jurisdiction by the State.

(3) Whether the State is estopped to challenge the notification inter-alia on the ground that Government Pleader was present before the Nazim Atiyat and

before the High Court in proceedings against the order passed by Nazim Atiyat and that the notification was published in State Government Gazette?

129. It is to be noted that the presence of the Government Pleader before the Nazim Atiyat was for a limited purpose as the grants were to be paid by State Government. The State was not a party either before the Nazim Atiyat or before the High Court. The State would be bound by the orders, if it was impleaded as party as it is likely to be affected on account of the orders passed. The liability of State for payment of grant was not in dispute but the question was as to whom the grants would be payable. Thus, the presence of Government Pleader was for the limited purpose of facilitating the implementation of the orders passed.

130. A perusal of the record of the Wakf Board, as extracted above, shows that the Errata notification was published when the same was sent by the Chief Executive Officer of the Wakf Board to the Commissioner, Government Printing Press on 13.03.2006. This publication of notification was made under Section 5(2) of the 1995 Act under the authority of the Chief Executive Officer of the Wakf Board. Hence, the notification was not at the instance of the State Government but was an act of the Wakf Board alone.

131. The argument raised that since the Errata notification was published in State Government Gazette, therefore, the State cannot turn around to say that they had no knowledge or that they are not bound by the notification so published is not tenable. We find that the purpose, object and scope of the publications in the Official Gazette is not what is sought to be contended. The Court is to presume the genuineness of any documents published in any Official Gazette as contemplated by Section 81 and Section 114 (e) of the Evidence Act, 1872. The publication in the Official Gazette is not only for the affairs of the State but has multiple uses. In fact, this question has been examined by a Division Bench of Delhi High Court in a judgment reported as **Universal Cans & Containers Ltd. v. Union of India,** 1991 SCC On Line Del 784 wherein the Court has quoted various parts of the Gazette required to be published by the Central Government. Section 4, Part III of the Gazette is meant for Miscellaneous Notifications including Notifications, Orders, Advertisements and Notices issued by Statutory Bodies, whereas Part IV is meant for Advertisements and Notices issued by Private Individuals and Private Bodies. Similar scheme of the publication in the Gazette would be available in the States as well. The High Court held as under:-

"8. Under Section 3(39) of the General Clauses Act, 1897, "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State. What is Official Gazette and under what authority it is published? is yet another question. A Gazette is generally understood as an

Official Government Journal containing public notices and other prescribed matters. Legal Glossary (1983 Edition) issued by the Legislative Department of the Ministry of Law, Justice and Company Affairs, Government of India, defines Gazette as "an official newspaper containing lists of Government appointments, legal notices, dispatches, etc xxx xxx 20. Under Section 81 of the Indian Evidence Act, 1872, the Court shall presume the genuineness of every document purporting to be in Official Gazette, and read with Section 114 of the said Act and Illustration (e) there to, the court can presume that the Official Gazette was notified on the date as appearing in the Official Gazette. However, this is only a rebuttable presumption. It can be rebutted by the evidence to the contrary. As noted above, in the present case it has been shown that the Official Gazette was notified on a date after the date appearing on the Gazette. Section 5 of the General Clauses Act, 1897, provides that where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the President. This is not applicable in the present case. Here we are concerned with a notification in the Official Gazette".

132. The Wakf Board is a statutory authority under the 1954 Act as well as under the 1995 Act. Thus, the Official Gazette had to carry any notification at the instance of the Wakf Board. Therefore, the State Government is not bound by the publication of the notification in the Official Gazette at the instance of the Wakf Board only for the reason that it has been published in the Official Gazette. The publication of a notice in an Official Gazette has a presumption of knowledge to the general public as an advertisement published in a newspaper. Therefore, mere reason that the notification was published in the State Government gazette is not binding on the State Government.

(4) Whether the notification published at the instance of Wakf Board is in exercise of power conferred under Section 32 read with Section 40 of the 1995 Act?

133. It has been argued that the Board is competent to collect information regarding any property which it has reason to believe to be Wakf property and if any question arises as to whether a particular property is a Wakf property or not, or whether a wakf is a sunni wakf or a shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

134. The argument of Mr. Ahmadi is that the Board under Section 32(2)(n) has the power to investigate and determine the nature and extent of wakf and wakf property and to cause whenever necessary, a survey of such wakf property. It is thus contended that the Wakf Board has a statutory function to investigate and determine the nature and extent of wakf. Such power is not dependent upon the provisions of Section 40 of the 1995 Act as the power to investigate and determine is exhaustive as contained in Section 32(2)(n) of the 1995 Act.

135. Reliance has been placed upon a judgment of Kerala High Court in **A.P.A. Rasheed** wherein the Division Bench of Kerala High Court examined the question as to whether a Wakf Board acting under Section 32 of the 1995 Act is an adjudicatory body. The High Court held that powers under Section 32 are in the nature of powers of superintendence in administration and empowers the Wakf Board to pass interim as well as final orders. The Court held as under:

"10. But it cannot be lost sight of that, basically the powers under Section 32 are in the nature of the powers of superintendence in administration. A reading of Section 32 clearly shows that Section 32 does not make any distinction between final orders and interim orders. When the situation demands, Section 32 certainly empowers the Wakf Board to pass interim orders as well as final orders. There is nothing in the language of Section 32 which can limit the powers of the Board to pass only final orders and not interim orders. The sweep of the powers under Section 32(1) as further explained by Section 32(2), according to us, can leave no semblance of doubt in our minds that interim as well as final directions can be issued by the Board under Section 32. The first contention raised that the Board does not have competence to issue interim orders like the one issued in the impugned orders cannot therefore succeed. This point is answered against the first respondent.

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12. We repeat that the powers under Section 32 are powers of superintendence. Such powers are to be exercised primarily to ensure that the Wakfs are properly maintained, controlled and administered. This is very clear from Section 32(1). Section 32(2)(c) clearly suggests that the Wakf Board has powers to give directions for the administration of the Wakf. Sub clause (o) shows that the Board has powers to do such acts as may be necessary for the control, maintenance and administration of the Wakf."

136. The High Court in the aforementioned case was examining scope of Section 32. It held that such powers are to be exercised primarily to ensure that the wakfs are properly maintained, controlled and administered. Sub-clause (o) shows that the Board has powers to do such acts as may be necessary for the control, maintenance and administration of Wakf.

137. Mr. Ahmadi has further relied upon an order passed by the learned Single Bench of the Calcutta High Court in **Amjad Ali Mirza's** case. It may be stated that a sale deed was executed by Secretary of State for India-in-Council in favour of five men managing committee on 31.7.1926. One of the questions examined was the scope of Section 40 of 1995 Act. It was held that the impugned resolution of the Wakf Board under Section 40 of 1995 Act was virtually devoid of reasons. The title in respect of a property was decided by the resolution but the Board did not care to record even a semblance of judicial consideration while taking the resolution. However, the Court examined the sale deed dated 31.07.1926 to hold that the

transfer was not in favour of the committee members in their personal capacity or for their individual interest but solely for the worship of the Mohammedan community. The High Court held as under:

"54. Section 40 of the Waqf Act empowers the board to collect information by itself about a property which it has reason to believe to be waqf property and after making an inquiry as it may deem fit, to decide such question. The section doe not specify the nature of inquiry to be undertaken by the board in arriving at a decision in that regard. In view of the summary nature of the proceeding as contemplated in the said section, detailed evidence or hearing might not be taken/given by the board before coming to a decision as to whether a property is a wakf property. In the present case, what is to be seen is whether adequate documents and materials were before the board to declare the suit property to be a waqf property.

