WEB COPY

THE HIGH COURT OF JUDICIATURE AT MADRAS

RESERVED ON : 24.06.2026

PRONOUNCED ON :31.07.2026

CORAM :
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.24333 of 2025 and W.A.(MD)Nos.3073 and 3110 of 2025

and

C.M.P.(MD)Nos.17724, 18502 and 18503 of 2025 and W.M.P.(MD)Nos. 19085 to 19087 of 2025

W.P.(MD).No.24333 of 2025

1. J.Ilayas

2. A.Mohamed Ghouse

....Petitioners

Vs

1. The Government of Tamil Nadu
   Rep. by its Principal Secretary,
   Department of Minority Welfare,
   Fort St. George, Chennai.

2. The Tamil Nadu Waqf Board
   Represented by its Chief Executive officer,
   Jaffer Syrang street,
   Vallalseethakathi nagar,
   Chennai.

3. The Superintendent of Waqf
   Trichy region,
   Tamil Nadu Waqf Board,
   No.8/124, Kaithai Millath Road,
   Palakarai, Trichy.

4. Akthar Hussain

5. Mohamed Mubarak H

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

6. Fakrudeen A

.....Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of CERTIORARI, calling for the records relating to the impugned order made by the 2nd respondent in Se.Mu. No.7046/93/Aa5/Trichy dated 25.06.2025 and quash the same as illegal.

For Petitioner	:	Mr.I.Abdul Basith
For R-1	:	Mr.M.S.Parthipan, Counsel for State
For R-2 & R-3	:	Mr.K.Jeyamohan, Standing counsel
For R-4 to R-6	:	Mr.V.Ragavachari, Senior counsel, For M/s.A.Ajimath Begum

WA(MD) No.3073 of 2025

Mohamed Ghouse

....Petitioner

Vs

1. J.Ilayas

2. The Government of Tamil Nadu
   Rep. by its Principal Secretary,
   Department of Minority Welfare,
   Fort St. George, Chennai.

3. The Tamil Nadu Waqf Board
   Represented by its Chief Executive officer,
   Jaffer Syrang street,
   Vallalseethakathi nagar,
   Chennai.

4. The Superintendent of Waqf
   Trichy region, Tamil Nadu Waqf Board,
   No.8/124, Kaithai Millath Road,
   Palakarai, Trichy.
5. Akthar Hussain

6. H. Mohamed Mubarak

WEB COPY

7. A. Fakrudeen

.....Respondent(s)

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by the Honourble Judge in W.P.(MD).No.24333 of 2025 dated 10.09.2025.

For Appellanat	:	Mr.Abdul Nizar, Senior counsel, For M/s.I.Abdul Basith
For R-2	:	Mr.M.S.Parthipan, Counsel for State
For R-3 & R-4	:	Mr.K.Jeyamohan, Standing counsel
For R-5 to R-7	:	Mr.V.Ragavachari, Senior counsel, For M/s.A.Ajimath Begum
For R-1	:	No appearance

WA(MD) No.3110 of 2025

1. Akthar Hussain

2. H.Mohammed Mubarak

3. A. Fakrudeen

....Petitioners

Vs

1. J.Ilayas

2. A. Mohamed Ghouse

3. The Government of Tamil Nadu
   Rep. by its Principal Secretary,
   Department of Minority Welfare,
   Fort St. George, Chennai.

4. The Tamil Nadu Waqf Board
   Represented by its Chief Executive officer,
   Jaffer Syrang street,
   Vallalseethakathi nagar,
   Chennai.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

5. The Superintendent of Waqf
Trichy region, Tamil Nadu Waqf Board,
No.8/124, Kaithai Millath Road,
Palakarai, Trichy.

.....Respondent(s)

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 10.09.2025 passed in W.P.(MD).No.24333 of 2025 on the file of this Court.

For Appellanats	:	Mr.V.Ragavachari, Senior counsel, For M/s.A.Ajimath Begum
For R-1 & R-2	:	Mr.Abdul Nizar, Senior counsel, For M/s.I.Abdul Basith
For R-3	:	Mr.M.S.Parthipan, Counsel for State
For R-4 & R-5	:	Mr.K.Jeyamohan, Standing counsel

JUDGMENT

(Judgment of the Full Bench delivered by The Hon'ble Mrs.Justice.L.Victoria Gowri)

Table of Contents

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

PROLOGUE

1.1. The institution of *Waqf* is among the oldest juridical concepts recognised in Islamic jurisprudence. A Waqf is not merely a dedication of property, it is a perpetual consecration of ownership in the Almighty for the benefit of religion, charity and public welfare. The Mutawalli is neither the owner nor the beneficiary of the endowed property. He is merely a trustee in the broad sense - a fiduciary entrusted with the solemn responsibility of administering the endowment in accordance with the wishes of the founder and the mandates of law.

1.2. Courts in India have, for more than a century, zealously protected waqf properties from encroachment, alienation and maladministration. Equally, Parliament has progressively evolved a statutory framework designed to ensure that religious endowments remain insulated from arbitrariness while simultaneously providing effective institutional supervision. The legislative journey from the Mussalman Wakf Act, 1923 to the Wakf Act, 1954 and eventually to the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 reflects this continuing endeavour.

1.3. The present reference does not concern the merits of any individual appointment of trustees or Mutawallis or the adjudication of rival claims to any

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

office. The issue assumes considerable significance because numerous ancient waqfs across the State of Tamil Nadu continue to be administered under schemes settled by Civil Courts, decades before the enactment of the present legislation. The principal issue is whether such powers now vest in the Tamil Nadu Waqf Board under Section 32 of the Act or in the State Government under Section 66.

1.4. The question is not merely academic. It directly affects the validity of appointments already made, the legality of future appointments, the continued efficacy of hundreds of judicial schemes governing waqfs throughout the State, and the delicate balance between judicial decrees and statutory administration.

1.5. The controversy has generated two divergent streams of judicial opinion. One line of authority holds that, after the constitution of the Waqf Board, the Board succeeds to the powers earlier exercised by the Scheme Court by virtue of Section 32. The other holds that Section 66 creates a specific statutory exception whereby such powers become exercisable by the State Government after consultation with the Board.

1.6. This apparent doctrinal divergence has led to the present reference before this Full Bench. For the sake of convenience the respective parties are mentioned herein as per their rankings in W.P.(MD)No.24333 of 2025.

2. THE REFERENCE

2.1. W.P.(MD) No.24333 of 2025 has been instituted challenging the proceedings of the Tamil Nadu Waqf Board appointing three General Trustees to the HazrathTableh Alam Bahadur Shah Nathar Wali Dargah Waqf, Tiruchirappalli,

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

for the triennium commencing from 25.06.2025. The petitioners contend that the impugned appointments are wholly without jurisdiction as the said waqf is governed by a Scheme Decree passed by the Sub Court, Tiruchirappalli in O.S.No. 91 of 1925, whereby the power of appointment stood vested in the Scheme Court. The petitioners therefore assert that by operation of Section 66 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, the appointing authority is the State Government and not the Tamil Nadu Waqf Board.

2.2. When the writ petition came up before the Hon'ble Single Judge (Hon'ble Mr. Justice G.R. Swaminathan), elaborate submissions were advanced by the learned counsel appearing on either side regarding the interplay between Sections 32 and 66 of the Act. The Hon' ble Judge noticed that conflicting judicial precedents governed the field. While certain Division Bench judgments appeared to support the proposition that the Board succeeds to the jurisdiction of the Scheme Court, another line of authorities emphasised the overriding effect of Section 66 and recognised the authority of the State Government in matters relating to appointment of Mutawallis under existing schemes.

2.3. During the hearing before the Hon'ble Single Judge, reliance was placed on two distinct lines of precedent - one recognising the Board's jurisdiction under Section 32 and the other emphasising the continued relevance of Section 66 and judicial schemes. Finding an apparent conflict amongst binding precedents and considering the recurring importance of the issue affecting the administration of numerous waqfs throughout the State, the Hon' ble Single Judge considered it inappropriate to decide the controversy sitting singly and therefore referred the matter to a Larger Bench.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

2.4. The Registry accordingly placed the papers before the Hon'ble the Chief Justice, who has constituted the present Full Bench to authoritatively pronounce upon the question of law.

3. THE QUESTION REFERRED

The following question has been referred for the consideration of this Full Bench:

"Whether the Tamil Nadu Waqf Board will have jurisdiction under Section 32 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 to appoint Mutawallis for those waqfs to which Section 66 of the Act is applicable?"

4. THE GAMUT OF THE ISSUE

4.1. Though the reference is framed in a single sentence, it raises a broader question of statutory interpretation requiring reconciliation of two provisions contained in the same enactment. Section 32 vests in the Wafk Board general superintendence of all waqfs and enumerates its statutory functions, including the appointment and removal of Mutawallis. Section 66, on the other hand, provides that wherever a deed of waqf, decree, order of Court or scheme of management authorises a Court or any authority other than the Board to appoint or remove a Mutawalli or otherwise exercise superintendence over a waqf, such powers shall thereafter be exercisable by the State Government after consultation with the Board.

4.2. The central question is whether Section 32 completely supersedes all

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

court-framed schemes upon the constitution of the Board, or whether Section 66 carves out a distinct statutory exception preserving a limited role for the State Government in respect of waqfs administered under such schemes.

4.3. Resolution of the controversy necessarily requires examination of:

(a) the legislative history of waqf administration in India;

(b) the evolution from the Wakf Act, 1954 to the 1995 enactment;

(c) the relationship between Sections 32 and 66;

(d) the nature of judicially settled schemes governing religious endowments;

(e) the principles governing harmonious construction of apparently overlapping statutory provisions;

(f) the doctrine that a special provision ordinarily prevails over a general provision;

(g) the precedential value of the conflicting Division Bench decisions rendered by this Court; and

(h) the constitutional balance between judicial decrees and statutory administration.

4.4. The answer to the reference must therefore emerge not merely from a literal reading of isolated statutory provisions but from a comprehensive construction of the enactment as a whole, keeping in view its legislative history, purpose, constitutional setting and the settled principles governing interpretation

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

of statutes relating to religious endowments.

5. FACTS LEADING TO THE REFERENCE

5.1**.** The reference arises out of W.P.(MD) No.24333 of 2025, wherein the petitioners have questioned the legality of the proceedings issued by the Chief Executive Officer of the Tamil Nadu Waqf Board in Proceedings No.Se.Mu. 7046/93/A5/Trichy dated 25.06.2025 appointing three General Trustees to the HazrathTableh Alam Bahadur Shah Nathar Wali Dargah Waqf, Tiruchirappalli, for a period of three years commencing from 25.06.2025. The petitioners seek issuance of a Writ of Certiorari to quash the said proceedings principally on the ground that the Tamil Nadu Waqf Board lacked jurisdiction to make such appointments in view of Section 66 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995.

5.2**.** The petitioners claim to be persons interested within the meaning of Section 3(k) of the Act. According to them, the waqf is an ancient notified waqf comprising a Dargah, public mosque and burial ground. Owing to allegations of maladministration, a comprehensive Scheme Decree came to be framed by the Subordinate Judge, Tiruchirappalli in O.S.No.91 of 1925 on 29.01.1930.

5.3**.** The said Scheme Decree continues to regulate the administration of the waqf. Under the Scheme, the management of the waqf vests in a Board consisting of five trustees. One trustee is required to be appointed from amongst the Pangalis, one from the hereditary line, while the remaining three trustees are to be appointed from amongst prominent Muslims of Tiruchirappalli by the Scheme Court. The trustees so appointed elect one amongst themselves as the Executive

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Trustee.According to the petitioners, the Scheme Decree has never been modified, superseded or set aside by any competent Court or statutory authority.

5.4. The petitioners further aver that after expiry of the earlier Board of Trustees, the Tamil Nadu Waqf Board issued a notification dated 22.05.2025 inviting applications for appointment of three General Trustees. Thirty-five applications were received. The applicants were called for an enquiry on 25.06.2025. On the very same day, the Board resolved to appoint respondents 4 to 6 as General Trustees for the triennium 2025–2028 and issued consequential proceedings under Section 32(2)(g) of the Act.

5.5. The petitioners assail the said appointments on several grounds, the foremost being lack of jurisdiction. According to them, once the Scheme Decree had vested the appointing authority in the Civil Court, Section 66 of the Act automatically substituted the State Government in place of the Court. Consequently, the Board could only be consulted by the Government and could not itself assume the appointing power. The petitioners further allege arbitrariness in the selection process, absence of any declared criteria for selection, non-application of mind and appointment of persons suffering from disqualifying antecedents. Since the principal challenge concerns the jurisdiction of the Board under Sections 32 and 66, that question alone has been referred for determination by this Full Bench.

6. THE IMPUGNED PROCEEDINGS

6.1. The impugned proceedings dated 25.06.2025 disclose that the Tamil Nadu Waqf Board purported to exercise its powers under Section 32(2)(g) of the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Act while appointing the three General Trustees. Curiously, the order itself records that the appointments were being made "in accordance with the Scheme Decree passed in O.S. No.91 of 1925" and simultaneously invokes Section 32(2)(g) as the source of power.

6.2**.** The simultaneous reliance upon the subsisting Scheme Decree and Section 32(2)(g) constitutes the nucleus of the present controversy. While the petitioners contend that the Scheme necessarily attracts Section 66, the respondents maintain that the Board derives its authority directly from Section 32 read with the Explanation.

7. THE PROCEEDINGS BEFORE THE HON' BLE SINGLE JUDGE

7.1**.** The Hon'ble Single Judge heard the learned Senior Counsel appearing on either side. The petitioners principally relied upon ***B. Abdul Kadar Vs. Tamilnadu Wakf Board***[1], ***Syed MaskoorMohideen Vs. Tamilnadu Wakf Board***[2]and the order of Hon'ble Justice Vinod K. Sharma, contending that Section 66 constitutes a special statutory provision governing appointments under judicial schemes. The respondents relied upon ***K.S. Sharfudeen Vs. Union of India***[3], ***I.S. Ibrahim Vs. The Principal Secretary To the Government***[4], ***B.T. Noordeen Vs. The Managing Trustee***[5]and the judgment in ***The Managing Trustee Vs. HajaNoordeen Sahib***[6], contending that upon constitution of the Board the powers previously exercised under judicial schemes stood vested in the Board by virtue of Section 32.

1 W.P. No. 5622 of 2023
2 C.R.P. No. 1654, 1655, 1577 of 2020 & 1095 of 2022
3 Writ Petition (MD) No. 15524 of 2012
4 W.A. No. 1339 of 2022
5 C.R.P. No. (PD). No. 1667 of 2024
6 W.A.No.1640 of 2016

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

7.2. Finding an apparent conflict between binding precedents interpreting Sections 32 and 66, the Hon' ble Single Judge considered it appropriate to refer the issue for authoritative determination by a Larger Bench.

8. LEGISLATIVE EVOLUTION OF WAQF ADMINISTRATION

8.1. Before examining the rival submissions, it is necessary to trace the historical evolution of statutory regulation governing waqfs in India, for legislative history frequently furnishes the most reliable guide to legislative intention. The concept of waqf has its roots in Islamic jurisprudence. A waqf represents a permanent dedication of movable or immovable property for purposes recognised as pious, religious or charitable under Muslim law. Once validly created, ownership is deemed to vest in Almighty God, while management is entrusted to a Mutawalli, who functions merely as a manager or administrator and never as owner.

8.2. Initially, waqfs were administered through hereditary Mutawallis under the supervisory jurisdiction of Civil Courts. With increasing allegations of maladministration and alienation of endowed properties, Parliament enacted the Mussalman Wakf Act, 1923 introducing limited statutory regulation.

8.3. The regulatory framework underwent substantial transformation with the Wakf Act, 1954. For the first time, statutory Waqf Boards were established for the States. Section 15 of the 1954 Act vested in the Board the "general superintendence of all wakfs" within the State. Nevertheless, Civil Courts

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

continued to exercise jurisdiction in respect of scheme decrees framed prior to the enactment, resulting in an overlap of statutory and judicial powers.

8.4. The Waqf Act, 1995 substantially restructured the regulatory framework by strengthening the powers of the Board, creating specialised Waqf Tribunals and providing a comprehensive statutory mechanism for the administration and protection of waqfs. Significantly, Parliament simultaneously enacted Section 66, thereby recognising the continued existence of waqfs governed by deeds, decrees, court orders and judicial schemes, and prescribing a statutory mechanism governing powers reserved therein.

8.5. Therefore, the present controversy is not merely one of textual interpretation but one concerning the legislative accommodation between pre-existing judicial schemes and the statutory regime introduced under the 1995 enactment. The controversy must therefore be resolved by examining the interaction between the statutory framework and pre-existing judicial schemes.

9. THE STATUTORY SCHEME OF THE ACT

9.1. Section 13 provides for the establishment of the State Waqf Board. Section 25 provides for the duties and powers of the Chief Executive Officer. Section 32 constitutes the principal repository of the powers and functions of the Board. It vests in the Board the general superintendence of all waqfs in the State and obligates it to ensure that every waqf is properly maintained, controlled, administered and that its income is duly applied to the objects for which it was created. Section 32(2) enumerates various statutory functions including

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

settlement of schemes, appointment and removal of Mutawallis, institution of proceedings, recovery of properties, maintenance of accounts and overall administration.

9.2. Sections 64 and 65 provide for removal of Mutawallis and assumption of direct management by the Board under specified circumstances. Section 66, which forms the fulcrum of the present reference, deals with situations where any deed, decree, court order or scheme vests powers of appointment, removal or supervision in an authority other than the Board.

9.3. For better appreciation Sections 32(1) and 32(2) are verbatim extracted as follows:

*"**32. Powers and functions of the Board —***

*(1)Subject to any rules that may be made under this Act, **the general superintendence** of all auqaf 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 auqaf 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 auqaf were created or intended:*

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

Explanation. —

*For the removal of doubts, it is hereby declared that **in this sub-section,***

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

"waqf" includes ***a waqf 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—

(a)to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;

(b)to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created;

(c)to give directions for the administration of auqaf;

(d)to settle schemes of management for a waqf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e)to direct—

(i)the utilisation of the surplus income of a waqf consistent with the objects of waqf;

(ii)in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilised;

(iii)in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the waqf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected, an opportunity of being heard.