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58. As such, the deed of 1926 makes it categorically clear that the transfer was not in favour of the committee members in their personal capacity or for their individual interest but solely for the worship of the Mohammedan community.

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63. Although Section 40 was not complied with in terms in the strictest sense, the spirit of Section 40 was complied with inasmuch as the board considered a deed of 1926, the execution of which has not been rebutted by the petitioners. The said deed, on a meaningful reading, can only be interpreted to be a dedication for the purpose of the God Almighty and worship by the Mohammedan community, if not directly in the name of God Almighty. The will of Allah in the Islamic sense has to be manifested through human agency, for which the investiture contemplated in the 1926 deed was in favour of the human beings, who would act as agents to perpetuate worship by the Mohammedan community.

64. Hence, despite the resolution taken by the board being technically unsound due to dearth of reasons, the conclusion arrived at by the Board was correct."

138. Therefore, the judgment of the High Court was interpreting the document which was subject matter of consideration before the High Court. The inquiry under Section 40 was found to be perfunctory without recording any reasons. Therefore, the said judgment is actually not helpful to the argument of Mr. Ahmadi.

139. The question to be examined is that power to investigate and determine the nature of property is an administrative function as submitted by the Learned Counsel for the Wakf Board and Dargah or is it a quasi-judicial function as an inquiry is required to be conducted before any property is declared to be Wakf property. It was argued by the appellants that since such order of the Wakf Board is final, subject only to an appeal before the Wakf Tribunal, it has to be a reasoned

and speaking order as in appeal, the correctness of the reasons recorded by the Board would be required to be examined.

140. The test to determine as to whether an institution discharges quasi-judicial function came up for consideration before this Court in a judgment reported as **Indian National Congress.** This Court held that if law requires that an authority before arriving at a decision must make an inquiry, such a requirement of law makes the authority a quasi-judicial authority. This Court held as under:-

"25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

27. What distinguishes an administrative act from a quasijudicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an Inquiry, such a requirement of law makes the authority a quasi-judicial authority."

141. In a Constitution Bench judgment reported as **Province of Bombay v. Khushaldas S. Advani & Ors;** AIR 1950 SC 222**,** this Court deduced principles as to when an authority can be said to exercising quasi-judicial functions. It was held that the absence of two parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially. This Court held as under:

"173. What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are:

(i) ……

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasijudicial act provided the authority is required by the statute to act judicially.

174. In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

142. This Court in a judgment reported as **State of Himachal Pradesh v. Raja Mahendra Pal & Ors;** (1999) 4 SCC 43 held that a quasijudicial function stands

midway between a judicial and an administrative function. The primary test is as to whether the authority alleged to be a quasi-judicial one, has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in the affirmative, the authority would be deemed to be quasi-judicial, and if the reply is in the negative, it would not be. It was held as under:-

"9. It follows, therefore, that an authority is described as quasi-judicial when it has some of the attributes or trappings of judicial functions, but not all. This Court in Province of Bombay v. Khushaldas S. Advani [AIR 1950 SC 222 : 1950 SCR 621] dealt with the actions of the statutory body and laid down tests for ascertaining whether the action taken by such a body was a quasijudicial act or an administrative act. The Court approved the celebrated definition of the quasi-judicial body given by Atkin, L.J., as he then was in R. v. Electricity Commrs. [(1924) 1 KB 171 : 130 LT 164] in which it was held:

"Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The aforesaid definition was accepted as correct in R. v. London County Council [(1931) 2 KB 215 : 144 LT 464] and many subsequent cases both in England and in India. Again this Court in Radeshyam Khare v. State of M.P. [AIR 1959 SC 107 : (1959) 1 MLJ 5 (SC)] relying upon its earlier decision held:

"It will be noticed that this definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi-judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a court or a quasi-judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, L.J.

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Relying on paras 114 and 115 of Halsbury's Laws of England, 3rd Edn., Vol. 11 at pp. 55-58 and citing the case of R. v. Manchester Legal Aid Committee [(1952) 2 QB 413 : (1952) 1 All ER 480] learned counsel for the appellants contends that where a statute requires decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially. As stated in para 115 of Halsbury's Laws of England, Vol. 11 at p. 57 the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with the assistance of the general principles laid down in the judicial decisions. The principles

deducible from the various judicial decisions considered by this Court in Khushaldas S. Advani [AIR 1950 SC 222 : 1950 SCR 621] at p. 725 (of SCR) : (at p. 260 of AIR) were thus formulated".

143. This Court in a judgment reported at **Kranti Associates** held as under:

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

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(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

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(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies."

144. In respect to the provisions of Section 32 of the 1995 Act, a Division Bench of Kerala High Court in a judgment reported as **Ezhome Sunni Valiya Juma Masjid v. Kerala State Wakf Board,** 2019 (3) KLT 1064 DB held that when the Wakf Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far reaching repercussion on the rights of the parties, it is a quasi-judicial function. It was held as under:-

"10. The aforementioned provisions dealing with the powers and duties of the Waqf Board and other related provisions under the Act would reveal there may be many acts which may be done by the Board. Among them, some are obviously administrative in nature. But, when the Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far reaching repercussion on the rights of the parties, it has a quasijudicial function. (See the decision in Puthencode Juma - ath Committee v. Abdul Rahiman, [2011 (3) KLT (SN) 155]). A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. It is subject to some measure of judicial procedure. As regards quasi-judicial functions, they cannot be delegated unless the authority concerned is enabled to do so expressly or by necessary implication. The general principle is that where any kind of a decision on a lis has to be made, it must be made by the authority empowered by the statute concerned and by no one else. We will deal with the same further, a little later."

145. Thus, we find that the power of the Board to investigate and determine the nature and extent of Wakf is not purely an administrative function. Such power has to be read along with Section 40 of the Act which enjoins "a Wakf Board to collect information regarding any property which it has reason to believe to be

wakf property and to decide the question about the nature of the property after making such inquiry as it may deem fit." The power to determine under Section 32(2)(n) is the source of power but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of information collected finds that the property in question is a wakf property. An order passed thereon is subject to appeal before the Wakf Tribunal, after an inquiry required is conducted in terms of subsection (1) of Section 40. Therefore, there cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property. The finding of the Wakf Board is final, subject to the right of appeal under sub-section (2). Thus, any decision of the Board is required to be as a reasoned order which could be tested in appeal before the Wakf Tribunal.

146. Therefore, the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry pre-supposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. The proceedings produced by the Wakf Board do not show any inquiry conducted or any notice issued to either of the affected parties. Primarily, two factors had led the Wakf Board to issue the Errata notification, that is, order of the Nazim Atiyat and the second survey report. Both may be considered as material available with the Wakf Board but in the absence of an inquiry conducted, it cannot be said to be in accordance with the procedure prescribed under Section 40 of the 1995 Act.

147. Since there is no determination of the fact whether the property in question is a wakf property after conducting an inquiry in terms of Section 40(1) of the 1995 Act, the Errata notification cannot be deemed to be issued in terms of Section 32 read with Section 40 of the 1995 Act. Such determination alone could have conferred right on the affected parties to avail the remedy of appeal under Section 40 of the 1995 Act.

148. The reliance on proviso to Section 40(3) of 1995 Act, contemplating notice to the registered trust or society in case the Board has any reason to believe that any property is Wakf and is registered under any of the Acts is absolutely misconceived. These provisions deal with an altogether different situation. A trust or society is already registered but the if Board finds it to be Wakf, the statute contemplates notice to the authority. It does not mean that such trust or society is not required to be heard. The hearing to Trust or Society would also be as per the principles of natural justice.

(5) Whether the second survey report and/or the order of the Atiyat Court could be said to be sufficient material with the Wakf Board to publish the impugned Errata notification in exercise of powers vested in Section 5 of the 1995 Act?

149. The argument in support of the Errata notification dated 13.03.2006 is that it is traceable to the powers conferred on the Wakf Board under Section 5 of the 1995 Act. The exercise of the publication of notification is the power conferred on the Wakf Board. Therefore, the fact that second survey report was not submitted to the State Government was inconsequential as it was only a ministerial action. Once the Board had the power to publish notification after perusing the various documents, the same could not be said to be illegal only for the reason that the report was not submitted to the State Government as contemplated by sub-section (1) of Section 5 of the 1995 Act. The argument raised by Mr. Ahmadi that the notification is in terms of Section 5 of 1995 Act is not tenable. It is an admitted case that the second survey report was not submitted to the State Government and such report has not even been forwarded by the Government to the Wakf Board. The Wakf Board may have a right to requisition of any document in terms of power conferred under Section 105 of the 1995 Act, but if a procedure is prescribed for issuance of a notification, it could be issued only in the manner prescribed and not in any other manner. Reference be made to judgment of this Court reported as **Babu Verghese** v. **Bar Council of Kerala**, (1999) 3 SCC 422 wherein this Court held as under:-

"31. It is the basic principle of law long settled that if the manner of going a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor, 63 Ind App 372 who stated as under : "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all." 32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954 SCR 1098 and again in Deep Chand v. State of Rajasthan, (1962) 1 SCR 662. These cases were considered by a Three Judge Bench of this Court in State of Uttar Pradesh v. Singhara Singh, AIR 1964 Supreme Court 358 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law."

150. A Constitution Bench in a judgment reported as **CIT** v. **Anjum M.H. Ghaswala**, (2002) 1 SCC 633 reiterated that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise the same only in the manner prescribed by the statute itself. It was held as under:-

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These

orders, instructions and directions are meant to be issued to other income-tax authorities for proper administration of the Act, the Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245D cannot have the administrative power of issuing directions to other income-tax authorities. It is normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

151. Therefore, we are unable to agree with Mr. Ahmadi that since it was only a ministerial part of submission of the second survey report to the State Government, therefore, the Board had the jurisdiction to publish notification under Section 5.

152. The question now to be examined is whether the Board could issue the Errata notification after a lapse of 17 years from the date of first notification, i.e., 9.2.1989. The exercise leading to the notification started with a letter from Syed Safiullah Hussaini, the Mutawalli on 30.1.2005. He is the mutawalli mentioned in the first notification published in the year 1989. Since the notification was issued with him as Mutawalli, then his inaction for 17 long years speaks volumes of his bona-fide in initiating the process to include the large area of land as wakf.

153. We would need to examine as to what is scope and meaning of the word "errata". "Errata" is a term of French origin which means a thing that should be corrected. It means a mistake in printing or writing. Reference may be made to a judgment reported as **Parvati Devi** v. **State of U.P.**, (2007) 6 ALL LJ 50. It was held as under:-

"20. The word "Erratum (French) means a mistake in printing or writing; a note drawing attention to such a mistake. A list of mistakes added at the end of a book.

21. The word "Errata" is a word of French origin and means 'a thing that should be corrected.' After a book has been printed, it often happens that certain mistakes are found to have been overlooked. In later editions, it is usual to insert, a list of such mistakes and to point out the necessary corrections. These are called 'corrigenda'.

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23. In Judicial Dictionary by Justice L.P. Singh and Majumdar, 2nd Edition, page 552, while quoting the following passage in Assam Rajyik Udyog Karmi Sangha v. State of Assam, (1996) Gau. L.R. 236, (at page 241), the word "corrigendum" has been defined as follows:— "The dictionary meaning of the word "corrigendum" means things to be correct. It means there must be an error and there is a necessity to amend and rectify it. In the garb of corrigendum, a

rule cannot be altered and or changed, but that is what appears to have been done in the instant case. In order to alter or modify a rule the same procedure adopted in making of the rule have to be gone through."

24. The meaning and application of the word "corrigendum" has been considered by the Courts time and again. In Commissioner of Sales Tax, U.P. v. Dunlop India Ltd., (1994) 92 STC 571, this Court held that corrigendum is issued to correct a mistake in the notification, therefore, would relate back to the date of issuance of the original notification.

25. In Piara Singh v. State of Punjab, (2000) 5 SCC 765 : AIR 2000 SC 2352, the Hon'ble Supreme Court held that there is no bar on issuing the corrigendum or 'more corrigenda' for correcting the arithmetical error.

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27. In view of the above, the legal position can be summarised that a corrigendum can be issued only to correct a typographical error or omission therein. However, it is meant only to correct typographical/arithmetical mistake. It cannot have the effect of law nor it can take away the vested right of a person nor it can have the effect of nullifying the rights of persons conferred by the law".

154. We find that in the facts of the present case, the Errata notification is nothing but a fresh notification altogether. Errata is a correction of a mistake. Hence, only arithmetical and clerical mistakes could be corrected and the scope of the notification could not be enlarged by virtue of an errata notification. As against 5506 sq. yards of land notified as wakf property in the year 1989, large area of 1654 acres and 32 guntas of land could not be included under the guise of an errata notification as it is not a case of clerical or arithmetical mistake but inclusion of large area which could not be done without conducting a proper Inquiry either under Section 32(2) (n) read with Section 40 or on the basis of survey report which was called by the State Government by appointing a Survey Commissioner.

155. It may be noticed at this stage that the second survey report as called by the Wakf Board from the Survey Commissioner has many interpolations visible to the naked eye which creates a doubt on the correctness of the report which could form as a reasonable base to confer jurisdiction on the Wakf Board to include such land as a wakf land.

156. The other part of question is as to whether the order of the Atiyat Court could be said to be relevant to determine the nature of jagir village Manikonda as that of a Wakf land.

157. The Enquiries Act was enacted to consolidate the law regarding Atiyat grants and enquiries as to claim of succession to, or any right, title or interest in Atiyat

grants by repealing Dastoor-ul-Amal Inams and Circular No. 10 of 1338 Fasli (1928 AD). In fact, it appears that a Circular No. 19 of 1332 Fasli (19.03.1923) was initially issued by the Sovereign for judicial determination of disputes regarding Atiyat grants. The Circular No. 10 of 1338 Fasli (1928 AD) was repleaded specifically in terms of Section 15 of the Enquiries Act.

158. The Enquiries Act is a special Act to deal with the issues of succession in respect of grants given by the Sovereign. It is the decision of the Civil Court which is to prevail on question of succession, legitimacy etc. The jurisdiction of the Atiyat Courts is limited to the issues which fall within its jurisdiction. The dispute regarding claim of the commutation falls within the jurisdiction of the Enquiries Act. The Atiyat grants also include the amount of compensation payable under the Inams Abolition Act. Section 2 provides that all Atiyat grants shall, subject to provision of Abolition Regulation and the Abolition of Inams Act, continue to be held by the holders thereof subject to the conditions as laid down in the documents issued by competent authorities as a result of inam or succession inquiries held under the Dastoor-ul-Amal Inams or other Government orders on the subject and issued by way of continuance or confirmation of Atiyat grants. Section 3 of the Enquiries Act is subject to the provisions of Abolition Regulation as well as Inams Abolition Act as it contemplates that all Atiyat grants would continue to be held by the holders as laid down in the documents issued by competent authorities as a result of inam or succession inquiries. Under Section 3-A, the Atiyat Courts shall make inquiries as to any right, title or interest notwithstanding the enactment of Abolition Regulation. Therefore, the scheme of the Act is to conduct inquiry in respect of entitlement to receive Atiyat grant and to decide the right of succession amongst the person entitled to receive the grants. In fact, the Enquiries Act cease to apply when the commutation sum has ceased to be payable on account of Abolition of Jagirs under Section 2(1)(b) (i).