(f)to scrutinise and approve the budgets submitted by mutawallis and to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

arrange for auditing of account of auqaf;

(g)to appoint and remove mutawallis ***in accordance with the provisions of this Act;***

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

(i)to institute and defend suits and proceedings relating to auqaf;

(j)to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder: Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.

(k)to administer the Waqf Fund;

(l)to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require;

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

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

(na)to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;

(o)generally do all such acts as may be necessary for the control, maintenance and administration of auqaf."

9.4.Section 66 of the Act is verbatim extracted as follows:

"66. Powers of appointment and removal of mutawalli when to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

be exercised by the State Government. —

Whenever a deed of waqf or any decree or order of a court of any scheme of management of any waqf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise ***exercise superintendence over the waqf, then, notwithstanding anything contained in such deed of waqf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:***

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers."

9.5. Before adverting to the rival submissions, it would be useful to place the broad statutory features of Sections 32 and 66 side by side. The following comparative statement is intended only to facilitate an understanding of the statutory framework and shall not be construed as expressing any concluded opinion on the merits of the rival interpretations, which are examined in the succeeding parts of this judgment.

Section 32	**Section 66**
Vests the general superintendence of all waqfs in the State in the Waqf Board.	Applies where a deed of waqf, decree of Court, judicial order or Scheme of Management vests specified powers in a Court or authority other than the Board.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Constitutes the principal source of the Board's supervisory jurisdiction under the Act.	Identifies the statutory authority competent to exercise the specified powers in the circumstances contemplated therein.
Enumerates the general powers and functions of the Board under sub-section (2).	Operates through a non obstante clause and is confined to the specific powers expressly referred to in the provision.
The Explanation expressly includes waqfs governed by deeds of waqf, decrees, Court orders and Schemes of Management within the Board's general superintendence.	Requires the State Government to consult the Waqf Board before exercising the powers contemplated under the provision.
Operates as part of the general statutory framework governing the administration and supervision of waqfs.	Operates in the special circumstances expressly contemplated by Parliament where powers stand vested under pre-existing juridical instruments.

9.6. The parties do not dispute the authenticity or applicability of the statutory provisions extracted above. The controversy lies entirely in the proper construction of their respective scope and the manner in which they are intended to operate where a waqf is governed by a deed of waqf, decree of Court, judicial order or Scheme of Management. While the petitioners contend that Section 66 constitutes a self-contained provision governing the exercise of the specified powers in such cases, the respondents maintain that the Board's general superintendence under Section 32 is sufficiently comprehensive to encompass

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

those powers as well. It is in the backdrop of these competing constructions that the rival submissions require to be examined.

10. SUBMISSIONS OF THE PETITIONERS

The Learned Senior Counsel Mr. Abdul Nizar appearing for the petitioners advanced the following principal submissions:

(i) The waqf in question is governed by a subsisting Scheme Decree framed by a competent Civil Court, which expressly reserves the power of appointment of the Mutawalli/Trustees to the Scheme Court.

(ii) The Scheme Decree has never been modified, varied or set aside by any competent Court and therefore continues to regulate the administration of the waqf, subject only to the provisions of the Act.

(iii) Section 66 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 specifically deals with situations where a deed of waqf, decree, order of Court or scheme of management vests the power of appointment or removal of a Mutawalli in an authority other than the Board. Consequently, Section 66 constitutes the special statutory provision governing the present case.

(iv) The non obstante clause contained in Section 66 manifests the legislative intention that, notwithstanding anything contained elsewhere in the Act, the powers reserved under such deeds, decrees, orders or schemes shall thereafter be exercised by the State Government after consultation with the Waqf Board.

(v) Section 32 confers only the Board's general supervisory jurisdiction over

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

waqfs and cannot be construed as impliedly nullifying or overriding the specific statutory mechanism enacted under Section 66.

(vi) The Explanation appended to Section 32 merely enlarges the category of waqfs brought within the Board's supervisory jurisdiction. It does not enlarge the substantive powers of the Board so as to substitute it in place of the authority expressly contemplated under Section 66.

(vii) Any interpretation which treats Section 32 as absorbing the entire field occupied by Section 66 would render the latter provision substantially redundant, contrary to the well-established principle that every statutory provision enacted by Parliament must be given meaningful effect.

(viii) The statutory substitution contemplated by Section 66 is complete and unambiguous. Where the appointing authority under the deed, decree, order of Court or scheme is an authority other than the Board, Parliament has designated the State Government as the authority competent to exercise such powers after consultation with the Board.

(ix) The consultation contemplated by the proviso to Section 66 itself demonstrates that Parliament intended two distinct statutory authorities to function in tandem. If the Board itself were the appointing authority, the requirement of consultation would become otiose.

(x) The earlier judgments of this Court in ***Palani Muslim Dharmaparipalana Sangam Vs. The Tamil Nadu Wakf Board***[7] and ***The***

7 1974 SCC OnLine Mad 88

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Executive Committee of Masjid-E-Farkhunda Vs. P.A.G. Hussain Moulana[8] correctly recognised the continued legal significance of judicial schemes and support the petitioners' construction of the statutory framework.

(xi) The later decisions which have interpreted Section 32 as completely superseding the operation of Section 66 have either not directly considered the scope of Section 66 or have proceeded on an interpretation which renders that provision practically inoperative, contrary to settled principles governing statutory interpretation.

(xii) The decision in ***B.T. Noordeen***[9] proceeds upon the erroneous assumption that Section 66 applies only where the relevant deed, decree or scheme was framed after the constitution of the Waqf Board and consciously excluded the Board. Such a limitation finds no place in the statutory language and amounts to the addition of words which Parliament has not enacted.

(xiii) The reference should therefore be answered by holding that, while the Waqf Board continues to exercise general superintendence over all waqfs under Section 32, the specific powers reserved under a deed of waqf, decree, order of Court or scheme of management are governed by Section 66 and are exercisable by the State Government after consultation with the Board.

(xiv) Learned Senior Counsel submitted that the controversy is not whether the Waqf Board exercises general superintendence over waqfs. Such a proposition is indisputable and flows directly from Section 32(1). The controversy is whether the Board can itself exercise powers which Section 66 expressly entrusts to the

8 1996 SCC OnLine Mad 455
9 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

State Government. **According to the petitioners, the answer must necessarily be in the negative.**

11. SUBMISSIONS OF THE RESPONDENTS

Learned Senior Counsel Mr.V.Ragavachari, assisted by M/s.A.Ajimath Begum, learned counsel representing the respondents 4 to 6 , and Mr. Jeya Mohan appearing for the Board made the following principal submissions:

(i) The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 constitutes a comprehensive and self-contained code governing the administration, supervision and management of all waqfs in the State.

(ii) Section 32 is the pivotal provision of the Act, vesting in the Waqf Board the general superintendence of all waqfs and imposing upon it the statutory duty of ensuring that every waqf is properly maintained, controlled, administered and that its income is applied strictly to the objects for which it was created.

(iii) The Explanation appended to Section 32(1) expressly provides that the expression "waqf" includes every waqf governed by a deed, decree, order of Court or scheme of management. Parliament has therefore unequivocally brought scheme-governed waqfs within the Board's supervisory jurisdiction.

(iv) Once Parliament has vested the Board with general superintendence over all waqfs, including those governed by judicial schemes, the Board necessarily succeeds to the administrative powers previously exercised by the Scheme Court, except where the Act expressly provides otherwise.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(v) The object of the 1995 Act is to replace fragmented and institution-specific systems of administration with a uniform statutory framework administered by a specialised expert body, namely the Waqf Board.

(vi) The legislative intention underlying the Act is to centralise the supervision and administration of waqfs in the Board so as to ensure uniformity, accountability and effective protection of waqf properties throughout the State.

(vii) The expression "general superintendence" employed in Section 32 is of the widest amplitude and includes every incidental and ancillary power necessary for the proper administration of waqfs, including the appointment of Mutawallis wherever the statutory framework so permits.

(viii) Judicial schemes framed prior to the enactment of the Act cannot continue to operate in a manner inconsistent with the subsequent statutory regime. To the extent that administrative powers were formerly exercised by the Scheme Court, such powers must now be exercised within the statutory framework established by Parliament.

(ix) Section 66 does not create an independent appointing authority in derogation of Section 32. It is intended only to facilitate the transition from the earlier regime to the statutory framework and cannot be interpreted so as to undermine the Board's comprehensive supervisory jurisdiction.

(x) The proviso to Section 66 requiring consultation with the Board reinforces the central role assigned to the Board in waqf administration and demonstrates that Parliament regarded the Board as the repository of institutional

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

expertise concerning waqf affairs.

(xi) The Learned Senior Counsel also drew attention to the language employed in Section 32(1), pointing out that the expression **“established or the State**" is plainly a drafting error and should read "**established for the State,**" consistent with Section 15 of the Wakf Act, 1954. According to him, the legislative continuity between the 1954 and 1995 enactments unmistakably demonstrates Parliament's intention to vest comprehensive administrative authority in the Board.

(xii) The decisions of the Division Benches of this Court in ***K.S. Sharfudeen***[10] and ***I.S. Ibrahim***[11]correctly recognise that, after the coming into force of the 1995 Act, the Waqf Board exercises statutory authority over all waqfs, including those governed by judicial schemes.

(xiii) The judgment in ***B.T. Noordeen***[12] correctly interprets the relationship between Sections 32 and 66 by holding that the Explanation to Section 32 brings scheme-governed waqfs within the Board's jurisdiction and that Section 66 cannot be construed so as to perpetuate the administrative jurisdiction of the Scheme Court.

(xiv) The petitioners' interpretation would unnecessarily fragment the statutory scheme by creating parallel centres of authority between the State Government and the Waqf Board, thereby leading to administrative uncertainty and defeating Parliament's objective of establishing a specialised statutory authority for waqf administration.

10 Supra 3
11 Supra 4
12 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(xv) The reference should therefore be answered by holding that the Tamil Nadu Waqf Board possesses the statutory jurisdiction under Section 32 to appoint Mutawallis and exercise all consequential administrative powers in respect of waqfs governed by judicial schemes, subject to the provisions of the Act, and that Section 66 does not operate to divest the Board of such jurisdiction.

12. THE RIVAL CONTENTIONS

12.1. Upon careful consideration of the elaborate submissions advanced on either side, it becomes evident that the controversy does not turn upon disputed facts but upon the true construction of the statutory framework.

12.2. The competing interpretations may be succinctly stated thus:

- The petitioners contend that **Section 66 is a special provision overriding Section 32**, thereby vesting the appointing authority in the State Government wherever a court-framed scheme governs the waqf.

- The respondents contend that **Section 32, read with its Explanation, completely transfers the jurisdiction of Scheme Courts to the Waqf Board**, rendering Section 66 applicable only in exceptional circumstances not attracted in the present case.

12.3. It is therefore necessary for this Full Bench to examine the statutory framework, the legislative history, the canons of interpretation, and the precedents governing the field before answering the reference.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

ANALYSIS

13. POINTS FOR CONSIDERATION

Having bestowed our anxious consideration to the rival submissions advanced by the learned counsel appearing on either side, and having carefully examined the statutory framework together with the judicial precedents cited at the Bar, we are of the considered opinion that the reference gives rise to the following principal and incidental questions for determination:

(i) Whether Section 32 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 constitutes the exclusive repository of the powers relating to administration of all waqfs in the State?

(ii) Whether Section 66 creates a distinct statutory exception in respect of waqfs governed by a deed, decree, order of Court or scheme of management?

(iii) Whether the Explanation appended to Section 32(1) has the effect of transferring every power earlier exercised by the Scheme Court to the Waqf Board?

(iv) Whether Sections 32 and 66 operate independently or harmoniously?

(v) Whether the earlier Division Bench decisions of this Court holding that the Board succeeds to the jurisdiction of the Scheme Court impliedly exclude the operation of Section 66?

(vi) Whether the proposition laid down in ***Executive Committee of Masjid-E-Farkhunda v. P.A.G. Hussain Maulana***[13] continues to hold the field?

13 Supra 8

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(vii) Whether the appointment of Mutawallis in waqfs governed by judicial schemes is required to be made by the State Government after consultation with the Board or by the Board itself?

(viii) Consequently, whether the question referred to this Full Bench deserves to be answered in favour of the petitioners or the respondents.

14. THE LEGAL MATRIX

14.1. The controversy essentially revolves around two provisions contained in the Act. The first is Section 32. The second is Section 66. Both provisions occur in the same enactment. Both deal with administration of waqfs. Neither can therefore be interpreted in isolation.

THE STATUTORY ARCHITECTURE OF THE ACT AND THE INTER-RELATIONSHIP BETWEEN SECTIONS 32 AND 66

14.2. Having considered the factual background, the legislative evolution of waqf administration, the statutory framework and the rival submissions advanced on behalf of the parties, we now proceed to examine the architecture of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (hereinafter referred to as "the Act"). The resolution of the present reference depends fundamentally upon a proper understanding of the structure of the enactment and the respective positions occupied by Sections 32 and 66 within that statutory framework.

14.3. The controversy before this Full Bench didn't arise because either Section 32 or Section 66 is ambiguous when read in isolation. Rather, the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

apparent difficulty arises because both provisions bear upon the administration of waqfs governed by deeds, decrees, orders of Court and schemes of management. The principal task of the Court, at the threshold, is therefore to identify the statutory role assigned to each provision within the overall legislative framework before examining their precise legal effect.

THE ACT AS A COMPREHENSIVE LEGISLATIVE CODE

14.4**.** The Act is a comprehensive enactment designed to regulate every significant aspect of waqf administration. It establishes statutory authorities, prescribes their powers and duties, provides mechanisms for supervision and accountability, protects waqf properties from alienation and encroachment, creates specialised adjudicatory forums and lays down the procedure governing the administration of waqfs throughout the State.

14.5. The enactment is not an aggregation of disconnected provisions. Its various Chapters are organised around distinct legislative themes. Certain provisions establish institutional authorities; others define their powers; some regulate the management of individual waqfs; others provide adjudicatory remedies and enforcement mechanisms. Every provision must therefore be understood in the context of the legislative function which Parliament intended it to perform.

14.6. It follows that the meaning of an individual section cannot ordinarily be determined by reading that provision in isolation from the statutory structure. The Court must first identify the place occupied by the provision within the scheme of the enactment and the purpose for which it has been enacted. Only

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

thereafter can its true scope and effect be ascertained.

THE PLACE OF SECTION 32 IN THE STATUTORY SCHEME

14.7. Section 32 occurs in the heading dealing with the powers and functions of the Waqf Board. It is the principal provision defining the Board's statutory responsibilities. The section vests in the Board the general superintendence of all waqfs in the State and entrusts to it the duty of ensuring that every waqf is properly maintained, controlled, administered and that its income is applied to the purposes for which it was created.

14.8. In addition to declaring the Board's general supervisory jurisdiction, Section 32 enumerates a wide range of statutory functions relating to the administration of waqfs. These functions extend across the entire spectrum of waqf administration and establish the Board as the principal statutory authority charged with safeguarding the proper management of waqf institutions.

14.9. The Explanation appended to Section 32 further clarifies that the expression "waqf" includes waqfs governed by deeds, decrees, orders of Court or schemes of management. By incorporating this Explanation, Parliament has expressly brought such waqfs within the statutory supervisory framework established under Section 32.

THE PLACE OF SECTION 66 IN THE STATUTORY SCHEME

14.10. Section 66 occupies a different position within the legislative framework. Unlike Section 32, it does not define the general powers or functions of the Board. Instead, it addresses a specific category of situations where, under a

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

deed of waqf, decree, order of Court or scheme of management, the power to appoint or remove a Mutawalli or to exercise superintendence over a waqf stands vested in a Court or an authority other than the Board.

14.11. Section 66 is therefore not concerned with the overall administration of every waqf. Its focus is confined to a defined class of powers arising from identified juridical instruments. The provision recognises the existence of such instruments and prescribes the statutory mechanism governing the exercise of the powers reserved therein.

14.12. Thus, while Section 32 establishes the Board's general supervisory jurisdiction over waqfs, Section 66 addresses the exercise of particular powers arising under particular legal instruments. The two provisions are directed towards different aspects of the statutory framework.

THE DISTINCT LEGISLATIVE FUNCTIONS OF THE TWO PROVISIONS

14.13. A careful reading of the Act demonstrates that Parliament has assigned distinct legislative functions to Sections 32 and 66. Section 32 is institutional in character. It creates and defines the Board's continuing supervisory role within the statutory scheme. Section 66, on the other hand, is situational in character. It is attracted only where the factual conditions specified therein exist.

14.14. This distinction is reflected not merely in the language employed but also in the legislative placement of the two provisions. Section 32 forms part of the provisions dealing with the powers and functions of the Board, whereas Section 66

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

addresses the exercise of particular powers reserved under specified legal instruments. Each provision therefore serves a separate legislative purpose within the overall statutory framework.

THE INTER-RELATIONSHIP BETWEEN SECTIONS 32 AND 66

14.15. Although Sections 32 and 66 perform different legislative functions, they are not unrelated provisions. Both operate within the same statutory framework and concern different dimensions of waqf administration. Consequently, neither provision can be properly understood without reference to the other.

14.16. Section 32 identifies the principal statutory authority entrusted with the supervision of waqfs. Section 66 identifies the statutory mechanism governing a specific class of powers where those powers arise under deeds, decrees, orders of Court or schemes of management. The relationship between the two provisions therefore lies at the centre of the present reference.

14.17. At this stage of the analysis, it is neither necessary nor appropriate to determine whether one provision qualifies, limits or supplements the other. That enquiry belongs to the subsequent parts of this judgment. The present purpose is confined to recognising that both provisions form integral components of the same statutory design and that neither can be interpreted without examining its place within the architecture of the Act.

THE NECESSITY OF READING BOTH PROVISIONS TOGETHER

14.18. Since both Sections 32 and 66 operate within the same legislative

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

framework and bear upon the administration of waqfs governed by deeds, decrees, orders of Court and schemes of management, any interpretation which isolates one provision while disregarding the other would necessarily present an incomplete picture of the statutory scheme.

14.19. The Court must therefore begin its enquiry by reading both provisions together as constituent parts of a single legislative design. Such an approach enables the Court to identify the distinct function performed by each provision before examining the manner in which they operate in relation to one another.

14.20. It is only after appreciating the architecture of the Act, the position occupied by Sections 32 and 66 within that architecture, and the separate legislative function assigned to each provision, that the Court can meaningfully undertake the interpretative exercise required to answer the reference.

15.THE NATURE, SCOPE AND AMPLITUDE OF SECTION 32 OF THE ACT

15.1. Having examined the statutory architecture of the Act and the position occupied by Sections 32 and 66 within that framework, it becomes necessary to examine the true nature and scope of Section 32 independently. Since the respondents principally rely upon Section 32 as the source of the Tamil Nadu Waqf Board's authority to appoint Mutawallis and administer waqfs governed by judicial schemes, a proper understanding of the content and extent of that provision assumes considerable importance.

15.2. At this stage, however, it is necessary to emphasise the limited nature

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

of the present enquiry. The Court is not presently concerned with the interaction between Section 32 and any other provision of the Act. Nor are we concerned with reconciling competing provisions or examining judicial precedents interpreting the section. Our enquiry in this chapter is confined exclusively to the intrinsic content of Section 32 - its language, structure, purpose and the statutory responsibilities entrusted to the Board thereunder.

15.3. Section 32 is the principal provision defining the powers and functions of the Waqf Board. It is the legislative foundation upon which the Board's institutional authority rests. The amplitude of the powers conferred by the provision must therefore be gathered from its language, the statutory context in which it appears, and the legislative object sought to be achieved.

THE WAQF BOARD AS A STATUTORY AUTHORITY

15.4. The Waqf Board is not a voluntary body nor a private trustee administering individual religious endowments. It is a statutory body brought into existence by Parliament for the purpose of ensuring proper administration, supervision and protection of waqfs within the State. Every power exercised by the Board must therefore find its source in the statute itself.

15.5. Unlike hereditary Mutawallis, trustees or committees of management, whose authority may originate in a deed of waqf, custom, hereditary succession or judicial scheme, the authority of the Board flows exclusively from the Act. The Board neither claims nor exercises any inherent jurisdiction. It functions solely within the limits prescribed by Parliament.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

15.6. The statutory character of the Board has two important consequences. First, every function entrusted to it must be performed in accordance with the Act. Secondly, the extent of its powers must be determined from the language employed by Parliament and not from notions of administrative convenience or institutional necessity.

15.7. Parliament has thus constituted the Board as the principal statutory institution responsible for overseeing the proper administration of waqfs. The Board represents the central regulatory authority envisaged under the Act and discharges its functions in the larger public interest to preserve the religious, charitable and pious purposes for which waqfs are created.

THE CONCEPT OF "GENERAL SUPERINTENDENCE"

15.8. The central expression employed in Section 32 is "general superintendence". The Legislature has not merely conferred isolated powers upon the Board; it has vested in the Board the general superintendence of all waqfs in the State.

15.9. The expression "superintendence" is one of broad legal import. In ordinary legal parlance, it denotes the power of oversight, supervision, inspection, regulation and control exercised for ensuring that the affairs of an institution are conducted in accordance with law. The addition of the qualifying adjective "general" enlarges the supervisory character of the jurisdiction by extending it across the entire field of waqf administration.

15.10. The legislative emphasis is therefore not upon occasional intervention

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

but upon continuous institutional oversight. Parliament intended that the Board should remain responsible for supervising the proper administration of every waqf so that its objects are faithfully fulfilled and its properties effectively protected.

15.11. The expression "general superintendence" also signifies that the Board occupies an overarching supervisory position within the statutory framework. It is entrusted with monitoring the functioning of waqfs, ensuring compliance with the Act, safeguarding waqf properties and promoting efficient administration throughout the State.

15.12. At the same time, the expression derives its precise content from the statute itself. The nature and extent of the Board's supervisory authority are reflected in the various statutory functions enumerated in Section 32(2).

THE DUTY CAST UPON THE BOARD

15.13. Section 32 is not merely a provision conferring powers. It simultaneously imposes statutory duties. Parliament has entrusted the Board with the responsibility of ensuring that every waqf is properly maintained, properly controlled, properly administered and that its income is applied to the objects and purposes for which the waqf was created.

15.14. The language employed is significant. The Legislature has not described these responsibilities as discretionary objectives. They constitute statutory obligations imposed upon the Board. The Board is therefore expected to exercise continuing vigilance over the affairs of waqfs so that their religious and charitable purposes are neither defeated nor diluted.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

15.15. The section thus places the Board under a positive legal obligation to secure proper administration rather than merely authorising intervention upon the occurrence of irregularities. The supervisory role assigned to the Board is preventive as well as corrective.

THE FUNCTIONS ENUMERATED UNDER SECTION 32(2)

15.16. Having declared the Board's general supervisory jurisdiction, Parliament proceeds, under sub-section (2), to enumerate the various functions through which that jurisdiction is to be discharged. The enumeration demonstrates the breadth of the Board's statutory responsibilities.

15.17. These functions extend to diverse aspects of waqf administration, including the maintenance and protection of waqf properties, supervision of Mutawallis, settlement of schemes where authorised by law, institution and defence of legal proceedings, maintenance of accounts, ensuring proper application of waqf income, prevention of encroachments and such other functions as are necessary for the effective administration of waqfs.

15.18. The legislative technique adopted is noteworthy. Parliament first states the general principle of superintendence and thereafter specifies the principal functions by which that supervisory responsibility is to be implemented. The statutory scheme thus combines a broad declaration of responsibility with an illustrative catalogue of functions.

15.19. The enumeration contained in Section 32(2) reflects the Legislature's intention that the Board should function as an active statutory regulator rather

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

than as a passive repository of supervisory authority. The Board is expected to administer the Act through continuous institutional engagement with the affairs of waqfs.

THE WIDTH OF THE BOARD'S RESPONSIBILITIES

15.20. The functions enumerated in Section 32(2) reveal that Parliament intended the Board to exercise comprehensive oversight over the administration of waqfs. The Board's responsibilities are not confined to financial supervision or inspection of records. They extend to every important aspect of institutional administration contemplated by the Act.

15.21. The Board is entrusted with protecting waqf properties from dissipation, ensuring lawful management, supervising the conduct of Mutawallis, preserving the charitable purposes of waqfs and securing compliance with the statutory framework. The provision therefore establishes the Board as the principal supervisory institution under the Act.

15.22. The comprehensive nature of these responsibilities reflects Parliament's determination to create a specialised statutory body possessing institutional expertise in waqf administration and capable of exercising continuing supervision over religious endowments throughout the State.

THE EXPLANATION APPENDED TO SECTION 32(1)

15.23. An important component of Section 32 is the Explanation appended to sub-section (1). The Explanation declares that the expression "waqf" includes every waqf in relation to which any scheme has been made either before or after

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

the commencement of the Act.

15.24. The Explanation performs an important clarificatory function. By expressly referring to waqfs governed by schemes, Parliament has removed any possible doubt regarding the applicability of Section 32 to such institutions. Scheme-governed waqfs are therefore not excluded from the Board's supervisory jurisdiction merely because their administration is regulated by a judicial or statutory scheme.

15.25. The legislative significance of the Explanation lies in the express inclusion of a class of waqfs which might otherwise have been thought to stand upon a different footing owing to their pre-existing administrative arrangements. Parliament has unequivocally clarified that such waqfs also fall within the ambit of Section 32.

15.26. The Explanation therefore enlarges the descriptive reach of the expression "waqf" occurring in Section 32 by placing beyond controversy that waqfs governed by schemes remain subject to the supervisory jurisdiction created by the section.

THE LEGISLATIVE OBJECT OF SECTION 32

15.27. Viewed as a whole, Section 32 discloses a clear legislative objective. Parliament intended to establish a central statutory authority possessing continuing supervisory responsibility over waqfs throughout the State. The provision seeks to ensure that waqf institutions remain subject to effective institutional oversight and that their religious and charitable purposes are

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

faithfully protected.

15.28. The section is therefore foundational in character. It defines the Board's institutional role, prescribes its statutory responsibilities and furnishes the legal basis for the exercise of its supervisory functions under the Act.

15.29. The Board's authority under Section 32 is accordingly broad, continuing and supervisory in nature. It extends across the administration of waqfs generally and constitutes one of the principal pillars of the statutory framework established by Parliament.

15.30. Having examined the intrinsic nature, scope and amplitude of Section 32, we shall now proceed to examine the character and purpose of Section 66 as an independent provision of the Act before considering the relationship between the two provisions.

The contention regarding the use of the word "or" in Section 32(1)

15.31. Before fully adverting to examine Section 66 , it is necessary to clarify the 'Typographic Error" submission made by the respondent's side**.** The Learned Senior Counsel appearing for the respondents laid considerable emphasis on the language employed in Section 32(1) of the Act. Drawing attention to the expression "**the Board established or the State**", it was contended that the Legislature had inadvertently used the word "**or**" in place of "**for**" and that the provision ought to be read as "**the Board established for the State.**" Reliance was placed upon Section 15(1) of the Wakf Act, 1954, wherein the corresponding provision employed the expression "Board established **for** the State". According to the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

learned Senior Counsel, the Act of 1995 merely re-enacted the earlier provision, and the substitution of the word "or" was an obvious typographical or printing error. It was therefore urged that the Court should correct the error and construe Section 32(1) as though the Legislature had employed the word "for".

15.32. Attractive though the submission appears at first blush, it cannot be accepted merely because the earlier enactment employed a different expression. The starting point of statutory interpretation is always the language enacted by Parliament and not the language employed in a repealed statute. When Parliament consciously repeals an earlier enactment and replaces it by a new legislation, every alteration in phraseology, every omission, every addition and every departure from the previous text must ordinarily be presumed to have been made deliberately. The Legislature is presumed to know not only the existing law but also the language of the enactment which it seeks to replace. Consequently, a deviation in legislative language cannot be lightly dismissed as a typographical error merely because the earlier statute employed different words.

15.33. The distinction between the words **"for"** and **"or"** is not merely grammatical but also linguistic. The preposition **"for"** ordinarily denotes purpose, destination, suitability or association. In the expression "Board established **for** the State", the word identifies the territorial Board constituted in relation to a particular State. The conjunction **"or"**, on the other hand, is ordinarily employed to express an alternative, a choice or a disjunctive relationship between two expressions. Grammatically, therefore, the use of the word "or" in the phrase "Board established or the State" may appear inelegant or even anomalous. Nevertheless, grammatical inelegance by itself is not synonymous with legislative

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

error.

15.34. Courts have consistently distinguished between correcting an obvious clerical mistake and rewriting a statutory provision. A clerical or typographical correction may be justified only where the error is so self-evident that the legislative intention is incapable of doubt and the provision, if literally read, becomes wholly unworkable or absurd. The power is one of exceptional necessity and not of ordinary interpretation. It cannot be exercised merely because another word appears more appropriate or because the previous enactment employed different language.

15.35. In the present case, the respondents invite this Court to travel beyond the enacted text by substituting one word for another on the assumption that Parliament intended to reproduce Section 15 of the Wakf Act, 1954 verbatim. Such an assumption overlooks an equally well-settled principle that **where the Legislature departs from the language of the previous enactment, the departure itself is presumed to be intentional unless the contrary is established by compelling internal evidence.** Courts cannot begin with the premise that Parliament inadvertently departed from the earlier statute; the presumption is precisely the opposite.

15.36. More importantly, accepting the respondents' contention would not merely involve replacing one word with another. It would require the Court to attribute to Parliament an intention which is not evident from the enacted text and thereafter to employ that assumed intention as the foundation for enlarging the scope of Section 32. Such an approach would amount to judicial legislation. The

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Court's duty is to interpret the statute as enacted and not to reconstruct it upon what it considers Parliament might have intended to say.

15.37. It is also significant that the controversy before us does not ultimately turn upon the solitary word "or". The issue is the relationship between Sections 32 and 66 of the Act. Even assuming that the respondents' suggested substitution were accepted, the substantive question regarding the extent of the Board's powers would still require determination by reading the Act as a whole. The interpretation of Section 32 cannot therefore be made to depend upon the replacement of a single word divorced from the larger statutory context.

15.38. An equally significant aspect deserves notice. Even if the expression "or the State" is regarded as linguistically unusual, it cannot be ignored that the Act itself contemplates a dual institutional framework in matters relating to waqf administration. While Section 32 vests the Board with the general superintendence of all waqfs, Parliament has, under Section 66, expressly entrusted the State Government with the exercise of certain specified powers in situations where a deed of waqf, decree of Court, judicial order or Scheme of Management reserves such powers to an authority other than the Board. In that statutory setting, the presence of the expression "or the State" cannot be brushed aside as wholly devoid of significance.

15.39. Though it may not by itself determine the construction of Section 32, it certainly reinforces the legislative design that the Board's general supervisory jurisdiction is not intended to exclude every role of the State Government. Rather, the Act itself identifies the specific circumstances in which the State Government

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

may legitimately enter the field and exercise the powers expressly entrusted to it by Parliament. The expression therefore lends contextual support to an interpretation which recognises the coexistence of the Board's general superintendence under Section 32 and the State Government's limited statutory intervention under Section 66, each operating within its own legislatively defined sphere.

15.40. We are, therefore, unable to accept the submission that the Court should simply substitute the word "**for**" in place of "**or**" on the basis of the phraseology employed in the Wakf Act, 1954. Every departure in the language of the Act of 1995 must, in the first instance, be treated as a conscious legislative choice. Unless the statutory text is incapable of sensible construction or leads to manifest absurdity, the Court must exhibit judicial restraint and give primacy to the language actually enacted by Parliament. To hold otherwise would permit the Court to rewrite legislation under the guise of correcting typographical errors, a course impermissible in the exercise of the judicial function.

16.THE NATURE, SCOPE AND PURPOSE OF SECTION 66 OF THE ACT

16.1. Having examined the nature and amplitude of Section 32 as the principal provision defining the powers and functions of the Waqf Board, we now proceed to examine Section 66 independently. The present enquiry is confined to the intrinsic character of Section 66, its language, legislative purpose and statutory mechanism. At this stage, we deliberately refrain from examining its interaction with any other provision of the Act.

16.2. Section 66 occupies a distinct position within the statutory framework.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Unlike provisions which define the institutional powers of statutory authorities, Section 66 addresses a specific class of situations arising from pre-existing legal instruments governing the administration of waqfs. Its language, structure and legislative formulation indicate that Parliament intended the provision to perform a specialised and independent statutory function.

SECTION 66 AS AN INDEPENDENT SUBSTANTIVE PROVISION

16.3. The first and most striking feature of Section 66 is that Parliament has enacted it as an independent substantive provision. It is not incorporated as a proviso to Section 32. Nor is it framed as an Explanation qualifying or limiting another provision. Instead, Section 66 appears as a self-contained section within the Act.

16.4. The legislative significance of this drafting technique cannot be overlooked. When Parliament chooses to enact a separate statutory provision rather than incorporating it as a proviso, exception or explanation, the Court must ordinarily proceed on the footing that the provision was intended to perform an independent legislative function. The form adopted by the Legislature is itself a relevant aid to statutory interpretation.

16.5. Section 66 is therefore not merely ancillary or incidental to another provision. It is a substantive enactment creating a distinct statutory mechanism applicable to the circumstances specifically identified therein.

THE NON OBSTANTE CLAUSE

16.6. The expression "Notwithstanding anything contained in such deed of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

[waqf],decree, order or scheme," is of great significance. The use of a non obstante clause is a recognised legislative device employed to indicate that the provision is intended to operate with overriding effect within the field specifically assigned to it.

16.7. By drafting Section 66 with a non obstante clause, Parliament has unmistakably indicated that the statutory mechanism enacted therein is to operate notwithstanding any other provision of the Act to the extent necessary to give effect to its object. The non obstante clause is therefore neither ornamental nor accidental. It forms an integral part of the legislative design.

16.8. The presence of such a clause demonstrates that Parliament considered the situations governed by Section 66 sufficiently distinctive to warrant separate legislative treatment. The clause underscores the special character of the provision and emphasises that its operation is not dependent upon or subordinate to the general provisions of the Act.

THE LEGISLATIVE OBJECT OF SECTION 66

16.9. The legislative object of Section 66 is discernible from the class of cases to which it applies. Parliament has consciously addressed situations where powers relating to the administration of a waqf arise not directly under the Act but under a deed of waqf, a decree of a Court, an order of a Court or a scheme of management.

16.10. The Legislature has thus recognised that many waqfs continue to be governed by legal instruments executed or framed before the enactment of the present statute. Instead of disregarding such instruments, Parliament has

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

expressly acknowledged their existence and enacted a statutory mechanism governing the exercise of the powers reserved therein.

16.11. Section 66 therefore serves as a transitional as well as a regulatory provision. It addresses the interface between the statutory framework established by the Act and the pre-existing legal instruments under which particular powers relating to waqf administration had been reserved.

THE CLASS OF LEGAL INSTRUMENTS CONTEMPLATED BY THE SECTION

16.12. Section 66 expressly refers to four categories of legal instruments:

(i) a deed of waqf;

(ii) a decree of a Court;

(iii) an order of a Court; and

(iv) a scheme of management.

16.13. The deliberate enumeration of these instruments is significant. Parliament has not employed general or illustrative language. It has identified with precision the legal sources from which the relevant powers may arise. The provision is therefore attracted only where the authority in question derives its power from one of the specified juridical instruments.

16.14. The legislative focus is accordingly not upon every aspect of waqf administration but upon a clearly defined category of powers originating from recognised legal instruments governing individual waqfs.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE STATUTORY SUBSTITUTION EFFECTED BY SECTION 66

16.15. The central feature of Section 66 lies in the statutory substitution which it effects. The provision proceeds on the premise that, under the relevant deed, decree, order or scheme, certain powers stand vested in a Court or an authority other than the Board.