159. Atiyat grants have been defined to mean in the case of jagirs abolished under the Abolition Regulation, the commutation sums payable under the Commutation Regulation. The Atiyat grant exclude inams under the Inams Abolition Act but contemplates the payment of compensation within the ambit of Atiyat grants. The inquiry is to be held by Atiyat Courts in accordance with the provisions of the Act including inquiries into claims to succession arising in respect of such grants. An appeal lies to the Board of Revenue against the order of the Nazim Atiyat in terms of Section 11 of the Act. The decision of the Civil Court is to prevail on questions of succession, legitimacy etc. in terms of Section 12 of the Act. Section 13 gives finality to the decision of the Atiyat Court.

160. However, sub-section (2) provides that the orders passed in cases relating to Atiyat grants on or after 18.9.1948 and before the commencement of the Act by the Military Governor, the Chief Civil Administrator or the Chief Minister of Hyderabad or the Revenue Minister by virtue of powers given or purported to be given to him by the Chief Minister shall be deemed to be the final orders validly passed by a competent authority under the law in force at the time when the order was passed and shall not be questioned before any Court of law.

161. In **Raja Ram Chandra Reddy**, the order of the Chief Minister was treated to be an order of the Sovereign. It was held that no limitation could have been imported into the effect of Farman of the Nazim. The Chief Minister's order would stand validated by Section 13(2) of the Enquiries Act irrespective of the competence of the preceding authorities which dealt with the case. The order passed by the Chief Minister passed on 29.5.1956 would be a binding order in terms of Section 13(2) of the Enquiries Act. This Court held as under:-

"12. .....Even, on the view suggested by Mr. Engineer, the Chief Minister's order in such cases was to be taken as a substitute for the Nizam's Firman and the purpose of Section 13(2) was to obviate the possible objection that the Nizam's Firman in Atiyat cases was an exercise of his prerogative and could not be delegated. If, as contended, the true purpose of Section 13(2) was to supply the lack of the imprimatur of the Nizam's Firman, it is difficult to see why the operation of this provision should be confined to such of the Chief Minister's orders as are preceded by recommendations of competent authorities. No such limitation could have been imported into the effect of the Nizam's Firman, at the time when the Nizam was in a position to issue the Firmans. We have no doubt, therefore, that if the intended effective order in a particular case was the Chief Minister's order, such an order would be validated by Section 13(2) irrespective of the competence of the preceding authorities who dealt with the case."

162. It is to be noted that the Enquiries Act is applicable in respect of Atiyat grants alone. Atiyat grants after the commencement of Jagir Abolition Regulation mean only the commutation sum payable under the Commutation Regulation or the compensation payable under the Inams Abolition Act or cash grants etc. The Nazim Atiyat passed its order on 31.5.1957, when its jurisdiction was only in respect of commutation payable after the commencement of the Commutation Regulation. Factually, the order of the Nazim Atiyat is regarding distribution of shares in the Biradari portion of Mashrut-ul- Khidmat whereas rest of the property was to be considered Madad Maash. Since the jurisdiction of the Nazim Atiyat was restricted only to the commutation amount payable, the finding regarding Mashrut-ul-Khidmat land or a Madad Maash land is beyond the scope of the authority of a Nazim Atiyat on the date when the order was passed.

163. A perusal of the order of the Nazim Atiyat shows that the Nazim was conscious of the factum of the Jagir Abolition Regulation, Commutation Regulation as well as Abolition of Inams Act. Therefore, the order was passed subject to the said three statutes. The statutes have to be read along with the order of the Chief Minister making it categorical that jagir Manikonda stood vested with the State. Therefore, the order of Nazim Atiyat is operative only qua the commutation amount payable to the dependents of Sajjada and the amount payable to the Muslim Wakf Board, now represented by the Wakf Board. In terms of Section 10(2)(i) of the commutation Regulation, 90% of the gross basic sum referred to in Section 4 of the Commutation Regulation is payable to the religious and charitable institutions. Therefore, by virtue of the Abolition and the Commutation Regulation, the claim of the Wakf Board is restricted only to 90% of the amount of the gross basic sum referred to in Section 4 of the Commutation Regulation. Therefore, after the Atiyat grants stood abolished in terms of Abolition Regulation, the Atiyat Courts would have jurisdiction to decide issues relating to succession of the commutation amount payable to the heirs.

(7) Whether the land in question is Mashrut-ul-Khidmat land and thus would continue to be wakf land even though the jagir of the village was abolished or that the land vested in the State under Abolition Regulation or the Commutation Regulation or under the Inams Abolition Act?

164. A perusal of the order of Nazim Atiyat shows that the Sovereign has issued a Royal Order on 1st Ramzan, 1333 Hijri i.e. 13.07.1915 directing Sajjada to pay debt amount in lumpsum to the mortgagee Hussain Bin Muqaddam Jung. The said Farman has been produced by the learned counsel for the Dargah as reproduced in Para 44 of the order. It has also come on record that the Sovereign in 1249 Fasli granted conditional jagir on Oodh-O-Gul (flowers and perfume) expenditure of the Dargah. It was held that since the property was mortgaged with the sanction of the minister, it conforms to the conditional nature of the Maash as no permission would have been necessary if the property was self-purchased. Later, referring to the order of the Chief Minister dated 29.5.1956, it was held that Manikonda and Guntapalli villages are conditional on service to the Dargah. However, under Issue No.3, it was held that Syed Safiullah Hussaini as Sajjada shall be entitled to 2/3rd share according to Sula-e-Sulsan rule in the property for rendering service but such share was made subject to the Abolition Regulation, Commutation Regulation and Inams Abolition Act. The 1/3rd share of the total property was also allotted by the Nazim Atiyat. It was the said order of Nazim Atiyat which was given effect to by issuing a Muntakhab No. 98.

165. The proceedings before the Nazim Atiyat started somewhere in the year 1923. The rights of the parties were being examined on the date when the plaint was filed before the Atiyat Court. Due to subsequent action of the Sovereign, a decision to abolish jagirs and consequently for payment of the commutation was taken. The Enquiries Act was amended in 1956 which makes the provisions of the Enquiries Act inapplicable when the commutation sum has ceased to be payable under Section 16 and the Atiyat grants mean the commutation sums payable under the Commutation Regulation after the Abolition Regulation and that even the commutation sum shall cease to apply to an Atiyat grants. Thus, the Jurisdiction of the Atiyat Court would be limited to the disputes relating to Atiyat grants as defined in the Enquiries Act.

(8) Whether the land in question is Mashrut-ul-Khidmat land and thus would continue to be wakf land even though, the Jagir of the village was abolished and that the Land vested in the State under Abolition Regulation or the Commutation Regulation or under the Inams Abolition Act?