16.16. Parliament has not left the future exercise of such powers to implication. Instead, Section 66 expressly designates the statutory authority competent to exercise them thereafter. The section therefore does not merely recognise the existence of pre-existing legal arrangements; it provides the statutory mechanism governing the future exercise of the powers reserved therein.

16.17. This legislative substitution constitutes the operative core of Section 66. The provision identifies the authority which is there to exercise the specified powers whenever the statutory conditions are fulfilled.

THE ROLE OF THE STATE GOVERNMENT

16.18. A feature of considerable significance is that Section 66 expressly refers to the State Government. Parliament has consciously designated the State Government as the authority entrusted with the exercise of the powers contemplated by the provision.

16.19. The express identification of the State Government is a matter of legislative choice. Where Parliament names a particular statutory authority, the Court must ordinarily give effect to that choice unless the statute itself indicates otherwise. The identity of the designated authority forms an integral component of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

the legislative scheme embodied in Section 66.

16.20. The statutory role assigned to the State Government under Section 66 is therefore neither incidental nor implied. It is expressly created by the Legislature and constitutes one of the defining features of the provision.

CONSULTATION WITH THE WAQF BOARD

16.21. While Section 66 designates the State Government as the authority competent to exercise the specified powers, Parliament has simultaneously incorporated a proviso requiring consultation with the Waqf Board before such powers are exercised.

16.22. The requirement of consultation is itself a matter of considerable legislative significance. By making consultation mandatory, Parliament has recognised the institutional expertise possessed by the Board in matters relating to waqf administration and has ensured that such expertise informs the decision-making process.

16.23. The proviso thus establishes a consultative mechanism between the State Government and the Waqf Board. The statutory design contemplates cooperation between the two authorities in relation to the matters governed by Section 66.

16.24. The requirement of consultation also reflects Parliament's intention that the exercise of powers under Section 66 should not take place in isolation from the specialised knowledge and supervisory experience of the Board. The Board's consultative role therefore forms an integral component of the statutory

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

procedure prescribed by the section.

THE LIMITED FIELD OF OPERATION OF SECTION 66

16.25. Section 66 is not a provision of universal application. It does not govern every waqf or every aspect of waqf administration. Parliament has confined its operation to a specific class of cases where the powers in question arise under the legal instruments expressly enumerated therein.

16.26. The limited field of operation of Section 66 is an important characteristic of the provision. Its application depends upon the existence of the statutory conditions specified by Parliament. Where those conditions exist, the section provides the governing statutory mechanism. Where they do not exist, the provision has no application.

16.27. The legislative precision with which Parliament has identified the circumstances attracting Section 66 indicates that the provision is intended to operate within a defined statutory field rather than as a general provision governing all aspects of waqf administration.

THE LEGISLATIVE CHARACTER OF SECTION 66

16.28. Considered as a whole, Section 66 possesses certain distinctive characteristics. It is:

(i) an independent substantive provision;

(ii) including a non obstante clause;

(iii) confined to a defined class of legal instruments;

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(iv) designed to regulate the exercise of specified powers arising under those instruments;

(v) expressly designating the State Government as the statutory authority; and

(vi) incorporating a mandatory consultative role for the Waqf Board.

16.29. These features distinguish Section 66 from the general provisions of the Act and demonstrate that Parliament intended it to perform a specialised legislative function within the overall statutory framework.

16.30. Having independently examined the intrinsic character and statutory purpose of Sections 32 and 66, we shall now proceed to examine the principles governing their interpretation and thereafter determine the relationship between the two provisions within the statutory framework established by Parliament.

17.PRINCIPLES OF HARMONIOUS CONSTRUCTION GOVERNING THE INTERPRETATION OF THE ACT

17.1. Having independently examined the nature and scope of Sections 32 and 66, it is now necessary to identify the interpretative principles which shall govern their construction. Before examining the relationship between the two provisions, the Court must first determine the settled principles evolved by the Hon'ble Supreme Court for resolving situations where different provisions of the same enactment appear to overlap or operate in adjoining fields.

17.2. Statutory interpretation is not an exercise in selecting one provision in preference to another. Nor is it a search for conflict where none exists. The judicial

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

function is to ascertain the true legislative intention by reading the enactment as an integrated whole and assigning to every provision the meaning intended by Parliament.

17.3. The doctrine of harmonious construction constitutes one of the fundamental principles of statutory interpretation. Over the years, the Hon'ble Supreme Court has consistently explained the contours of this doctrine through a series of authoritative pronouncements. Those principles, being of general application, furnish the interpretative framework for resolving the present reference.

THE STATUTE MUST BE READ AS AN INTEGRATED WHOLE

17.4. In ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.***[14], the Hon'ble Supreme Court laid down the cardinal principle that interpretation must begin by reading the statute as a whole. The Court observed that no word, phrase or provision can be construed in isolation. Every provision derives its colour from the context in which it occurs and from the legislative scheme of which it forms a part. The Court emphasised that interpretation depends upon the text and the context, for neither is complete without the other. A statute is best understood when every provision is read in the setting in which Parliament has placed it, and the Court must endeavour to discover the legislative intention from the enactment viewed as an integrated whole.

17.5. The decision in ***Reserve Bank of India v. Peerless General***

14 (1987 (1) SCC 424)

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Finance[15] thus establishes that Courts must resist fragmentary interpretation. A statutory provision cannot be understood by isolating individual words or clauses from the broader legislative framework. The Act must be approached as a coherent and unified enactment.

EVERY PROVISION MUST BE GIVEN MEANINGFUL EFFECT

17.6. In ***Commissioner of Income Tax v. Hindustan Bulk Carriers***[16], the Hon'ble Supreme Court reaffirmed the well-settled maxim *ut res magis valeat quampereat*, namely, that it is better for a thing to have effect than to perish. The Hon' ble Apex Court held that a construction which reduces a statutory provision to futility must invariably be avoided and that every enactment must be construed so as to make it effective, workable and operative.

17.7. The Hon' ble Supreme Court further held that where two constructions are reasonably possible, the Court should prefer the interpretation which advances the legislative purpose rather than one which renders the enactment ineffective. One provision of a statute cannot ordinarily be utilised to defeat another. A construction which converts one provision into a "dead letter" or "useless lumber" is inconsistent with the very concept of harmonious construction.

17.8. The judgment thus reiterates that Parliament legislates to achieve practical results. Courts must therefore adopt an interpretation which preserves the efficacy of every statutory provision and enables the enactment to operate as a coherent legislative instrument.

15 *Id.*
16 2002 INSC 545

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE COURT MUST AVOID A HEAD-ON CLASH BETWEEN PROVISIONS

17.9. The principle was further elaborated in ***Sultana Begum v. Prem Chand Jain***[17]. The Hon'ble Supreme Court observed that it is the duty of the Court to avoid a head-on clash between two provisions of the same enactment. Whenever reasonably possible, provisions which appear to conflict must be construed so that they harmonise with each other.The Hon' ble Apex Court hinted that ,such rule of construction which is also spoken of as *'ex visceribus actus-'from the very words of the Act''* helps in avoiding any inconsistency either within a Section or between two different Section or provisions of the same statute.

17.10. The Court emphasised that it should not lightly be assumed that Parliament intended to give with one hand what it simultaneously took away with the other. The legislative presumption is always in favour of consistency rather than contradiction. The Court must therefore strive to reconcile apparently competing provisions before concluding that one overrides the other.

THE NON OBSTANTE CLAUSE

17.11. The legal effect of a non obstante clause was authoritatively explained by the Hon'ble Supreme Court in ***R.S. Raghunath v. State of Karnataka***[18]and in ***Union of India v. G.M. Kokil***[19]. The Hon' ble Apex Court observed that a non obstante clause is a legislative device ordinarily employed to confer overriding effect upon a particular provision over other contrary provisions occurring either in the same enactment or in another enactment.

17 1997 (1) SCC 373
18 1992 (1) SCC 335
19 AIR 1984 SC 1022

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

17.12. The Hon’ ble Supreme Court nevertheless made it clear that the overriding operation of a non obstante clause extends only to the field intended by Parliament. The existence of such a clause does not authorise the Court to disregard the remainder of the statute or to enlarge the provision beyond its legitimate scope. Before invoking the overriding effect of a non obstante clause, the Court must first ascertain whether any real inconsistency exists between the competing provisions.

17.13. The principle emerging from ***G.M. Kokil***[20] is that a non obstante clause is designed to resolve actual conflict; it is not a licence to create conflict where harmonious operation is reasonably possible.

EXPLANATIONS MUST BE CONSTRUED IN THEIR PROPER FUNCTION

17.14. In ***S. Sundaram Pillai v. V.R. Pattabiraman***[21], the Hon'ble Supreme Court undertook an exhaustive analysis of the legal function performed by an Explanation appended to a statutory provision. The Court held that an Explanation ordinarily clarifies, explains or removes doubts regarding the principal provision. It does not ordinarily enlarge or restrict substantive rights unless the legislative language clearly compels such a conclusion.

17.15. The Court identified the recognised purposes served by an Explanation, namely, to explain the meaning of the principal provision, remove ambiguity, clarify doubtful expressions, suppress possible misconceptions and make the legislative intention explicit. An Explanation is therefore to be construed in aid of the principal provision and not independently of it.

20 *Id.*
21 1985 (1) SCC 591

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

REPEAL BY IMPLICATION IS STRONGLY DISFAVOURED

17.16. The doctrine that repeal by implication is not readily inferred as long been recognised by the Hon'ble Supreme Court. In ***Municipal Council Palai v. T.J. Joseph***[22]**,** the Court held that implied repeal is never favoured in law and can arise only where the provisions are so irreconcilably inconsistent that they cannot reasonably stand together.

17.17. The same principle was reaffirmed in ***Lal Shah Baba Dargah Trust v. Magnum Developers***[23]. The Supreme Court held that repeal by implication is an exceptional doctrine and that Courts must lean against any construction which treats one provision as silently extinguishing another. So long as both provisions are capable of meaningful operation, each must be permitted to function within its own legislative sphere.

HARMONISATION IS PREFERRED TO INVALIDATION

17.18. In ***Grasim Industries Ltd. v. Collector of Customs***[24]*,* the Hon'ble Supreme Court reiterated that Courts should prefer an interpretation which harmonises apparently competing provisions rather than one which renders either provision ineffective. Statutory interpretation must preserve legislative coherence and avoid unnecessary inconsistency.It is propounded that the elementary principle of interpreting any word while considering a statute is to gather the mens or sentential legs of the legislature.

17.19. The Hon' ble Apex Court observed that every enactment is presumed

22 AIR 1963 SC 1561
23 2015 (17) SCC 65
24 2002 4 SCC 297

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

to be internally consistent. The judicial duty is therefore to reconcile different provisions so that each performs the legislative function intended for it.

EVERY PROVISION HAS A LEGISLATIVE PURPOSE

17.20. In ***Visitor, Aligarh Muslim University v. K.S. Misra***[25], the Hon'ble Supreme Court emphasised that Parliament does not enact statutory provisions without purpose. Every section must therefore be assigned a field of operation consistent with the legislative design. Courts should avoid interpretations which render any provision redundant or unnecessary unless the statutory language leaves no alternative.

17.21. The judgment reinforces the principle that statutory interpretation must preserve the effectiveness of every provision and avoid attributing redundancy to legislative drafting.

THE PRINCIPLES EMERGING FROM THE AUTHORITIES

17.22. The decisions noticed above establish certain settled principles governing statutory interpretation:

(i) a statute must be read as an integrated whole;

(ii) legislative intention must be gathered from the entire enactment and not from isolated provisions;

(iii) every statutory provision must be assigned meaningful operation;

(iv) Courts must avoid constructions which render any provision redundant,

25 2007 (8) SCC 593

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

futile or ineffective;

(v) apparently competing provisions should be reconciled wherever reasonably possible;

(vi) Explanations ordinarily clarify the principal provision and must be construed accordingly;

(vii) a non obstante clause operates within the field intended by Parliament and only to the extent necessary to resolve genuine inconsistency;

(viii) repeal by implication is strongly disfavoured and will not be inferred unless reconciliation is impossible; and

(ix) Parliament is presumed to legislate consistently and with a definite purpose behind every provision enacted.

17.23. The aforesaid principles, repeatedly affirmed by the Hon'ble Supreme Court, constitute the governing canons of statutory interpretation. They shall guide the examination of the relationship between Sections 32 and 66 of the Act. The subsequent analysis shall therefore proceed upon these settled interpretative principles, and wherever reference is made hereafter to the construction of those provisions, it shall be understood as **applying the aforesaid principles** rather than restating them afresh.

18.HARMONISING SECTIONS 32 AND 66: THE TRUE LEGISLATIVE RELATIONSHIP

18.1. Having independently examined the nature and scope of Sections 32

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

and 66 and having identified the governing principles of statutory interpretation, we now proceed to determine the true legislative relationship between the two provisions. This constitutes the central question arising in the present reference. The issue is not whether either provision should prevail over the other, but whether Parliament intended both provisions to operate together within the statutory framework and, if so, the manner in which their respective fields of operation are to be identified.

18.2. At the outset, it must be emphasised that the Court is not concerned with choosing between two competing statutory provisions. Both Sections 32 and 66 form part of the same enactment, were enacted by the same Legislature and continue to remain on the statute book. The judicial task is therefore to ascertain the legislative design underlying both provisions and to identify an interpretation that faithfully gives effect to each of them.

THE CONSEQUENCES OF TREATING SECTION 32 AS ABSOLUTE

18.3. The first construction urged before us proceeds upon the premise that Section 32 constitutes the exclusive repository of all powers relating to the administration of waqfs. According to this approach, once the Board has been constituted and vested with general superintendence over all waqfs, every administrative power connected with the management of a waqf must necessarily vest in the Board, irrespective of the source from which such power originally arose.

18.2. Attractive though this submission may appear at first glance, its logical consequences merit careful examination. If Section 32 is treated as wholly

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

exhaustive of the entire field of waqf administration, the independent function assigned by Parliament to Section 66 becomes difficult to identify. The specific legislative reference to deeds of waqf, decrees, orders of Court and schemes of management would cease to perform any meaningful function, for every such power would automatically stand absorbed within the Board's general jurisdiction.

18.3. Such a construction would inevitably reduce Section 66 to a provision of little practical consequence. The elaborate legislative language employed therein would become largely unnecessary, and the distinct statutory mechanism consciously enacted by Parliament would be deprived of an identifiable field of operation.

18.4. It is difficult to attribute such an intention to Parliament. The Legislature has chosen to enact Section 66 as a separate substantive provision. If Parliament had intended every power relating to waqf administration to vest exclusively in the Board under Section 32, the enactment of a separate provision dealing specifically with powers arising under deeds, decrees, Court orders and schemes would have served no discernible legislative purpose.

THE CONSEQUENCES OF TREATING SECTION 66 AS ABSOLUTE

18.5. The converse construction urged on behalf of the petitioners is that wherever the conditions specified in Section 66 are satisfied, the entire administration of the concerned waqf must necessarily stand outside the effective jurisdiction of the Board, leaving the State Government as the principal authority in relation to such institutions.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

18.6. This interpretation likewise presents serious difficulties. Section 66 is carefully confined to a specific class of powers arising under particular legal instruments. The provision does not purport to regulate every aspect of waqf administration. Nor does it establish an independent administrative framework governing all waqfs falling within its ambit.

18.7. If Section 66 were construed as comprehensively governing every aspect of the administration of waqfs covered by judicial schemes or Court decrees, the continuing statutory responsibilities entrusted to the Board in relation to those institutions would stand substantially diminished. Such an interpretation would enlarge the operation of Section 66 far beyond the field expressly defined by Parliament.

18.8. The language of Section 66 does not indicate that Parliament intended such a consequence. The provision is directed only to specified powers arising under specified legal instruments. It does not purport to substitute the entire statutory framework established under the Act with an alternative administrative regime.

THE FALLACY OF THE EXTREME POSITIONS

18.9. The difficulty with both rival constructions lies in their common assumption that the Legislature intended one provision to exhaustively occupy the entire field to the exclusion of the other. Such an assumption overlooks the possibility that Parliament deliberately enacted two provisions because it intended each to perform a separate legislative function.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

18.10. Neither Section 32 nor Section 66 expressly declares that the other shall cease to operate. Neither provision states that it is the exclusive repository of every administrative power relating to waqfs. The Act contains no indication that Parliament intended either provision to render the other redundant.

18.11. The Court must therefore guard against interpretations which elevate one provision to such predominance that the other becomes devoid of independent content. The legislative scheme does not warrant such an approach.

THE DISTINCT SPHERES OF OPERATION

18.12. A careful examination of the language employed by Parliament reveals that the two provisions are directed towards different juridical concerns.

18.13. Section 32 identifies the statutory authority entrusted with the continuing supervision of waqfs and prescribes the general responsibilities and functions of that authority under the Act.

18.14. Section 66, on the other hand, is concerned not with the general administration of waqfs but with the exercise of a specific class of powers arising under specified legal instruments. The focus of the provision is not institutional supervision as such, but the statutory regulation of identified powers reserved under deeds, decrees, Court orders and schemes of management.

18.15. The distinction is significant. One provision establishes the general supervisory framework of the Act. The other regulates the exercise of particular powers arising under particular juridical sources. Their legislative emphasis is therefore different, though they operate within the same statutory framework.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

सत्यमेव जयते
WEB COPY

THE TRUE LEGISLATIVE BALANCE

18.16. The statutory scheme appears to disclose a carefully balanced legislative arrangement. Parliament has established a specialised statutory authority to exercise continuing supervision over waqfs while simultaneously recognising that certain powers may arise under pre-existing legal instruments and providing a specific statutory mechanism governing the exercise of those powers.

18.17. Such an arrangement is neither unusual nor anomalous. Modern regulatory legislation frequently combines broad institutional powers with specialised provisions addressing defined situations. The existence of a specialised provision does not detract from the importance of the general provision, nor does the existence of the general provision render the specialised provision unnecessary.

18.18. The legislative balance therefore lies not in allowing one provision to dominate the other, but in identifying the distinct role assigned to each within the overall statutory framework.

THE STATUTORY SCHEME MUST OPERATE AS A COHERENT WHOLE

18.19. The Act must ultimately be understood as a coherent legislative instrument. Each provision contributes to the achievement of the statutory objectives. The Court's interpretation should therefore enable every material provision to perform the legislative function for which it has been enacted.

18.20. The construction which best accords with the statutory design is one

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

which recognises that Parliament has consciously enacted both Sections 32 and 66 and intended each to operate within its own sphere. The provisions are not mutually destructive. Rather, they complement one another by addressing different aspects of waqf administration.

THE LEGISLATIVE DESIGN THAT EMERGES

18.21. The analysis undertaken thus far permits the identification of certain broad features of the legislative design.

First, Parliament intended that the Act should establish a comprehensive statutory framework governing the administration of waqfs.

Secondly, Parliament recognised that waqfs might continue to be governed by deeds, decrees, Court orders and schemes of management.

Thirdly, Parliament enacted separate provisions addressing these distinct aspects of waqf administration.

Fourthly, neither provision is expressed in terms which require the extinction of the other.

18.22. The legislative design is therefore one of coexistence rather than exclusion. The provisions are intended to function as complementary components of the same statutory framework.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

19. ANALYSIS OF THE EARLIER AUTHORITIES (1975–2015)

19.1.THE NECESSITY OF A PRECEDENTIAL ANALYSIS

The controversy before this Full Bench cannot be resolved merely by resort to textual interpretation of Sections 32 and 66 of the Act. Equally important is the judicial exposition which these provisions and their predecessors have received over the last five decades. The answer to the reference lies not only in the language of the statute but also in the evolution of precedent interpreting the respective powers of Civil Courts and the Waqf Board. We therefore propose to examine the earlier authorities chronologically, identify the ratio decidendi emerging from each decision, and ascertain whether the subsequent decisions have correctly appreciated or departed from those principles.

19.2.*PALANI MUSLIM DHARMAPARIPALANA SANGAM v. TAMIL NADU WAKF BOARD* (1975)

1. The earliest and foundational authority is the judgment of Hon'ble M.M. Ismail, J. in ***Palani Muslim Dharmaparipalana Sangam v. Tamil Nadu Wakf Board***[26]. The institution concerned therein was governed by a Scheme Decree passed by the Sub-Ordinate Judge's Court, Dindigul in O.S. No.29 of 1939. The Scheme comprehensively regulated the administration of the waqf, including the composition of the Managing Committee, election of office-bearers and manner of governance.

26 Supra 7

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

2. The Tamil Nadu Wakf Board purported to approve a committee allegedly elected outside the framework of the Scheme and further appointed an Executive Officer for administration of the institution.The principal issue before the Hon'ble Judge was whether the Board could invoke its power of "general superintendence" under Section 15 of the Wakf Act, 1954 to disregard the subsisting Scheme Decree.

Ratio of the Decision

3. The Hon' ble Judge unequivocally answered the question in the negative. The Court held that the power of general superintendence vested in the Wakf Board did not authorise it to nullify, override, ignore or supersede a Scheme Decree framed by a competent Civil Court. The Court further held that so long as the Scheme Decree remained operative, the Board was bound to administer the waqf within the framework of that decree.If the Board considered the Scheme inadequate or obsolete, the proper remedy was to approach the competent Civil Court for modification of the Scheme and not to act contrary thereto.

Importance of the Decision

4. This judgment constitutes the first authoritative exposition of the limits of the Board's supervisory jurisdiction. The decision draws a clear distinction between -

(i) supervisory jurisdiction;

and

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(ii) jurisdiction to displace a judicial scheme.

5. The significance of this distinction cannot be overstated.The Hon' ble Judge never doubted the existence of the Board's supervisory powers.What was rejected was the proposition that such supervisory powers authorised the Board to disregard a judicial decree.This principle forms the jurisprudential foundation upon which later authorities were built.

6. We accordingly hold that the decision in ***Palani Muslim DharmaparipalanaSangam***[27] continues to represent good law to the extent of the ratio actually decided therein. The judgment correctly recognises that a subsisting judicial Scheme Decree does not cease to operate merely because the administration of the waqf is brought within the regulatory framework of the Act and that the Board's power of general superintendence cannot, by itself, be construed as authorising it to disregard, supersede or act in derogation of a valid and subsisting judicial Scheme.

7. At the same time, it must be noticed that the precise scope and interrelationship of Sections 32 and 66 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 did not arise for consideration in that case in the manner in which it arises before this Full Bench. The authority of ***Palani Muslim Dharmaparipalana Sangam***[28] must, therefore, be understood within the limits of its ratio decidendi. Subject to the clarification furnished in this judgment regarding the distinct fields occupied by Sections 32 and 66, the decision requires neither reconsideration nor dilution and continues

27 *Id.*
28 *Id.*

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

to hold the field.

19.3.*EXECUTIVE COMMITTEE OF MASJID-E-FARKHUNDA v. P.A.G. HUSSAIN MOULANA* (1996)

1. The next milestone is the Division Bench judgment in the case***Executive Committee of the Masjid-E. Farkhunda v. P.A.G. Hussain Moulana*[29]*.*** The institution involved therein was likewise governed by a Scheme Decree framed by this Court. The issue was whether appointments could be made contrary to the Scheme upon the strength of the statutory powers of the Wakf Board.The Division Bench emphatically reaffirmed the principle laid down in ***Palani Muslim Dharmaparipalana Sangam*[30]*.***

Ratio of the Division Bench

2. The Division Bench categorically held that:

(a) the power of general superintendence vested in the Board does not extend to nullifying or superseding a Scheme Decree;

(b) so long as the Scheme remains operative, the Board cannot act contrary to it;

(c) notification of the waqf under the Wakf Act does not suspend or extinguish the Scheme;

29 Supra 8
30 Supra 7

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(d) the day-to-day administration by the Board does not authorise departure from the judicial decree.

Binding Nature of the Decision

3. Being a judgment rendered by a Division Bench, ***Masjid-E-Farkhunda***[31] became binding upon every Single Judge. More importantly, the Division Bench expressly approved the reasoning adopted in ***Palani Muslim Dharmaparipalana Sangam***[32]**.** Thus, what was originally the opinion of a Hon'ble Single Judge became the law declared by a Division Bench.Consequently, after 1996, the proposition that the Board cannot ignore a subsisting Scheme Decree acquired the force of binding precedent.

WHETHER THE DECISION DEALT WITH SECTION 66

4. It must, however, be noticed that ***Masjid-E-Farkhunda***[33] arose under the Wakf Act, 1954 and therefore did not directly interpret Section 66 of the 1995 Act. Nevertheless, the decision remains significant because it establishes an enduring principle: "A judicial scheme continues to bind the parties until lawfully modified." That principle transcends the particular statutory provision then under consideration.

5. Accordingly, ***Masjid-E-Farkhunda***[34] continues to be binding authority for the proposition that notification under the Wakf Act does not, by itself, extinguish a subsisting judicial Scheme. The judgment did not, however, consider the specific

31 Supra 8
32 Supra 7
33 Supra 8
34 Id.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

scope of Section 66 of the 1995 Act and must be understood within those limits.

***19.4. SYED THAJUDDIN v. SYED MOHIDEEN* (2011)**

1. The principle enunciated in ***Masjid-E-Farkhunda*** came to be reaffirmed in ***Syed Thajuddin v. Syed Mohideen***[35]. *The Hon'ble Judge recognised the continuing efficacy of judicial schemes and reiterated that statutory powers cannot be exercised inconsistently with such schemes so long as they remain in force. Although the controversy in that case arose in a different factual setting, the decision reinforces the continuing authority of* ***Palani***[36] *and* ***Masjid-E-Farkhunda***[37]**.**

19.5. THE DECISION OF JUSTICE VINOD K. SHARMA (2011)

1. Learned counsel for the petitioners has also placed reliance upon the decision rendered in **Application No.7140 of 2010 in C.S.No.117 of 1954**.In that decision, the Hon'ble Judge examined the effect of Section 66 upon a Scheme Decree which expressly reserved appointments to the High Court.The Hon'ble Judge held that after the coming into force of the 1995 Act, such powers no longer remained with the High Court.

2. However, instead of holding that they vested in the Board, the Hon'ble Judge concluded that Section 66 transferred them to the State Government after consultation with the Board. The significance of the decision lies not merely in its conclusion but in the interpretative methodology adopted. The Hon'ble Judge treated Section 66 as an independent statutory provision requiring full effect. The

35 2011 (2) MLJ 105
36 Supra 7
37 Supra 8

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

judgment therefore represents the earliest judicial attempt to reconcile Sections 32 and 66.

3.This decision is significant because it constitutes the earliest judicial recognition that Section 66 requires an independent field of operation distinct from the Board's general supervisory powers under Section 32.

19.6. *K.S. SHARFUDEEN v. UNION OF INDIA (2014)*

1. We now turn to the important judgment rendered in ***K.S. Sharfudeen v. Union of India***[38]. Unlike the earlier cases, the challenge therein was principally constitutional.The petitioners questioned the validity of Explanation to Section 32(1) and the powers conferred upon the Board.The Division Bench upheld the constitutional validity of the provision. It observed that the Legislature was competent to transfer supervisory jurisdiction from Civil Courts to the statutory Board.The Explanation extending Section 32(1) even to waqfs governed by judicial schemes was upheld.

Scope of the Decision

2. However, an equally important aspect deserves emphasis.The principal issue before the Division Bench was constitutional validity.The precise interplay between Sections 32 and 66 did not arise for direct consideration. There is nothing in the judgment indicating that the Division Bench undertook an examination of Section 66 or reconciled it with Explanation to Section 32(1). The ratio of a judgment extends only to questions actually decided. Observations upon issues

38 Supra 3

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

not arising for decision cannot be elevated to binding precedent.

The judgment therefore continues to bind only on the questions actually decided therein.

19.7.*H. MOHAMED GHOUSE v. CHIEF EXECUTIVE OFFICER, TAMIL NADU WAKF BOARD* (2015)

1. The next decision relied upon is ***H. Mohamed Ghouse v. Chief Executive Officer, Tamil Nadu Wakf Board***[39]. *The Hon' ble Judge recognised that the Board exercises statutory jurisdiction even over waqfs governed by Scheme Decrees. At the same time, the Hon' ble Judge did not hold that the Scheme itself ceased to exist. On the contrary, appointments were required to conform to the requirements of the Scheme.The decision therefore proceeds upon the assumption that the Scheme continues to regulate qualifications and the manner of appointment even if the appointing authority undergoes statutory change.*

19.8. EMERGING LEGAL POSITION (1975–2015)

1. The authorities rendered between 1975 and 2015 disclose two distinct but not necessarily irreconcilable strands of reasoning.

2. The first strand, represented by ***Palani Muslim Dharmaparipalana Sangam***[40], ***Masjid-E-Farkhunda***[41], ***Syed Thajuddin***[42], and to some extent ***H. Mohamed Ghouse***[43], emphasises the continued binding force of Scheme Decrees and the inability of the Board to ignore or supersede them.

39 MANU/TN/2764/2015
40 Supra 7
41 Supra 8
42 Supra 32
43 Supra 36

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

3. The second strand, reflected in ***K.S. Sharfudeen***[44], emphasises the enlarged supervisory jurisdiction conferred upon the Board under Section 32, including in relation to waqfs governed by judicial schemes. Significantly, none was required to undertake a comprehensive reconciliation between Sections 32 and 66 of the 1995 Act.

4. Equally significant is the fact that ***K.S. Sharfudeen***[45] did not expressly overrule or even advert to the earlier Division Bench judgment in ***Masjid-E-Farkhunda***[46], while the earlier decisions necessarily arose in a different statutory context or before Section 66 came to receive focused judicial attention. It is against this jurisprudential backdrop that the later decisions rendered after 2023 - particularly ***B. Abdul Kadar***[47], ***C.I. Majeed***[48], ***Syed MaskoorMohideen***[49], ***I.S. Ibrahim***[50], and ***B.T. Noordeen***[51] - must be examined to determine whether they have resolved the apparent tension or accentuated it. That exercise we now undertake in the succeeding part of this judgment.

20.ANALYSIS OF THE LATER AUTHORITIES (2023–2025)

20.1. THE JURISPRUDENTIAL SHIFT AFTER 2023

1. The period commencing from 2023 witnessed a renewed judicial examination of the relationship between Sections 32 and 66 of the Act. Unlike the earlier authorities, which primarily focused upon the continued efficacy of Scheme

---

44 Supra 3
45 *Id.*
46 Supra 8
47 Supra 1
48 OP (Wakf). No. 3106 of 2013
49 Supra 2
50 Supra 4
51 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Decrees or the amplitude of the Board's supervisory jurisdiction, the later decisions squarely addressed the statutory interaction between the two provisions.

2. The apparent divergence among these later decisions has ultimately culminated in the present reference. It therefore becomes necessary to analyse each of them, not merely to identify the conclusions reached, but to ascertain the precise questions decided, the statutory provisions considered and the ratio emerging therefrom.

20.2. B. ABDUL KADAR v. TAMIL NADU WAQF BOARD

1. The Hon'ble Single Judge in ***B. Abdul Kadar v. Tamil Nadu Waqf Board***[52] proceeded on the premise that Section 66 is a special provision governing waqfs administered under court-framed schemes.The Hon'ble Judge observed that while Section 32 undoubtedly confers general supervisory powers upon the Board, Parliament consciously enacted Section 66 to deal with a narrower class of waqfs where a deed, decree, order or scheme vested powers in an authority other than the Board.

2. Applying the well-established principle that a special provision prevails over a general provision, the Hon'ble Judge concluded that the appointing authority in such cases would be the State Government and not the Board. The judgment further reasoned that if Section 32 alone were intended to govern every waqf irrespective of existing schemes, Section 66 would become wholly otiose.

3. We find that the reasoning proceeds upon accepted principles of statutory interpretation. However, it is equally true that the judgment did not undertake an

52 Supra 1

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

exhaustive examination of the earlier Division Bench decisions rendered in ***K.S. Sharfudeen***[53] and ***I.S. Ibrahim***[54]. More importantly, the judgment was subsequently reversed in appeal in **W.A.No.2011 of 2024** dated 20.03.2025. Although reversed in appeal, the interpretative reasoning adopted therein may still be examined on first principles, independent of its precedential status.

EFFECT OF THE REVERSAL

4. Learned counsel for the petitioners submitted that notwithstanding the reversal, the reasoning contained in the judgment deserves acceptance.We are unable to subscribe to such a broad proposition.Once a judgment is reversed in appeal, its declaration of law ceases to possess precedential authority.Nevertheless, the legal reasoning contained therein may still be examined on first principles, provided it is not inconsistent with binding precedent.

20.3. I.S. IBRAHIM v. PRINCIPAL SECRETARY TO GOVERNMENT

1. Considerable reliance was placed by the respondents upon the Division Bench judgment in ***I.S. Ibrahim v. Principal Secretary to Government***[55]. The Division Bench reiterated the principle earlier enunciated in ***K.S. Sharfudeen***[56], namely that after the coming into force of the Act, the Board exercises statutory superintendence even over waqfs governed by court-framed schemes. The judgment proceeds upon the legislative object of centralising waqf administration under a specialised statutory body in preference to continued judicial

53 Supra 3
54 Supra 4
55 Supra 4
56 Supra 3

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

administration.

2. However, on a careful reading of the judgment, we find that the precise scope of Section 66 was not directly in issue. The controversy related principally to the Board's supervisory competence and not to the exercise of powers expressly reserved under Section 66.A precedent is an authority only for what it actually decides. It cannot be extended to issues which neither arose nor were argued.

20.4. C.I. MAJEED v. KERALA STATE WAQF BOARD

1. The Division Bench of the Kerala High Court in ***C.I. Majeed v. Kerala State Waqf Board***[57] adopted an approach which, in our respectful opinion, deserves careful consideration. The Kerala High Court drew a distinction between two different categories of powers:

(a) the Board's supervisory jurisdiction under Section 32;

and

(b) the authority to alter or interfere with an existing court-framed scheme.

2. The Court held that the Board's general supervisory powers continue to extend to all waqfs. However, where the question concerns modification of a subsisting judicial scheme, Section 66 assumes significance and the statutory mechanism provided therein must be followed. This distinction between supervisory jurisdiction and scheme-altering jurisdiction, in our view, constitutes an important contribution towards harmonising Sections 32 and 66.

57 Supra 45

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

20.5. SYED MASKOOR MOHIDEEN v. TAMIL NADU WAQF BOARD

1. The judgment rendered by Hon'ble Mr. Justice N. Sathish Kumar in ***Syed MaskoorMohideen v. Tamil Nadu Waqf Board***[58] constitutes perhaps the most elaborate judicial analysis of Section 66 prior to the present reference.His Lordship recognised that the Division Bench decisions had consistently held that the Board had replaced the Scheme Court for purposes of general administration. However, His Lordship made an important observation. The earlier Division Bench judgments had no occasion to examine the specific language employed in Section 66.

2. His Lordship therefore proceeded upon the footing that while Section 32 governs the Board's general jurisdiction, Section 66 specifically deals with waqfs governed by judicial schemes.We are in respectful agreement with the methodological approach adopted by the Hon’ ble Judge.The significant contribution of the judgment lies in identifying that the earlier Division Bench decisions had not directly addressed Section 66.

20.6. B.T. NOORDEEN v. THE MANAGING TRUSTEE

Its True Ratio, Distinguishing Features and the Limits of the "Conscious Choice" Test:

[1]. We shall now examine the decision in ***B.T. Noordeen v. The Managing Trustee***[59], which has figured prominently in the submissions advanced before us. The judgment contains a comprehensive narration of the historical evolution of the

58 Supra 2
59 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Nagore Dargah Scheme, the successive stages of litigation concerning its administration and the transition from supervision by the Scheme Court to regulation under the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995. The Hon'ble Judge ultimately held that, after the statutory regime became fully operative, the Scheme Court could no longer continue to exercise administrative control over the institution and that the Tamil Nadu Waqf Board was competent to constitute the Advisory Committee contemplated under the Scheme. The decision arose out of a Civil Revision Petition challenging proceedings initiated by the District Court, Nagapattinam, inviting applications for constitution of the Advisory Committee under the Nagore Dargah Scheme.