166. In a celebrated book titled as Mohammedan Law by Syed Ameer Ali (compiled from the Authorities in the original Arabic), the relevant explanation in respect of wakfs of jagirs and grants made by Kings and Ameers reads thus:

"Jagirs are of two kinds, one where the land has been granted in fee, that is, first the sovereign has purchased it from the Bait-ul-mal and presented it to the grantee, or it is a portion of the royal domains; 2nd, where the usufruct is only granted and the jagir is vested in the Crown. In the former case, the grantee may make a wakf, in the latter case not."

167. The Privy Council in a judgment reported as **Vidya Varuthi Thirtha** v. **Balusami Ayyar & Ors;** AIR 1922 PC 123 drew a fine distinction between the Wakf recognised by Muslim law, religious endowments recognised by Hindu law and the Public Charitable Trust as contemplated by the English law. The Court held as under:

"15. The conception of a trust apart from a gift was introduced in India with the establishment of Moslem rule and it is for this reason that in many documents of later times in parts of the Country where Mahommedan influence has been predominant, such as Upper India and the Carnatic, the expression wakf is used to express dedication.

16. But the Mahommedan law relating to trusts differs fundamentally from the English law. It owes its origin to a rule laid down by the Prophet of Islam: and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." When once it is declared that a particular property is wakf, or any such expression is used as implies wakf, or the tenor of the document shows, as in the case of Jewan Doss Sahoo v. Shah Kubeerooddeen (1837) 2 MIA 390 : 6 WR PC 4 : 1 Suther 100 : 1 Sar 206, that a dedication

to pious or charitable purposes is meant, the right of the wakf is extinguished and the ownership is transferred to the Almighty. The donor may name any meritorious object as the recipient of the benefit. The manager of the wakf is the Mutwali the governor, superintendent, or curator. In Jewan Doss Sahu's case (1837) 2 MIA 390 : 6 WR PC 4 : 1 Suther 100 : 1 Sar 206 the Judicial Committee call him " procurator." It related to a Khankha, a Mahommedan institution analogous in many respects to a Mutt where Hindu religious instruction is dispensed. The head of these Khankhas, which exist in large numbers in India, is called a sajjada-nashin. He is the teacher of religious doctrines and rules of life, and the manager of the institution and the administrator of its charities, and has in most cases a larger interest in the usufruct than an ordinary Mutwalli. But neither the sajjada-nashin nor the Mutwalli has any right in the property belonging to the wakf : the property is not vested in him and he is not a trustee" in the technical sense.

168. The said enunciation of law was followed in a judgment reported as **Nawab Zain Yar Jung (since deceased) & Ors.** v. **Director of Endowments & Anr.**[78] wherein, this Court has held as under:

"9. The Act was passed in 1954 for the better administration and supervision of wakfs. Section 3(l) defines a wakf as meaning a permanent dedication by a person professing Islam of any moveable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes:

(i) a wakf by user;

(ii) Mashrut-ul-khidmat; and

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

and "wakif" means any person making such dedication.

Consistently with this definition of "wakf", a "beneficiary" has been defined by Section 3(a) a meaning a person or object for whose benefit a wakf is created and it includes religious, pious and charitable 78 AIR 1963 SC 985 objects and any other objects of public utility established for the benefit of the Muslim community. …"

169. The question as to whether the grant of Mashrut-ul-Khidmat would continue to be wakf land needs to be examined. The argument of Mr. Giri is that Manikonda being a jagir village, the grant was for life time of the grantee and that such grant was neither heritable nor alienable. In **Ahmad-Un- Nissa Begum**, a full bench of the then Hyderabad High Court dealt with succession to the jagir estate of one Nawab Kamal Yar Jung. It was, inter alia, held that Ruler of the State was the absolute owner of all the lands. He granted usufructuary rights to them including the jagirdars. It was held as under:

"7. …….The cumulative effect of the authorities referred to above is that the jagir tenures in this State consisted of usufructuary rights in lands which were terminable on the death of each

grantee, were inalienable during his life, the heirs of the deceased holder got the estate as fresh grantees and the right to confer the estate was vested in the Ruler and exercisable in his absolute discretion. Nevertheless, the Jagirdars had during their lives valuable lights of managing their estates, enjoying the usufructs and other important privileges, which conferred considerable monetary benefits on them.

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12. The effects of these Regulations are that all existing Jagir tenures in the State were merged in the State lands and the State alone became the ultimate landlord; and the rights to receive allowances became statutory, heritable and justiciable. Had it not been for the proviso to sub-S. (2) of S. 21, it could have been argued with some justification that the rights to receive interim allowances and compensation required no special sanctions by acceptance of the recommendations of the tribunals in pending succession cases; for under sub-s. (3) of S. 9, the heirs of the deceased jagirdars are declared to be entitled to their shares in the income after the deduction of expenses. The proviso, however, directs completion of such proceedings according to the existing law, which term has been defined by clause (b) of S. 2 of Regulation no LXIX[69] of 1358 Fasli to mean the law in force at the commencement of this Regulation including the Atiyat Law, customs or usage having the force of law. Thus under the enactment still some sanction is necessary to complete the heirs title to the income and compensation. I have said that the right of regranting jagir according to the Atiyat law was vested in the Ruler as his prerogative on the basis of his being the Seignior of the manor and could be exercised only by him even after the Police Action.

But after the passing of the Regulation and the vesting of the Seigniory in the Government the power of regranting becomes statutory and capable of being exercised on behalf of the new owner, whoever it may be, by the person entrusted with the executive powers. It was argued that event before the Police Action estates of jagirdars escheated to the 'Diwani' and never to the Ruler. I would not attach any importance to such precedents, for in Atiyat matters the Rulers of this State have not held themselves bound by precedents. The position becomes fundamentally different when there are specific statutory provisions and there are rules relating to such escheats in the Regulation. That was the legal position when Shri M.K. Vellodi was appointed as the Chief Minister."

170. The said judgment was affirmed by this Court in a judgment reported as **Raja Rameshwar Rao and Another** v. **Raja Govind Rao**, AIR 1961 SC 1442 holding that the jagirs granted in Hyderabad State were not hereditary, though it may be that a son was allowed to succeed to the father in the normal course. The State, however, always had the right to resume the grant at its pleasure. It was held that:

"11. …….But even this letter shows that the State has got the right to resume the grant at pleasure and if that is so it cannot be said that the jagirs granted in Hyderabad were permanent and hereditary, though it may be that a son was allowed to succeed to the father in the normal course. The State however had always the right to resume the grant at pleasure. The nature of jagirs in Hyderabad came to be considered by a bench of five Judges of the former High Court of Hyderabad in Ahmad-un-Nissa Begum v. State [AIR 1952 Hyd 163, 167] . Ansari, J., after

referring to two cases of the Privy Council of the former State of Hyderabad as it was before 1947 and certain firmans of the Ruler observed as follows as to the nature of jagirs in Hyderabad:

"The cumulative effect of the authorities referred to above is that the jagir tenures in this State consisted of usufructuary rights in lands which were terminable on the death of each grantee, were inalienable during his life, the heirs of the deceased holder got the estate as fresh grantees and the right to confer the estate was vested in the Ruler and exercisable in his absolute discretion. Nevertheless, the Jagirdars had during their lives valuable rights of managing their estates, enjoying the usufructs and other important privileges which conferred considerable monetary benefits on them."