[2]. The decision, in our considered view, must first be appreciated in the context of the controversy that actually arose for determination therein. The immediate question before the Hon'ble Judge was whether, after the statutory framework had come into force and earlier judicial proceedings had recognised the role of the Waqf Board in the administration of the Nagore Dargah, the District Court could nevertheless continue to exercise the administrative functions earlier vested in the Scheme Court by inviting applications for appointment to the Advisory Committee. The controversy before the present Full Bench is fundamentally different. The question referred to us is not whether the Scheme Court continues to possess administrative jurisdiction, but whether, in cases where a deed of waqf, decree of Court, judicial order or Scheme of Management vests one of the powers enumerated in Section 66 in an authority other than the Board, the statutory successor to that authority is the Waqf Board under Section

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

32 or the State Government under Section 66. The present Reference, therefore, directly concerns the proper construction and interrelationship of Sections 32 and 66 of the Act.

[3]. The distinction is one of considerable legal significance. The conclusion that the Scheme Court can no longer continue as the administrative authority answers only the question as to **who can no longer exercise the power**. It does not, by necessary implication, answer the further and distinct question as to **who thereafter becomes the statutory repository of that power**. The former concerns the cessation of the Scheme Court's administrative jurisdiction; the latter concerns the statutory substitution enacted by Parliament. These two questions, though related, are conceptually distinct and cannot be treated as interchangeable. We respectfully agree with the Hon'ble Judge in ***B.T. Noordeen***[60] to the extent that a Scheme Court cannot indefinitely continue routine administrative supervision after the statutory regime has displaced that role and that a scheme-governed waqf remains subject to the Board's general supervisory jurisdiction by virtue of the Explanation to Section 32(1). The principal aspect requiring clarification, however, is whether those propositions necessarily exclude the operation of Section 66.

[4]. The reasoning in ***B.T. Noordeen***[61] substantially proceeds upon what may conveniently be described as the **"conscious choice" test**. According to the Hon'ble Judge, Section 66 would become operative only where the deed of waqf, decree of Court, judicial order or Scheme of Management was framed at a point of time when the Waqf Board was already in existence and, notwithstanding such

60 *Id.*
61 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

existence, the maker of the instrument consciously vested the relevant power in a Court or authority other than the Board. Since the Nagore Dargah Scheme had been framed in the year 1955, long before the constitution of the Tamil Nadu Waqf Board, it was held that the Scheme could not have embodied any conscious decision to exclude the Board, and consequently Section 66 was held to be inapplicable.

[5]. With profound respect, we are unable to find such a requirement in the language employed by Parliament. Section 66 operates whenever a deed of waqf, decree of Court, judicial order or Scheme of Management confers one or more of the powers specified therein upon a Court or an authority other than the Board. The provision is expressed in objective terms. It neither classifies such instruments with reference to the date of their origin nor prescribes that they must have been framed after the constitution of the Board. Equally, it does not require proof that the maker of the instrument consciously preferred another authority to the Board. Parliament could readily have introduced such temporal or subjective qualifications had it intended to do so. The absence of any such limitation is significant and cannot be supplied by judicial interpretation.

[6]. In our considered opinion, Section 66 adopts an objective statutory test rather than an enquiry into historical intention. The question posed by the section is not whether the author of the deed, decree or Scheme consciously intended to exclude the Board; rather, it is whether the instrument, as a matter of legal effect, vests one or more of the specified powers in a Court or an authority other than the Board. Once that objective juridical fact exists, the statute itself prescribes the authority by whom the power shall thereafter be exercised. The operation of the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

present statute cannot depend upon reconstructing the presumed state of mind of a Waqif or a Scheme Court functioning decades before the present statutory framework came into existence.

[7]. The principal aspect requiring clarification is that the introduction of the "conscious choice" requirement materially narrows the operation of Section 66 by adding conditions which Parliament has not chosen to enact. Such an interpretation excludes from the ambit of Section 66 a substantial class of historical deeds, decrees and judicial schemes - precisely those instruments which, by reason of their antiquity, were most likely to require statutory accommodation after the enactment of the present legislation. While the decision in ***B.T. Noordeen***[62] correctly recognises the cessation of the Scheme Court's routine administrative jurisdiction and the continuing general superintendence of the Waqf Board over scheme-governed waqfs, the proposition that Section 66 applies only where there existed a conscious exclusion of the Board cannot, with great respect, be accepted as laying down the correct interpretation of the provision. The apparent divergence arises not from any inconsistency in the statutory scheme, but from importing into Section 66 a temporal and subjective requirement which the Legislature has not expressed.

Section 66 as a Transitional Provision – Objective Statutory Test – Relationship between Sections 32 and 66 – Institutional Significance of Consultation

[8]. Section 66, in our considered opinion, is essentially transitional and substitutive in character. Parliament was fully conscious that, long before the

62 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

enactment of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, numerous waqfs throughout the country were already being administered under deeds of waqf, judicial decrees, Court orders and Schemes of Management framed by competent Civil Courts. Such instruments frequently vested powers relating to the appointment, removal or supervision of Mutawallis in Courts or other authorities which constituted the prevailing legal framework of the time. Section 66 was enacted to address precisely such pre-existing juridical arrangements by identifying the statutory authority that would thereafter exercise those specified powers wherever the earlier authority ceased to be competent under the new legislative regime. The provision is therefore directed not towards the extinction of existing legal arrangements but towards providing an orderly statutory substitution consistent with the new institutional framework established by Parliament.

[9]. If Section 66 were construed as applying only to instruments framed after the constitution of the Waqf Board or only where the author of the instrument consciously excluded the Board, the practical field of operation of the provision would become exceedingly narrow. Schemes, decrees and deeds framed after the coming into force of the statutory regime would ordinarily be expected to conform to the provisions of the Act itself. The principal class of instruments requiring statutory accommodation would, therefore, be the very historical deeds, decrees, Court orders and Schemes of Management that pre-date the establishment of the present statutory framework. A construction that excludes such instruments from the operation of Section 66 would substantially diminish the independent role consciously assigned to that provision and would deprive the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

statutory references to deeds, decrees, Court orders and Schemes of Management of much of their practical content. Such a result would be inconsistent with the settled principle that every substantive provision enacted by Parliament must be assigned meaningful operation.

[10]. The apparent divergence between Sections 32 and 66 substantially disappears once the two provisions are appreciated as addressing different juridical questions. Section 32 answers the general question as to **who exercises continuing regulatory supervision over the waqf as an institution**. Section 66 answers the distinct and specific question as to **who shall exercise certain identified powers where those powers stood vested under a deed of waqf, decree of Court, judicial order or Scheme of Management in an authority other than the Board**. The two provisions thus operate at different normative levels. The former establishes the Board's continuing supervisory jurisdiction over all waqfs; the latter prescribes the statutory successor in relation to particular powers expressly identified by Parliament. Properly understood, the provisions are complementary and not competing.

[11]. The Explanation appended to Section 32(1) reinforces this construction. It expressly recognises that waqfs governed by deeds of waqf, decrees, Court orders and Schemes of Management remain subject to the Board's general superintendence. The Explanation ensures that such waqfs do not stand outside the statutory supervisory framework merely because they are governed by historical instruments. It does not, however, declare that every power reserved under those instruments automatically becomes exercisable by the Board. To attribute such an effect to the Explanation would be to convert a provision

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

recognising the Board's general supervisory jurisdiction into one effecting a wholesale transfer of every scheme-related power, notwithstanding the separate legislative mechanism expressly enacted in Section 66. Such an interpretation would leave little independent work for Section 66 to perform and would be inconsistent with the legislative architecture examined in the earlier chapters of this judgment.

[12]. Equally significant is the proviso to Section 66 requiring the State Government to consult the Waqf Board before exercising the powers contemplated therein. The proviso demonstrates that Parliament deliberately envisaged two distinct statutory authorities performing complementary functions. The Board, by reason of its continuing supervisory jurisdiction, institutional experience and specialised knowledge of waqf administration, was required to be consulted before any decision was taken. At the same time, Parliament consciously vested the ultimate statutory responsibility in the State Government. The legislative choice of consultation rather than concurrence is itself indicative of the institutional balance intended by Parliament.

[13]. The construction adopted in ***B.T. Noordeen***[63] appears to conflate these two distinct institutional roles by treating the Board's general supervisory jurisdiction as necessarily comprehending the decision-making authority contemplated by Section 66. Such an approach leaves unexplained the legislative purpose in expressly designating the State Government as the statutory authority while simultaneously requiring consultation with the Board. A harmonious reading, on the other hand, preserves the role of both institutions. The Board

63 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

continues to discharge its comprehensive supervisory responsibilities under Section 32 and contributes its expertise through the consultative process mandated by Section 66, while the State Government exercises the specific statutory power entrusted to it by Parliament. Thus, neither institution is rendered redundant and each performs the function consciously assigned to it within the statutory framework.

[14]. We are, therefore, of the considered opinion that the proper reconciliation lies not in enlarging Section 32 at the expense of Section 66, nor in treating Section 66 as an exception that substantially curtails the Board's general superintendence. The two provisions are designed to operate simultaneously. Section 32 preserves the Board's overarching regulatory and supervisory jurisdiction over every waqf, including those governed by judicial schemes, while Section 66 provides the statutory mechanism by which particular powers reserved under historical deeds, decrees, Court orders or Schemes of Management are thereafter exercised by the authority designated by Parliament. Such a construction preserves the integrity of both provisions, gives meaningful effect to the proviso requiring consultation with the Board, and avoids importing into the statute conditions that Parliament has not chosen to enact.

The Nagore Dargah Litigation – Distinction between the Scheme and the Scheme Court – Harmonious Reconciliation

[15]. The decision in ***B.T. Noordeen***[64] must also be appreciated in the backdrop of the exceptional factual matrix out of which it arose. The Nagore Dargah had been the subject of prolonged and multifaceted litigation extending

64 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

over several decades before Civil Courts, the Waqf Tribunal, Hon'ble Single Judges, Division Benches of this Court and the Hon'ble Supreme Court. During different stages of that litigation, an Ad hoc Committee had administered the institution; subsequently, the Board of Trustees was restored; and various judicial orders recognised the statutory role of the Tamil Nadu Waqf Board in the administration of the Dargah. The Hon'ble Judge, therefore, approached the controversy in the context of an institution whose administration had already undergone repeated judicial intervention and restructuring. The observations made therein must necessarily be understood against that unique procedural and institutional background.

[16]. The immediate controversy before the Hon'ble Judge did not concern the appointment of a Mutawalli under Section 66 but the competence of the District Court, functioning as the Scheme Court, to invite applications for constituting the Advisory Committee contemplated under the Nagore Dargah Scheme. The office of the Advisory Committee formed only one component of a complex institutional framework consisting of hereditary trustees, a Managing Trustee, a paid Manager and other administrative bodies created under the Scheme. The present Reference, however, concerns the statutory competence to exercise powers expressly enumerated in Section 66, particularly where a subsisting deed of waqf, decree of Court or Scheme of Management vests such powers in an authority other than the Board. The statutory question now before us is therefore considerably wider than the institution-specific controversy decided in ***B.T. Noordeen***[65].

65 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

[17]. The principal aspect requiring clarification arises from the distinction between the **Scheme** and the **Scheme Court**. These expressions cannot be treated as synonymous. A judicial Scheme is a continuing juridical instrument regulating the administration of the waqf. The Scheme Court, on the other hand, is merely the judicial authority which originally framed, supervised or administered that Scheme. The cessation of the Scheme Court's continuing administrative jurisdiction, whether by reason of statutory reform or otherwise, does not, by itself, extinguish the Scheme or the substantive provisions embodied therein. A Scheme may continue to regulate matters such as the constitution of the institution, qualifications, tenure, hereditary succession, manner of appointment and other incidents of administration even though the Court which originally exercised administrative supervision no longer continues to discharge that role.

[18]. Once this distinction is maintained, the apparent conflict substantially disappears. The displacement of the Scheme Court merely answers the question that the Court itself can no longer continue to exercise routine administrative powers after the statutory regime has occupied that field. It does not answer the distinct statutory question as to the authority by whom the specified powers reserved under the Scheme are thereafter to be exercised. That question falls to be answered not by implication from Section 32 but by reference to the statutory mechanism expressly enacted by Parliament. It is precisely in this limited field that Section 66 assumes significance by identifying the statutory successor to the authority named in the deed, decree, Court order or Scheme of Management.

[19]. The apprehension that recognising the operation of Section 66 in relation to historical Schemes would undermine the authority of the Waqf Board

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

is, in our respectful opinion, unfounded. The Board's general superintendence under Section 32 continues unabated. The Board remains responsible for ensuring proper administration of the waqf, safeguarding its properties, preventing encroachments, supervising accounts, ensuring compliance with the Act and discharging every other statutory function entrusted to it. The application of Section 66 merely determines the authority competent to exercise the particular powers expressly specified therein. The Board's overarching supervisory jurisdiction is neither eclipsed nor diluted. Thus, the perceived institutional difficulty is resolved by recognising that the two provisions operate in different statutory spheres rather than by reading limitations into either of them.

[20]. Equally, the controversy can be resolved without treating ***B.T. Noordeen***[66] as laying down a universal proposition applicable to every Scheme-governed waqf irrespective of its factual setting. The conclusion that the District Court could not continue to function as the administrative authority under the Nagore Dargah Scheme was entirely consistent with the peculiar litigation history of that institution and the earlier judicial pronouncements governing its administration. It was unnecessary, however, for the resolution of that controversy to formulate a broader proposition that Section 66 applies only where the Board was already in existence when the relevant instrument was framed or that a conscious exclusion of the Board constitutes a condition precedent for the operation of the provision. To that extent, the observations extend beyond what was indispensable for deciding the controversy before the Hon'ble Judge and cannot, with great respect, be accepted as laying down the governing interpretation of Section 66.

66 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

[21]. The harmonious reconciliation, therefore, lies in preserving the valuable ratio of ***B.T. Noordeen***[67] while confining it to the questions actually decided therein. The decision correctly establishes that a Scheme-governed waqf remains subject to the Board's general superintendence under Section 32 and that the Scheme Court cannot indefinitely continue to exercise routine administrative jurisdiction after the statutory regime has displaced that role. At the same time, the present Reference requires us to clarify that the cessation of the Scheme Court's administrative jurisdiction does not, by itself, determine the repository of the specific statutory powers enumerated in Section 66. Those powers continue to be governed by the legislative mandate contained in that provision. Thus understood, the ratio of ***B.T. Noordeen***[68] is preserved within its legitimate field, while the broader observations concerning the scope of Section 66 stand clarified in the manner indicated in this judgment. The apparent divergence is thereby reconciled without unsettling the sound principles actually decided in that case.

[22]. We accordingly clarify that the ratio of ***B.T. Noordeen***[69] shall continue to govern controversies concerning the cessation of the administrative jurisdiction of the Scheme Court and the continuing supervisory jurisdiction of the Waqf Board under Section 32. However, the decision shall not be understood as laying down a general proposition that Section 66 is confined only to deeds of waqf, decrees, Court orders or Schemes of Management framed after the constitution of the Board, or that its operation depends upon proof of a conscious exclusion of the Board by the author of the instrument. Those propositions do not arise from the statutory language and are, therefore, clarified to the limited extent indicated

67 Supra 5
68 Supra 5
69 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

herein. Thus understood, the valuable ratio of ***B.T. Noordeen***[70] is preserved within its legitimate field, the statutory scheme enacted by Parliament receives full and harmonious effect, and the apparent divergence among the authorities stands satisfactorily reconciled.

21.RECONCILIATION OF THE PRECEDENTS

21.1**.** Having examined the earlier authorities, the Division Bench decisions and the later line of judgments separately, it now becomes necessary to reconcile the entire body of precedent. The function of a Full Bench is not merely to choose between competing authorities but to ascertain whether they are truly irreconcilable and, if possible, preserve the continuity of the law by identifying the precise field within which each decision operates.

21.2**.** Judicial discipline requires that precedents should not be regarded as conflicting merely because they employ different reasoning or arise from different factual situations. An apparent conflict frequently disappears when the ratio decidendi of each decision is identified with precision and confined to the issues actually arising for determination.

21.3**.** The present exercise is therefore directed not towards re-writing earlier judgments but towards identifying their true precedential content, distinguishing propositions actually decided from broader observations, and determining whether the authorities are capable of harmonious reconciliation.

70 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE CONTINUING VALIDITY OF THE EARLIER AUTHORITIES

21.4. The earlier decisions in ***Palani Muslim Dharmaparipalana Sangam***[71] and ***Executive Committee of Masjid-E-Farkhunda***[72] continue to represent good law in so far as they recognise the continuing juridical existence and legal efficacy of judicial Scheme Decrees governing waqfs.

21.5. Those judgments correctly proceed on the principle that a Scheme framed by a competent Civil Court does not lose its legal character merely because subsequent statutory regulation has been introduced. Until lawfully modified or superseded, such a Scheme continues to regulate the administration of the institution for which it was framed.

21.6. The proposition emerging from those authorities that judicial schemes possess continuing legal significance has neither been expressly overruled nor impliedly displaced by any subsequent binding precedent. That aspect of the earlier jurisprudence therefore remains intact.

21.7. At the same time, those judgments cannot be understood as having finally resolved every question arising from the later statutory framework. Their ratio is confined to the issues directly arising before the respective Courts and should not be extended beyond that field.

THE PLACE OF THE DIVISION BENCH DECISIONS

21.8. The Division Bench decisions in ***K.S. Sharfudeen***[73] and ***I.S.***

71 Supra 7
72 Supra 8
73 Supra 3

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Ibrahim[74] also continue to retain precedential authority within the sphere of the questions actually decided therein.Their enduring contribution lies in recognising that the administration of waqfs must thereafter proceed within the statutory framework established by Parliament and that the statutory institutions created by the enactment occupy a central place in the administration of waqf affairs.

21.9**.** Those decisions do not expressly overrule the earlier authorities. Nor do they declare that judicial schemes have ceased to possess legal significance. Their emphasis lies upon the operation of the statutory regime and the institutional framework created thereunder.

21.10**.** Consequently, the Division Bench decisions and the earlier authorities need not be viewed as mutually destructive. Each addresses different aspects of waqf administration arising from different factual contexts.

B. ABDUL KADAR

21.11**.** The decision in ***B. Abdul Kadar***[75] substantially follows the jurisprudential approach reflected in the earlier authorities by recognising the continued legal relevance of judicial schemes governing waqfs.

21.12**.** The judgment does not purport to formulate an entirely new principle of law. Rather, it proceeds upon the premise that a subsisting Scheme continues to constitute a relevant legal instrument regulating the administration of the concerned institution. To that extent, *B. Abdul Kadar* is consistent with the earlier line of authorities and does not call for reconsideration.

74 Supra 4
75 Supra 1

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

SYED MASKOOR MOHIDEEN

21.13. The decision in ***Syed MaskoorMohideen***[76]likewise adopts an approach broadly consistent with ***B. Abdul Kadar***[77]. The Hon' ble Judge treated the governing Scheme as continuing to possess legal significance while resolving the controversy arising before the Court.

21.14. The judgment substantially reinforces the earlier jurisprudence rather than departing from it. It therefore continues to remain good law within the limits of the propositions actually decided.

B.T. NOORDEEN

21.15. The position of ***B.T. Noordeen***[78] requires separate consideration. Unlike the earlier authorities, the judgment undertakes an extensive historical survey of the litigation concerning the Nagore Dargah and formulates broader propositions regarding the legal consequences flowing from the statutory framework governing waqf administration.

21.16. The factual background of ***B.T. Noordeen***[79] was exceptional. The litigation arose from the administration of the Nagore Dargah, which had been the subject of prolonged judicial proceedings extending over several decades. The issues before the Hon' ble Judge were therefore shaped by the unique institutional history of that waqf.

21.17. The conclusions reached by the Hon' ble Judge in relation to the

76 Supra 2
77 Supra 1
78 Supra 5
79 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

administration of the Nagore Dargah must therefore be understood in the context of that institution and the controversies actually requiring determination.

21.18**.** At the same time, certain broader observations contained in the judgment travel beyond what was strictly necessary for deciding the controversy before the Court. To the extent that those observations formulate propositions of general application extending beyond the immediate issues arising in that litigation, they require careful scrutiny before being applied as binding precedent in every subsequent case.

21.19**.** Accordingly, ***B.T. Noordeen***[80] cannot be regarded either as wholly incorrect or as universally applicable irrespective of factual context. The judgment must instead be understood as possessing two distinct components.

21.20**.** The first comprises the conclusions necessary for deciding the Nagore Dargah litigation. Those conclusions continue to govern that factual situation.

21.21**.** The second consists of broader propositions expressed in the course of the reasoning. The applicability of those propositions to other factual situations must necessarily depend upon the issues arising in the subsequent litigation and cannot automatically be treated as the ratio decidendi of the case.

THE TRUE NATURE OF THE APPARENT CONFLICT

21.22**.** The survey of the authorities demonstrates that the perceived conflict between the various judgments is considerably narrower than was initially suggested. The earlier authorities emphasise the continuing legal significance of

80 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

judicial schemes.The Division Bench decisions emphasise the centrality of the statutory framework governing waqf administration.

21.23. ***B. Abdul Kadar***[81] and ***Syed MaskoorMohideen***[82] substantially continue the earlier approach in relation to Scheme-governed waqfs.

21.24. ***B.T. Noordeen***[83], while deciding the controversy arising from the Nagore Dargah litigation, formulates broader propositions concerning the relationship between judicial schemes and the statutory framework.

21.25. Thus, the apparent divergence arises principally from the differing emphasis adopted by the respective judgments rather than from any direct contradiction in the conclusions reached upon identical questions.

WHICH AUTHORITIES REMAIN GOOD LAW

21.26. The following propositions continue to represent good law:

(i) ***Palani Muslim Dharmaparipalana Sangam***[84] correctly recognises the continuing juridical efficacy of judicial Scheme Decrees.

(ii) ***Executive Committee of Masjid-E-Farkhunda***[85]correctly affirms that judicial schemes continue to regulate the institutions for which they were framed until lawfully modified.

(iii) ***K.S. Sharfudeen***[86] correctly recognises the central role of the statutory framework governing waqf administration.

81 Supra 1
82 Supra 2
83 Supra 5
84 Supra 7
85 Supra 8
86 Supra 3

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(iv) ***I.S. Ibrahim***[87] correctly reiterates the importance of administering waqfs through the statutory institutions established by law.

(v) ***B. Abdul Kadar***[88] correctly recognises the continuing relevance of judicial schemes in resolving disputes concerning Scheme-governed waqfs.

(vi) ***Syed MaskoorMohideen***[89] likewise correctly proceeds upon the continued legal significance of the governing Scheme.

WHICH AUTHORITIES REQUIRE DISTINCTION OR CLARIFICATION

21.27**. *B.T. Noordeen***[90] requires clarification rather than wholesale rejection.The judgment remains authoritative in relation to the factual controversy concerning the Nagore Dargah and the conclusions necessary for resolving that litigation.

21.28**.** However, certain broader observations expressed therein cannot be read as laying down propositions of universal application extending to every waqf governed by a judicial Scheme irrespective of its own factual and legal background.

21.29**.** The judgment must therefore be understood within the factual matrix in which it was rendered and confined to the ratio necessary for deciding the issues directly arising before the Hon'ble Judge. To that limited extent, the broader observations contained in ***B.T. Noordeen***[91] require clarification so that they are not understood as displacing the earlier authorities or as extending beyond the

87 Supra 4
88 Supra 1
89 Supra 2
90 Supra 5
91 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

controversy actually decided.

THE RESULT OF THE RECONCILIATION

21.30. The exercise undertaken above demonstrates that no earlier authority requires to be overruled in its entirety.The earlier authorities continue to govern the propositions actually decided therein.The Division Bench decisions likewise continue to bind in relation to the issues directly determined by them.

21.31. The later Single Judge decisions remain valuable expositions of the law within their respective factual contexts.The apparent conflict is therefore capable of resolution by identifying the precise ratio decidendi of each judgment and confining each authority to the questions actually decided.

22.FINAL STATUTORY SYNTHESIS: THE TRUE INTER-RELATIONSHIP BETWEEN SECTIONS 32 AND 66

22.1. The preceding parts have examined the statutory architecture of the Act, the independent scope of Sections 32 and 66, the governing principles of statutory interpretation and the evolution of the judicial precedents. It now becomes necessary to synthesise those conclusions and formulate the true legislative relationship between the two provisions. The discussion below represents the culmination of the statutory analysis and forms the bridge between the interpretative exercise undertaken thus far and the answers which this Full Bench is required to return to the Reference.

22.2. The endeavour of the Court throughout the preceding discussion has been to ascertain the intention of Parliament by examining the statute as a

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

coherent whole. The exercise has demonstrated that neither Section 32 nor Section 66 exists in isolation. Both provisions form integral parts of the same legislative framework and derive their meaning from the role assigned to them within the structure of the Act.

SECTION 32 CONTINUES TO GOVERN GENERAL SUPERINTENDENCE

22.3. The first conclusion emerging from the statutory analysis is that Section 32 continues to remain the principal provision governing the Board's general superintendence over waqfs. The Legislature has entrusted the Board with continuing supervisory responsibilities to ensure that waqfs are properly maintained, administered, protected and managed in accordance with the objects for which they were created.

22.4. The Board accordingly continues to function as the principal statutory authority entrusted with the institutional supervision of waqfs. Its powers and duties under Section 32 remain comprehensive within the field assigned to that provision and constitute one of the foundational pillars of the statutory framework.

22.5. Nothing contained in the subsequent analysis warrants any dilution of the Board's continuing statutory responsibility to supervise waqfs in accordance with the Act. The institutional role assigned to the Board by Parliament remains fully intact.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE EXPLANATION EXPRESSLY INCLUDES SCHEME-GOVERNED WAQFS

22.6. The second conclusion emerging from the statutory scheme is that the Explanation appended to Section 32 expressly brings within the ambit of the Board's supervisory jurisdiction waqfs governed by deeds, decrees, orders of Court and schemes of management. Parliament has therefore removed every possible doubt regarding the applicability of the Board's general supervisory jurisdiction to such institutions.

22.7. Consequently, a waqf administered under a judicial Scheme does not stand outside the statutory framework merely because its internal administration is regulated by a pre-existing legal instrument. Such institutions continue to fall within the supervisory jurisdiction contemplated by Section 32.

22.8. The inclusion of scheme-governed waqfs within the Board's supervisory jurisdiction is therefore no longer open to controversy. That proposition stands firmly established by the language employed by Parliament.

SECTION 66 OPERATES IN ITS OWN DISTINCT FIELD

22.9. The third conclusion is equally important. Section 66 has not been enacted as an appendage to Section 32 nor as an incidental procedural provision. Parliament has consciously enacted it as an independent substantive provision dealing with a specific category of powers arising under deeds of waqf, decrees, Court orders and schemes of management.

22.10. The legislative function assigned to Section 66 is therefore different

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

from that assigned to Section 32. While Section 32 establishes the Board's continuing supervisory jurisdiction over waqfs generally, Section 66 addresses only the exercise of the particular powers expressly contemplated therein.

22.11. The field occupied by Section 66 is thus limited but nevertheless distinct. Its operation is confined to the specific powers identified by Parliament and cannot either be enlarged beyond that field or reduced to a mere repetition of Section 32.

THE TWO PROVISIONS ARE COMPLEMENTARY

22.12. The analysis undertaken in this discussion demonstrates that Sections 32 and 66 are not competing provisions but complementary components of the same statutory design.

22.13. Parliament has deliberately created a comprehensive supervisory framework through one provision while simultaneously enacting a specialised mechanism governing a defined class of powers through another. The two provisions therefore perform different legislative functions while operating within the same statutory framework.

22.14. Properly understood, the provisions supplement rather than supplant each other. Each addresses a distinct juridical situation contemplated by Parliament.

THERE IS NO IMPLIED REPEAL

22.15. The analysis further demonstrates that there is no basis for treating

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

either provision as having impliedly displaced the other. Parliament has neither expressly repealed Section 66 nor indicated that the enactment of Section 32 was intended to extinguish its independent operation.

22.16. Equally, there is nothing in Section 66 which indicates an intention to diminish or displace the Board's continuing supervisory responsibilities under Section 32. The statutory language admits of no such conclusion.

22.17. The legislative scheme therefore negatives any suggestion that one provision has silently absorbed or extinguished the other. The Act proceeds upon the continued existence of both provisions within the same statutory framework.

NEITHER PROVISION IS REDUNDANT

22.18. The Court must equally reject every construction which renders either provision redundant. Parliament is presumed to legislate with deliberation and purpose. Where two independent substantive provisions have been enacted, each must ordinarily be assigned an independent field of operation.

22.19. To treat Section 32 as completely exhausting the field would substantially deprive Section 66 of practical operation. Conversely, to enlarge Section 66 beyond the field assigned to it would unnecessarily diminish the continuing operation of Section 32.Neither consequence accords with the legislative design disclosed by the Act. The proper interpretation is therefore one which preserves the efficacy of both provisions.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE LEGISLATIVE BALANCE

22.20. The statutory framework reveals a carefully balanced legislative arrangement. Parliament has entrusted the Board with continuing institutional supervision over waqfs while simultaneously providing a separate statutory mechanism governing the exercise of specified powers arising under particular legal instruments.

22.21. The balance achieved by the Legislature lies in permitting both provisions to function concurrently within their respective fields rather than permitting one to consume the other. Such an interpretation preserves the integrity of the statutory framework and enables every substantive provision enacted by Parliament to perform the function assigned to it.

THE SYNTHESIS

22.22. The statutory synthesis emerging from the foregoing discussion may therefore be stated thus:

(i) Section 32 continues to constitute the principal source of the Board's general supervisory jurisdiction over waqfs.

(ii) The Explanation expressly includes waqfs governed by deeds, decrees, Court orders and schemes of management within that supervisory framework.

(iii) Section 66 is an independent substantive provision operating within the specific field expressly assigned to it by Parliament.

(iv) The statutory function assigned to Section 66 is confined to the exercise

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

of the particular powers identified therein.

(v) Neither provision displaces the other.

(vi) Each continues to operate within its own legislatively assigned sphere.

THE RESULT OF THE STATUTORY ANALYSIS

22.23**.** The Court is therefore unable to accept either of the extreme constructions urged before us. The Act does not support the proposition that Section 32 has absorbed the entire field occupied by Section 66. Equally, the Act does not support the proposition that Section 66 has displaced the Board's continuing supervisory jurisdiction under Section 32.

22.24**.** The legislative design instead points unmistakably towards coexistence. Parliament has consciously enacted two independent substantive provisions, each addressing a distinct aspect of waqf administration. The judicial duty is to preserve that legislative design by permitting both provisions to operate according to their respective terms.

22.25**.** The statutory analysis undertaken thus reaches a single coherent conclusion: the Act contemplates the simultaneous and meaningful operation of both Sections 32 and 66. Neither provision is subordinate to the other; neither is rendered otiose by the existence of the other; and neither can be interpreted in a manner that destroys the independent field assigned to the other by Parliament.

23.WHETHER SECTION 32 IS A GENERAL PROVISION

23.1**.** Having synthesised the statutory scheme and reconciled the judicial

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

precedents, we now proceed to examine the true juristic character of Section 32. The principal question is not whether Section 32 is an important provision—its significance is beyond dispute—but whether Parliament intended it to operate as a provision of universal application governing every aspect of waqf administration or as a general supervisory provision within a larger statutory framework.

23.2. The answer to this question is of considerable importance. If Section 32 is understood as a provision conferring every conceivable administrative power upon the Board, the subsequent provisions of the Act dealing with specific situations would become largely unnecessary. Conversely, if Section 32 is recognised as laying down the Board's general supervisory jurisdiction, the remaining provisions of the Act can continue to perform their respective legislative functions within their own designated fields.

23.3. The enquiry is therefore confined to three related questions: first, the legal meaning of the expression "general superintendence"; secondly, the distinction between a general supervisory jurisdiction and a specific statutory power; and thirdly, the distinction between institutional supervision over a waqf and the exercise of a particular appointing authority.

THE LEGAL CHARACTER OF A GENERAL PROVISION

23.4. In legislative drafting, a distinction is frequently drawn between provisions which establish the general framework of a statute and those which regulate specific situations arising within that framework. A general provision ordinarily declares the institutional authority, the overall responsibility and the continuing supervisory role entrusted to that authority. It lays down the broad

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

legislative policy without necessarily prescribing the legal consequences of every individual situation.

23.5. Such provisions perform an institutional function. They identify the authority responsible for administering the enactment and define the broad contours of its jurisdiction. Their purpose is to establish the general framework within which the remaining provisions of the statute are intended to operate.

23.6. Section 32 possesses precisely these characteristics. It identifies the Waqf Board as the statutory body entrusted with the general superintendence of waqfs and enumerates the principal functions through which that supervisory responsibility is to be discharged. The provision is therefore institutional rather than transactional in character.

THE MEANING OF "GENERAL SUPERINTENDENCE"

23.7. The Legislature has consciously employed the expression "general superintendence" rather than expressions such as "exclusive control", "absolute authority" or "sole jurisdiction". The choice of language is both deliberate and significant.

23.8. The word "superintendence" denotes supervision, oversight, regulation, inspection and continuous monitoring. It conveys the idea of ensuring that an institution functions in accordance with law, performs its statutory obligations and faithfully fulfils the objects for which it exists. The expression does not, by itself, determine the source or destination of every individual administrative power.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

23.9. The adjective "general" assumes equal importance. It qualifies the nature of the superintendence exercised by the Board. The Legislature has not conferred superintendence over isolated aspects of waqf administration but has entrusted the Board with an overarching supervisory responsibility extending across the administration of waqfs generally.

23.10. The emphasis of Section 32 is therefore institutional continuity rather than case-specific decision-making. The Board is entrusted with the continuing obligation of ensuring that waqfs are properly maintained, properly administered and properly protected. The provision is directed towards maintaining the integrity of waqf administration as a whole rather than prescribing the legal consequence of every particular administrative situation.

23.11. The expression "general superintendence" thus describes the Board's supervisory relationship with waqfs. It establishes the Board as the statutory guardian of waqf administration but does not, merely by reason of its generality, answer every specific question arising under the Act.

GENERAL SUPERVISORY POWER AND SPECIFIC STATUTORY POWER

23.12. A fundamental distinction must be maintained between a general supervisory jurisdiction and a specific statutory power. Though both may coexist within the same enactment, they operate at different juridical levels.

23.13. A general supervisory power enables the statutory authority to oversee the functioning of institutions, ensure compliance with the law, monitor administration and discharge continuing regulatory responsibilities. Its operation

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

is broad, continuous and institutional.

23.14**.** A specific statutory power, on the other hand, is transactional in nature. It authorises the performance of a particular legal act upon the occurrence of specified statutory conditions. Its existence, extent and manner of exercise are determined not by the general supervisory jurisdiction of the authority but by the language of the particular provision conferring that power.

23.15**.** The distinction is neither artificial nor merely academic. Throughout modern regulatory legislation, Parliament frequently entrusts statutory bodies with broad supervisory responsibilities while separately enacting provisions governing particular transactions, appointments, removals, approvals or other defined legal acts. The existence of the former does not automatically absorb the latter.

23.16**.** The failure to distinguish between these two categories of statutory power often leads to interpretative difficulty. A supervisory authority may oversee an institution without necessarily exercising every specific statutory power relating to that institution. Likewise, the conferment of a specific statutory power does not displace the continuing supervisory responsibility of the regulatory authority.

INSTITUTIONAL SUPERVISION IS DISTINCT FROM APPOINTING AUTHORITY

23.17. The present reference illustrates the importance of maintaining this distinction. Institutional supervision and the power to make a particular appointment are juridically distinct concepts.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

23.18. Institutional supervision concerns the continuous oversight of the administration of the waqf. It includes ensuring compliance with statutory obligations, safeguarding waqf properties, preventing maladministration, monitoring the discharge of duties by office-bearers and protecting the charitable and religious purposes of the institution.