171. Similar view was taken by the High Court in a judgment reported as **Sarwarlal and Others** v. **State of Hyderabad**, AIR 1954 Hyd 227 which was affirmed by this Court in **Sarwanlal & Anr.** v. **State of Hyderabad (Now Andhra Pradesh) & Ors;** AIR 1960 SC 862. The issue has been examined in another judgment reported as **M/s Trinity Infraventures Limited** v. **The State of Telangana, represented by its Principal Secretary**, 2018 SCC Online Hyd 360 wherein it was held as under:

"20. (xii) These Paigah grantees, were not absolute owners of the estates. In fact, the Jagirsin Hyderabad State were neither in the nature of Zamindaries of Madras State nor of Taluqaris of U.P. While proprietary rights vested in the Zamindars of Madras and Taluqdars of Qudh, the Jagirdars in Hyderabad were entitled only to the usufructs of revenue from the estate for life. The grant, in law, on the death of Jagirdar. The Paigah estates with which this case was concerned, was no exception to this. In fact, since they were burdened with the obligation to maintain Paigah troops, they were liable to be resumed by the Nizam if he so willed. The Nizam could as well commute the military burden into an equivalent money payment and requires such payment on pain of resuming the Paigah Jagir. He was, at any time entitled to state that he does not require troops but require money in their stead."

172. The reliance of Mr. Ahmadi upon an order passed by the Andhra Pradesh High Court in **R. Doraswamy Reddy** is not helpful to the arguments raised. The High Court referred to the judgment of this Court in **Nawab Zain Yar Jung.** In the aforesaid case, the appellant in second appeal before the High Court was asserting his rights as purchaser of the land after the issue of notification declaring such land to be wakf property. The argument raised was that the property does not vest in Almighty but it vests in the person who is rendering service. It was held that for non-performance of service, the land can be resumed but does not mean that the original grantor continues to be the owner of the property. Once Wakf is created, it continues to be wakf. In the present case, the grantor of Mashrut-ul-Khidmat i.e. service to Dargah is not an individual but the Sovereign in whom the entire interest in the property vested. Therefore, Sovereign who is ultimate repository of all functions of the State, can undo the grant of service. The

jagir stood abolished with the Farman and land consequently vested with State. Such vesting would include the vesting of right of Mashrut-ul-Khidmat, which is ancillary right as right to provide service to Dargah. The jagir or jagir rights were not granted to Dargah.

173. It is the said judgment which was quoted with approval by this Court in a judgment reported in **Sayyed Ali**, in the said case, a civil suit was filed by the Wakf Board disputing long-term lease executed by Mutawalli. Learned counsel for the appellant referred to a compromise (Exhibit A-20) of the dispute between the Government and the Mokhasadar before the Madras High Court. The compromise contemplated to spend a portion of income for performing Moharram, monthly festivals and general upkeep of Dargah. It was held that the compromise decree constituted inam as a service inam and such grant answers to description of wakf even if the Mokhasadars were allowed to enjoy the property. The said judgment has no applicability to the facts in the present appeals as the Mashrut-ul-Khidmat, service grant to Dargah was granted by the Sovereign and therefore Sovereign had a right to take away that right. Such right was exercised by enacting Abolition and Commutation Regulations including abolishing the jagirs granted to temples, mosques and other institutions. Therefore, the abolition of grant for the service of the Dargah is covered by Section 16 of the Abolition Regulation.

174. The argument of Mr. Ahmadi is that as per the Nazim Atiyat order, land of jagir village Manikonda was found to be Mashrut-ul-Khidmat land i.e. income from the land was to be used for the service of Dargah that is for pious and religious purposes. The said purpose would be considered as wakf under the Muslim law even before 1961 when the same was specifically included in the 1954 Act. Thus, a land which is dedicated for pious and religious purposes would continue to be wakf in view of the principle that once a wakf is always a wakf. It was also argued that the Endowment Regulations framed in the year 1940 excluded Mashrut-ul-Khidmat land from the operation of the statue as per the definition of endowment in Section 2 of the said Act. The reliance is placed upon Rules 445 and 447 framed in terms of Section 16 of the Endowment Regulations contemplating that the estates subject to condition of service will be regarded as endowed and the proceedings will be adopted for entering the said estates in the Book of Endowment. It was also argued that the Abolition Regulation abolished different forms of jagirs but not the jagir which was a Mashrut-ul-Khidmat land, therefore, the argument is that the Abolition Regulation would not be applicable in respect of the land dedicated to Wakf.

175. The land was mortgaged by Sajjada Safeerullah Hussaini with the permission of the sovereign in favour of Hasan Bin Muqaddam Jung on 1st Rajab 1296 Hijri (June 20, 1879). It shows that user of land for service of Dargah was not as sacrosanct as is sought to be projected. In fact, after the death of Safeerullah Hussaini in 1303 H (somewhere in the year 1886-87), his son Akbar Hussaini submitted an application for the restoration of Maash. It was on the request of Akbar Hussaini that the Sovereign issued the Farman on 1st Ramzan 1333 (13.7.1915) for the release of the mortgaged land, subject to the Sajjada, repaying the amount he owes to the factory of Hasan Bin Mohsin, who appears to be successor of the mortgagee who died in the year 1290 Fasli (1880).

176. It is the Sovereign who had granted permission to redeem land to Akbar Hussaini. The Sovereign was the owner of all lands within his State. The jagirdars were permitted to enjoy the usufruct thereof. Such jagirdar had no right to alienate the property and after his death, the Sovereign may regrant the same to his son but it is the Sovereign who has had the title over the land at all material times.

177. The Shahi Farman dated 1st Ramjan 1333 Hijri (13.7.1915) shows two facts- (1) that the jagir land was mortgaged with Hasan Bin Mohsin, and (2) after his death, the land was under the supervision of the Government. Still further, at the time of death of the Sajjada Safeerulla Hussaini, his heirs were minors and the Court of Wards was appointed to manage the estate on behalf of the minors. The Royal Order is to the effect that Sajjada of Dargah shall regularly pay the amount to the other shareholders who have the right to receive maintenance allowance required for their upkeep. If the inam inquiries or inheritance inquiries are required, the same shall be done as per the rules and regulations. It was thereafter that the matter was taken up by Nazim Atiyat on the basis of a plaint filed by Akbar Hussaini, son of late Safeerulla Hussaini in terms of the royal order.

178. Section 16 of the Abolition Regulation specifically abolishes the jagir granted to a temple or mosque or any other institution established for a religious or public purpose. In the present case, jagir was not granted to a mosque or any institution established for religious or public purpose but the Sajjada was only permitted to use the usufruct of the land of the village for the service of the Dargah. If the jagir itself stood abolished in terms of Section 16 of the Abolition Regulation, the usufruct from the land as Mashrut-ul-Khidmat was not greater than the jagir granted to a religious or public purpose. Therefore, the land granted as Mashrut-ul-Khidmat to Sajjada for rendering service to Dargah would be a minor right as against the jagir granted to a mosque or any other religious institution.

Therefore, the land which was given for Mashrut-ul- Khidmat could very well be abolished by the Sovereign while enacting the Abolition Regulation.

179. The column 7 of Muntakhab No. 98 describes the property of village Manikonda as conditional service grant to the Dargah. It does not override the statutory provisions. The Muntakhab is a consequential order or decree to the order passed by Nazim Atiyat. Such jurisdiction conferred on the Atiyat Court is confined to the entitlement of the persons to the right or interest in Atiyat grants. Therefore, the Muntakhab (decree) would not enlarge the scope of the order as neither the jurisdiction of the Atiyat Courts under the Enquiries Act nor the Abolition Regulation or the Commutation Regulation, permitted the service to Dargah.

180. Now adverting to the order of the Chief Minister dated 29.05.1956 which is the other document relied upon by Mr. Ahmadi apart from the reports of the first Taluqdar and second Taluqdar as mentioned in the order of Nazim Atiyat, the reports of the first Taluqdar and the second Taluqdar are only aid to facilitate decision by the Nazim Atiyat but they are not the judicial orders which could be said to be binding. It is the order of the Nazim Atiyat passed under the Enquiries Act which is relevant and not the reports received from the Revenue Authorities to arrive at the decision dated 31.05.1957. The order of Nazim Atiyat in review as well as the dismissal of appeal by Board of Revenue without any reasons would be relevant only to the extent that such proceedings were initiated but remain unsuccessful. Even the order of the High Court in the writ petition against the order passed by the Board of Revenue is only an order of affirmation of the order passed by Nazim Atiyat, though certain observations were made which were not even part of the order of Nazim Atiyat. Similarly, the Muntakhab No. 98 issued by Nazim Atiyat is only a consequential decree subsequent to the order passed by Nazim Atiyat on 31.05.1957. In fact, the survey report at serial number 262, in the remark's column, mentioned that "Dargah is looked after by Mutawalli and in the past, the Jagirs of Manikonda, Dargah Hussain Shah Wali and Guntapalli were given for the functioning of Dargah and annual Urs. The particulars of the compensation received used by the Mutawalli are not known".

181. The argument that Manikonda village was in the list of exempted jagirs and that in the final order, Manikonda and Guntapalli villages were not made subject to Abolition of Inams Act does not appear to be factually correct and in any case is of no consequence. Issue No.3 in the order of Nazim Atiyat was whether Maqdoom Hussaini has any preferential right over the claim of Akbar Hussaini. Maqdoom Hussaini was claiming right as self-purchased property whereas Akbar

Hussaini was claiming as the successor of Sajjada. It was held that it was not the self-acquired property of Maqdoom Hussaini and thus the Nazim Atiyat had fixed the share of legal heirs. 1/3 family share of Mashrut-ul-Khidmat was in respect of jagir village of Manikonda and Guntapalli, which was to be worked out separately whereas the rest of the property in other villages was to be considered as Madad Mash and that the parties were entitled to their legal shares according to Siham-e-Sharai. Therefore, the only distinction between Manikonda and Guntapalli villages is that they were found to be jagir villages whereas the other villages were found to be Madad Mash. But all the properties were subject to Abolition of Jagirs, Commutation of Regulation and Abolition of Inams Act.

182. Alternatively, even if it is assumed that there is no mention of Abolition of Jagir Regulation or Commutation Regulation in the order in respect of Manikonda Village, it would be wholly inconsequential as a statute would have preference over an order passed in a proceeding initiated prior to the commencement of the statute framed under the authority of the Sovereign. Therefore, on the date of the order passed, the Nazim Atiyat Court had no jurisdiction in respect of jagir villages or in respect of payment of inam but had only the jurisdiction to determine the share of the heirs. Therefore, Muntakhab, the decree is only to give effect of determining the share of all the legal heirs. Hence, the order of Nazim Atiyat could not have overriding effect over the Abolition Regulation and Commutation Regulation.

183. The order of the Chief Minister is to the effect that the Manikonda Village has been handed over to the Government due to abolition of jagir. The order further records that the commutation payable on abolition of jagir is being sent to the shares of the dependents of the family of Sajjada and rest to the Muslim Wakf Board towards service expenses of Dargah. Therefore, the land which was described as a Mashrut-ul- Khidmat stood vested with the State and the commutation amount was paid to the dependents of Sajjada and to the Muslim Wakf Board. The right, title and interest in the jagir land of Manikonda vested with the State with the orders of the Chief Minister. The commutation amount after the abolition of Jagir was also ordered to be paid to the dependents of the estate and the Muslim Wakf Board.

184. Though the said order of the Chief Minister was mentioned by Nazim Atiyat, it was still held that the land is Mashrut-ul- Khidmat to the Dargah. In terms of the order of the Chief Minister, jagir Manikonda vested with the State. Such order of Nazim Atiyat has to be read subject to the order of the Chief Minister who was acting under the Farman issued by the Sovereign. Such order being that of

Sovereign, the order of the Nazim Court, again a creation of the Sovereign will not be operative to the extent of the order passed by the Sovereign.

185. The order of the Chief Minister shows two things- that the land of Manikonda village had been handed over to the Government due to abolition of jagirs and the commutation amount is being sent to the dependents on the estate as well as to the Muslim Wakf Board. Therefore, the order passed by the Nazim Atiyat is, in fact, not in accordance with order passed by the Chief Minister, who was discharging the functions of the Sovereign.

186. Therefore, the Sovereign having enacted the Abolition Regulation and consequent Commutation Regulation was exercising its right as the owner of the land which at all material times vested with the Sovereign, subject to usufructuary right of the jagirdar. It was the Sovereign who had granted right to do service to Dargah. The Sovereign who had the right to give jagir village for service had a right to take away that right as well. Therefore, the abolition of jagir by the Abolition Regulation was absolute.

187. Therefore, in terms of the Jagir Abolition Regulation, the rights in the jagir and of Sajjada as holder of right to take care of Dargah stood abolished. Such is the order of Nazim Atiyat as the order was made subject to the Abolition and Commutation Regulations and also abolition of Inam under the Inams Abolition Act.

188. In **Mohd. Habbibuddin Khan**, the appellant was a hissedar in the Paigah estate. Such estate was abolished under the Abolition Regulation followed by the Commutation Regulation. The argument raised was that Atiyat Courts had no jurisdiction to hold an investigation into his claim regarding commutation. This Court held as under:

"8. We regret that we find no substance in the contentions advanced before us by the appellant's Counsel. There is no reason to limit the jurisdiction of the atiyat Courts established under the Atiyat Enquiries Act, 1952. They are competent to make Atiyat enquiries as to claims to succession to any right, title or interest in Atiyat grants and matters ancillary thereto. para 2 of the Statement of Objects and Reasons of Act 28 of 1956 by which the Atiyat Inquiries Act, 1952 was amended contains the following observation:

"2. Although Jagirs have been abolished, cases of inam enquiries in respect of several Jagirs are yet to be completed and payment of commutation sum depends on the completion of such enquiries. It is obvious that in view of the nature of these grants, such enquiries should be held in atiyat Courts…."

9. ....These questions, however, have to be decided for ascertaining the extent of the Paigah for which the appellant claims commutation. There is obviously a need for investigation. It is not at

all our intention to say that the evidence on which the appellant relies is either useless or non-conclusive. Whatever may be the weight of that evidence the matter is to be decided by the special courts viz. the atiyat Courts, which have been set up to enquire into the claims of Jagirdars and Hissedars. Therefore, it is to the atiyat Court that the appellant should have gone."

189. In **K.S.B. Ali**, the Division Bench of the High Court was considering a challenge to the tenders called by the Hyderabad Urban Development Authority for sale of land situated in Kokapet village. The dispute was after the death of Nawab Nusrat Jung Bahadur who was the holder of the land admeasuring 1635 acres and 34 guntas. The High Court held under the Enquiries Act that the power and jurisdiction of the Atiyat Court is confined to make an inquiry into the right, title or interest in the Atiyat grants and hold Inquiry into the claim to succession arising in respect of such grants. It was also held that all jagir lands vested in Diwani and that the erstwhile jagirdars and hissedars were only entitled to cash grants in whatever name they are called. There was no question of granting propriety rights under the Enquiries Act. It was held as under:

"29. From a reading of the above referred/reproduced provisions of the 1952 Act, and as amended, it could be seen that the power and jurisdiction of Atiyat Court is confined to making enquiries into right, title or interest in Atiyat grants and also holding Inquiry into the claims to succession arising in respect of such grants. Under Section 3 (pre-amended provision) all Atiyat grants held before the commencement of the Act were continued subject to the provisions of the Hyderabad Enfranchised Inams Act, 1952. Section 4 made the grants in the Jagir areas or granted by the erstwhile Jagirdars subject to enquiries and confirmation in accordance with the 1952 Act.

30. As already noted above, the definition of Atiyat grants was amended by the 1956 Amendment Act and Section 2(1)(b)(i) specifically restricted the Atiyat grants in case of Jagir lands to the commutation sums payable under the 1359 Fasli Regulation.

xxx xxx xxx

33. Since all Jagir lands were vested in the 'Diwani' and the erstwhile holders (Jagirdars and Hissedars) were only entitled to cash grants in whatever name they are called there was no question of granting property rights to them under the 1952 Act. If the definition of Atiyat grant is construed to comprehend even grant of property rights over Jagir lands, it frustrates the entire scheme and renders the provisions of the 1358 and 1359 Fasli Regulations nugatory."

190. Thus, the writ appeal was dismissed by the Division Bench. A special leave petition was filed by the appellant before this Court. Such special leave petition and the writ petition were withdrawn on 13.12.2007 with liberty to avail alternative remedy. The alternative remedy availed was of again filing a writ petition. The Special Leave Petition was dismissed on 4.10.2017 against the order passed by the High Court in the second round of litigation.

191. The judgment of this Court reported as **Nawab Zain Yar Jung** was a case arising out of a writ petition filed by the trustees appointed by the Sovereign, directing the trustees to register the trust under the Endowment Regulations and to render accounts of the same. When the matter was pending before this Court, Muslim Wakf Board constituted under Section 9 of the 1954 Act decided that the trust was a wakf within the meaning of Wakf Act and steps should be taken for registration of the trust under Section 28 of the said Act. In these circumstances, the question considered was whether registration of a trust under Section 28 of the Wakf Act was valid or not. This Court held as under:

"18. It is true that a large number of provisions contained in the document are consistent with the view that the document creates a wakf as much as they are consistent with the view that it creates a public charitable trust as distinguished from wakf. It is, however, patent that there are some clause which are inconsistent with the first view, whereas with the latter view all the clauses are consistent. In other words, if the construction for which the Board contends is accepted, some clauses would be defeated, whereas if the construction for which the respondents contend is upheld, all the clauses in the document become effective. In our opinion, it is an elementary rule of construction that if two constructions are reasonably possible, the one which gives effect to all the clauses of the document must be preferred to that which defeats some of the clauses. It is not in dispute that if the document is held to be a wakf, the directions in the document that charitable purposes should be selected without distinction of religion, caste or creed, would obviously be defeated and that undoubtedly supports the conclusion that the document evidences a public charitable trust and not a wakf.

19. Besides, the clause on which the argument of dedication is based cannot be divorced from the provision contained in the said clause which provides charitable purposes without distinction of religion, caste or creed and so, intention of the settlor was to help not only charities which would fall within the definition of a wakf but also charities which would be outside the definition and so, the whole argument of dedication breaks down because the idea dedication is not confined to purposes which are recognised as charitable by definition of the Act but extends far beyond its narrow limits. In this connection it may be relevant to recall that it would be competent to the Trustees to a substantial part of the income, and may be even the whole of the income, purpose which may be outside the limits of wakf by virtue of their powers under clause 3(c) of the document, and that plainly suggests that the vision of settlor was not confined to the narrow limits prescribed by the conditions as to a valid wakf."

192. This Court held that several features of the trust supported the conclusion that the trust is not a wakf and does not fall within the provisions of the 1954 Act. This Court held that on the basis of fair and reasonable construction, the document must be held to have created a trust for public charitable purposes, some of which are outside the limits of the wakf.

193. Mr. Ahmadi has relied upon an order passed by the Chancery Division in the case of **Hughes**. The Chancery Division was considering Section 70 of the Local

Government Act, 1894. Hughes was a trustee. The Charity Commissioner found desirable that the land should be revalued by a competent valuer vide its letter dated 08.03.1897. The order was of payment of some amount by the Hughes. The said order has no application whatsoever to the facts of the present case.

194. In **Hathija Ammal**, the Wakf Board instituted a suit before the Civil Court for declaration that the property is a wakf property though it was not published as the wakf property under Section 5(2) of the 1954 Act. It was held that Wakf Board should have followed the procedure as required under Sections 4, 5 and 6 or Section 27 of the Act.

195. In **Sri Rama Chandra Murthy**, a suit was filed by the respondent before the Wakf Tribunal for cancellation of a sale deed. The appellant asserted that the property is not a wakf property as it was not notified in the Official Gazette. An application was filed for rejection of the plaint. It was held that the Wakf Board has not exercised its jurisdiction under Section 27 of the 1954 Act or Section 40 of the 1995 Act and therefore, the averment made in the plaint does not disclose the cause of action for filing the suit. It was held as under:

"16. Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the Official Gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due Inquiry and after valid survey as well as after due application of mind. The Inquiry contemplated under sub-section (3) of Section 4 is not merely an informal Inquiry but a formal Inquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the Gazette. Since the list is prepared and published in the Official Gazette by following the aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's Report. Since the Surveyor's Report was required to be considered by the State Government as well as the Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's Report will have to be reconsidered. On the contrary, the Surveyor's Report merges with the gazette notification published under Section 5 of the Wakf Act."

196. The land dedicated for pious and religious purpose is not immune from its vesting with the State. In **Khajamian Wakf Estates v. State of Madras,** (1970) 3 SCC 894 the validity of the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 26 of 1963); the Madras Lease-holds (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 27 of 1963) and the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 30 of

1963) was subject matter of challenge on the ground that the material provisions in those Acts are violative of Articles 14, 19(1)(f) and 31 of the Constitution. The impugned Acts were said to be providing for the acquisition by the State of the "estate" as contemplated by Article 31-A. These legislations were undertaken as a part of agrarian reform. In regard to the Inams belonging to the religious and charitable institutions, the impugned Acts did not provide for payment of compensation in a lump sum but on the other hand provision is made to pay them a portion of the compensation every year. The Constitution Bench held as under: -

"12. It was next urged that by acquiring the properties belonging to religious denominations, the Legislature violated Article 26(c) and (d) which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own, acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property."

197. In view of the above, we pass the following order:

i) The Civil Appeals are allowed. The orders passed by the High Court are set aside.

ii) The Errata notification dated 13.3.2006 is quashed. The Land admeasuring 1654 Acres and 32 guntas vest with the state and/or Corporation free from any encumbrance.

iii) In terms of Section 10(2)(i) of the Commutation Regulation, 90% of the gross basic sum referred to in Section 4 of the Commutation Regulation is payable to the Dargah. The arrears shall be calculated and paid to the Dargah within 6 months.

iv) No order as to costs.

CIVIL APPEAL NOS. 10771 OF 2016, 10772 OF 2016 AND 10774 OF 2016

198. These appeals are on behalf of alleged tenants or pattadars under the jagirdar. It has been asserted that they started paying rent to the State after abolition of jagirs and claim possession on some part of the land which is now part of the impugned Errata notification. The arguments raised by the appellants have been incorporated in the main judgment. For the reasons recorded above, the appellants are at liberty to seek remedy for the redressal of their grievances before an appropriate forum in accordance with law. These appeals are

accordingly disposed of.