23.19. The power to appoint a Mutawalli or trustee, however, is a specific legal act. It is exercised on a particular occasion, in relation to a particular office and in accordance with the statutory conditions governing that appointment. Once exercised, the power stands exhausted until the next occasion requiring its exercise.

23.20. The two functions are therefore conceptually distinct. One concerns the continuing supervision of the institution; the other concerns the exercise of a particular appointing authority. The existence of the former does not necessarily determine the repository of the latter.

23.21. Indeed, in several branches of public law, the authority exercising general supervision over an institution is not invariably the authority empowered to make every appointment connected with that institution. Legislative schemes frequently distribute supervisory and appointing powers among different authorities depending upon the purpose sought to be achieved.

THE BOARD'S ROLE AS AN INSTITUTIONAL REGULATOR

23.22. The structure of Section 32 demonstrates that Parliament intended the Board to function primarily as an institutional regulator rather than merely as

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

an appointing authority. The emphasis of the provision is upon ensuring proper administration, maintaining discipline in waqf management, protecting endowed properties and securing faithful implementation of the objects of the waqf.

23.23**.** The Board's responsibilities under Section 32 are therefore continuous in nature. They do not arise only when a vacancy occurs or when a particular office requires to be filled. Rather, they persist throughout the life of every waqf and continue irrespective of changes in its office-bearers.

23.24**.** This continuing institutional role distinguishes the Board's supervisory jurisdiction from individual administrative powers which arise only upon the occurrence of particular events. The Legislature has consciously entrusted the Board with the broader responsibility of ensuring the proper governance of waqfs as enduring religious and charitable institutions.

THE JURISTIC CONSEQUENCE

23.25**.** Once this distinction is appreciated, the true character of Section 32 becomes evident. The provision establishes the Board as the statutory authority entrusted with the general supervision and regulation of waqfs. It creates an enduring institutional relationship between the Board and every waqf falling within the Act.

23.26**.** At the same time, the expression "general superintendence" cannot be understood as automatically resolving every question relating to the exercise of every specific statutory power under the Act. The provision performs the broader legislative function of establishing the Board's supervisory jurisdiction. Questions

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

concerning the repository of particular statutory powers must necessarily be answered by reference to the provisions specifically dealing with those powers.

23.27**.** Thus, the Board's general superintendence and the existence of particular statutory powers are not competing concepts. They operate at different juridical levels and together constitute the comprehensive statutory framework envisaged by Parliament.

23.28**.** The foregoing analysis leads us to the following conclusions:

(i) Section 32 is institutional in character and constitutes the principal provision establishing the Board's general supervisory jurisdiction over waqfs.

(ii) The expression "general superintendence" denotes broad, continuing and overarching supervision over waqf administration and not merely the performance of isolated administrative acts.

(iii) A general supervisory jurisdiction is conceptually distinct from a specific statutory power.

(iv) Institutional supervision over a waqf is legally distinguishable from the exercise of a particular appointing authority.

(v) Section 32 therefore establishes the Board as the continuing statutory regulator of waqfs without, by itself, determining every specific legal consequence arising elsewhere under the Act.

23.29**.** The distinction between a general supervisory provision and a specific statutory provision having now been identified, it becomes necessary to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

examine whether Section 66 constitutes such a special provision and, if so, the legal consequences flowing therefrom.

24.WHETHER SECTION 66 IS A SPECIAL PROVISION

24.1. Having concluded that Section 32 is a provision establishing the Board's general supervisory jurisdiction over waqfs, the next enquiry is whether Section 66 occupies a distinct and narrower field as a special provision. The answer to this question is crucial, for it determines whether Parliament intended Section 66 merely to repeat what had already been enacted elsewhere or whether it was designed to regulate a particular class of situations requiring separate legislative treatment.

24.2. This enquiry is not directed towards comparing the relative importance of Sections 32 and 66. Both provisions are integral components of the same enactment. The question is one of legislative character. While Section 32 establishes the Board's continuing institutional responsibility over waqfs generally, does Section 66 address a particular subject-matter by creating a special statutory mechanism? It is to this question that we now turn.

THE CONCEPT OF A SPECIAL PROVISION

24.3. Legislative drafting frequently proceeds upon two complementary techniques. Parliament first enacts provisions laying down the general framework governing a subject. It thereafter introduces special provisions dealing with particular situations, particular institutions or particular classes of cases which require separate legislative treatment.

WEB COPY

24.4. A provision is regarded as special not because it is more important than the general provision, but because it is directed towards a narrower and more specifically defined field. Its speciality lies in the precision with which Parliament has identified the circumstances attracting its operation.

24.5. The hallmark of a special provision is therefore specificity. It is confined to identified situations and prescribes the legal consequences applicable only when those specified conditions exist.

THE MAXIM *GENERALIA SPECIALIBUS NON DEROGANT*

24.6. The maxim *generalia specialibus non derogant* embodies one of the oldest and most firmly established principles of statutory interpretation. Literally translated, it means that general provisions do not derogate from special provisions.

24.7. The principle is founded upon legislative common sense. Where Parliament has enacted a general provision applicable to a broad class of situations and has also enacted another provision dealing specifically with a defined category of cases, it is presumed that the Legislature intended the special provision to govern that particular field without disturbing the operation of the general provision elsewhere.

24.8. The maxim does not subordinate one provision to another. Rather, it allocates distinct fields of operation to each. The general provision continues to govern the larger statutory landscape, while the special provision regulates the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

narrower field specifically identified by Parliament.

24.9**.** Thus, the doctrine does not diminish the importance of the general provision; it merely preserves the effectiveness of the special provision by ensuring that its carefully defined field is not absorbed into the wider language of the general enactment.

SECTION 66 POSSESSES ALL THE CHARACTERISTICS OF A SPECIAL PROVISION

24.10**.** When tested against these principles, Section 66 unmistakably bears the characteristics of a special statutory provision.

24.11**.** First, its operation is confined to a specifically identified class of legal instruments, namely, deeds of waqf, decrees of Court, orders of Court and schemes of management. Parliament has consciously restricted its application to these defined juridical sources.

24.12**.** Secondly, the provision does not regulate every aspect of waqf administration. It is attracted only when the specified powers arise under the legal instruments expressly enumerated therein. Its operation is therefore conditional and situational rather than universal.

24.13**.** Thirdly, Parliament has prescribed a complete statutory mechanism applicable only to those situations. The section identifies the authority competent to exercise the powers contemplated therein and prescribes the procedure governing their exercise.

24.14**.** These features distinguish Section 66 from provisions laying down

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

the general administrative framework of the Act. Its field is narrower, its application more specific and its operation dependent upon clearly defined statutory conditions.

THE SPECIALITY LIES IN THE SUBJECT-MATTER, NOT IN THE AUTHORITY

24.15**.** The speciality of Section 66 does not arise because it designates a different authority. Rather, it arises because it governs a distinct subject-matter.

24.16**.** Parliament has identified a particular class of powers arising under specified legal instruments and has enacted a separate statutory mechanism for their exercise. The provision is therefore special by reason of the field which it regulates and not merely because it refers to a different statutory authority.

24.17**.** The legislative focus is thus upon the nature of the powers contemplated by the section. Their source is confined to deeds, decrees, Court orders and schemes of management. It is this defined field which imparts to Section 66 its special character.

THE LEGISLATIVE CHOICE OF THE STATE

24.18**.** A striking feature of Section 66 is Parliament's deliberate designation of the State as the authority competent to exercise the powers contemplated by the provision.

24.19**.** This choice cannot be regarded as accidental or surplusage. Parliament could have employed different language had it intended any other

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

authority to discharge those functions. Instead, it consciously named the State as the statutory authority for the purposes of Section 66.

24.20. Courts must attach due significance to such legislative choices. When Parliament expressly identifies a particular authority, the Court cannot lightly substitute another merely because the latter exercises broader supervisory functions elsewhere under the Act.

24.21. The express designation of the State therefore constitutes an essential component of the statutory scheme embodied in Section 66 and cannot be ignored while construing the provision.

THE MANDATORY CONSULTATION WITH THE BOARD

24.22. Equally significant is the proviso requiring consultation with the Waqf Board before the powers contemplated by Section 66 are exercised.

24.23. Parliament has not treated consultation as a matter of administrative discretion. It has made consultation a statutory requirement, thereby ensuring that the institutional expertise of the Board informs the exercise of the powers entrusted to the State.

24.24. The requirement of consultation reveals an important aspect of the legislative design. Parliament did not intend the State to function in isolation from the specialised statutory body entrusted with the supervision of waqfs. Rather, it envisaged a consultative process combining governmental authority with institutional expertise.

24.25. At the same time, consultation is conceptually distinct from

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

concurrence. By employing the former expression, Parliament preserved the independent statutory role of the State while simultaneously requiring that the views of the Board should be obtained and considered before a decision is taken.

24.26**.** The consultative requirement therefore reinforces the conclusion that Parliament intended both authorities to perform complementary functions within the limited field governed by Section 66.

THE LIMITED BUT DISTINCT FIELD OF SECTION 66

24.27**.** The speciality of Section 66 should not be misunderstood as conferring universal application upon the provision. On the contrary, its very strength lies in the precision with which Parliament has confined its operation.

24.28**.** It does not regulate every aspect of waqf administration. Nor does it seek to establish a parallel administrative regime for all waqfs. It operates only within the specific field expressly delineated by Parliament.The provision is therefore narrow in its application but significant in its purpose. Its limited field is a product of legislative choice and must be respected accordingly.

24.29**.** The foregoing analysis leads us to the following conclusions:

(i) Section 66 is a special statutory provision governing a specifically defined class of situations.

(ii) Its speciality lies in the precision with which Parliament has identified the subject-matter to which it applies.

(iii) The maxim *generaliaspecialibus non derogant* requires that the distinct

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

field occupied by Section 66 be preserved without diminishing the operation of the general supervisory framework established elsewhere in the Act.

(iv) Parliament has consciously designated the State as the authority competent to exercise the powers contemplated by Section 66.

(v) The mandatory requirement of consultation with the Waqf Board reflects Parliament's intention that governmental authority and institutional expertise should operate together within the field assigned to the provision.

(vi) Section 66 is therefore narrow in its operation, specific in its application and complete in the statutory mechanism which it prescribes.

24.30**.** The recognition of Section 66 as a special provision does not conclude the controversy. The remaining question is whether judicial schemes framed prior to the enactment of the Act continue to possess legal efficacy and, if so, in what manner they operate within the statutory framework.

25.EFFECT OF THE NON OBSTANTE CLAUSE IN SECTION 66

25.1**.** One of the principal features of Section 66 is that it includes the expression "**Notwithstanding anything contained in such deed of [waqf],decree, order or scheme.''** Considerable emphasis was placed by the learned Senior Counsel appearing on either side upon the legal consequence flowing from this non obstante clause. It therefore becomes necessary to determine its true scope, purpose and limits within the statutory framework.

25.2**.** This enquiry is deliberately confined to the legal effect of the non obstante clause. We are not presently concerned with the substantive operation of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Section 66 or its relationship with any other provision of the Act. The sole question is the extent to which the words of Section 66 influence the operation of the provision itself.

25.3. A non obstante clause is an interpretative aid. It neither enlarges the substantive content of the provision in which it appears nor authorises the Court to disregard the remainder of the enactment. Its legal effect must therefore be gathered from the statutory context in which Parliament has employed it.

THE LEGISLATIVE PURPOSE OF A NON OBSTANTE CLAUSE

25.4. Parliament frequently employs a non obstante clause as a legislative device to indicate that a particular provision is intended to prevail in the event of inconsistency with another provision contained either in the same enactment or in another statute. The purpose of such a clause is to secure the effective operation of the provision to which it is attached by removing obstacles that may otherwise impede its application.

25.5. The clause, however, does not exist independently of the substantive provision. It derives both its purpose and its content from the section in which it appears. Consequently, its legal effect cannot exceed the field which Parliament has assigned to the substantive provision itself.

25.6. The words "Notwithstanding anything contained in **such deed of [waqf],decree, order or scheme.**" therefore cannot be read in isolation. They must be understood as qualifying and facilitating the operation of Section 66 within the field specifically occupied by that provision.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE NON OBSTANTE CLAUSE DOES NOT CREATE SUBSTANTIVE POWER

25.7. The non obstante clause is not itself a source of substantive authority. The power to act must always be found in the operative portion of the section. The non obstante words merely regulate the manner in which that substantive provision is to operate when its field of operation overlaps with another provision of the Act.

25.8. Accordingly, the clause cannot be employed to create rights, powers or jurisdiction which Parliament has not expressly conferred. Nor can it be utilised to enlarge the substantive reach of the section beyond the circumstances contemplated by the Legislature.

25.9. The operative part of Section 66 therefore determines the extent of the statutory power. The non obstante clause merely ensures that the provision is capable of functioning effectively within the field assigned to it.

THE OVERRIDING EFFECT IS LIMITED TO THE LEGISLATIVE FIELD

25.10. The presence of a non obstante clause does not imply that the provision overrides the entire enactment in every conceivable situation. The overriding effect extends only to the extent necessary for the effective operation of the substantive provision.

25.11. Parliament has not declared that Section 66 shall govern every aspect of waqf administration. Nor has it stated that every other provision of the Act shall yield to Section 66 irrespective of the subject-matter involved. Such a construction

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

would attribute to the non obstante clause an operation far wider than the language of the section itself warrants.

25.12. The correct approach is to identify the field specifically occupied by Section 66 and to permit the non obstante clause to operate only within that field. Outside that sphere, the remaining provisions of the Act continue to operate according to their own terms.

THE CLAUSE IS NOT A LEGISLATIVE WEAPON OF DISPLACEMENT

25.13. A non obstante clause is frequently misunderstood as a legislative declaration that every other provision of the statute stands displaced. Such an understanding is inconsistent with the structure of modern legislation.

25.14. Parliament ordinarily employs a non obstante clause not to destroy the coherence of the enactment but to protect the operation of a particular provision in those situations for which it has been enacted. The clause therefore performs a protective function rather than a destructive one.

25.15. It follows that the presence of a non obstante clause cannot by itself justify the conclusion that every provision occurring elsewhere in the Act has become inoperative. Such a conclusion can arise only if the substantive language of the provision unmistakably compels that result.

THE CLAUSE CANNOT ENLARGE THE FIELD OF SECTION 66

25.16. Equally, the non obstante words of Section 66 cannot be employed to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

enlarge the legislative field assigned to the provision.Parliament has carefully identified the circumstances in which Section 66 is intended to operate. Those circumstances define the limits of the section itself. The non obstante clause cannot be utilised to extend the provision beyond those statutory limits.

25.17**.** To hold otherwise would permit the introductory words to dominate the substantive part of the enactment. Such an approach would invert the legislative structure by allowing the interpretative aid to become wider than the provision which it is intended to support.

25.18**.** The clause must therefore remain subordinate to the substantive content of Section 66 and cannot be treated as an independent source for enlarging the provision beyond its intended scope.

THE CLAUSE MUST BE READ WITH THE OPERATIVE PART OF THE SECTION

25.19**.** The non obstante words of Section 66 and its operative provisions constitute a single legislative unit. The two cannot be separated. While the non obstante clause indicates that Parliament intended Section 66 to operate effectively notwithstanding any inconsistent provision, the operative part of the section identifies the precise circumstances in which such overriding operation becomes necessary.

25.20**.** Consequently, the legal effect of the non obstante clause must always be determined with reference to the substantive provisions which immediately follow it. Such words cannot be interpreted independently of the legislative

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

command which they introduce.

THE TRUE EFFECT OF THE NON OBSTANTE CLAUSE

25.21**.** The true effect of the non obstante clause may therefore be summarised thus.

First, Parliament intended that the statutory mechanism created by Section 66 should operate effectively within the field assigned to that provision.

Secondly, the overriding effect is confined to that legislative field.

Thirdly, the clause neither enlarges the substantive scope of Section 66 nor authorises the Court to disregard the remainder of the Act outside the situations specifically contemplated by Parliament.

Fourthly, the clause cannot be construed as impliedly extinguishing other provisions which continue to operate within their own respective fields.

25.22**.** The non obstante clause contained in Section 66 is thus a legislative device intended to secure the effective operation of that provision within the specific field assigned to it by Parliament. Its operation is neither universal nor unrestricted. It extends only so far as is necessary to give full effect to the substantive statutory mechanism enacted under Section 66.

25.23**.** The clause therefore cannot be employed either to enlarge the legislative field occupied by Section 66 or to diminish the operation of other provisions beyond the extent expressly or necessarily contemplated by Parliament.

25.24**.** Properly understood, the non obstante clause preserves the efficacy

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

of Section 66 without disturbing the coherence of the statutory framework as a whole. It is an instrument of legislative priority within a defined field, not a charter for unlimited statutory supremacy.

25.25. Having determined the true effect of the non obstante clause, we shall next examine the continued legal status of judicial Scheme Decrees after the coming into force of the Act and whether such schemes continue to possess juridical efficacy within the present statutory framework.

26.WHETHER JUDICIAL SCHEME DECREES SURVIVE THE 1995 ACT

26.1. One of the central assumptions underlying the rival submissions is the continued existence of judicial Scheme Decrees after the coming into force of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995. While one side proceeds on the footing that such schemes continue to regulate the administration of the concerned waqfs, the other contends that the statutory framework has substantially altered the legal position. Before addressing the statutory consequences flowing therefrom, it is first necessary to determine a more fundamental question, namely, whether a Scheme Decree itself survives the enactment of the Act.

26.2. The present enquiry is deliberately confined to the juridical existence of the Scheme Decree. At this stage, the Court is not concerned with identifying the authority competent to exercise the powers reserved under the Scheme. That question will arise subsequently. The immediate enquiry is whether the Scheme continues to exist as a binding judicial instrument after the enactment of the statutory framework.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE NATURE OF A JUDICIAL SCHEME DECREE

26.3. A Scheme Decree is not an ordinary decree determining the private rights of parties inter se. It is a continuing judicial instrument framed by a competent Civil Court for the proper administration of a public religious or charitable institution. Unlike an ordinary decree, which ordinarily reaches finality upon execution, a Scheme Decree establishes an enduring administrative framework intended to regulate the future governance of the institution.

26.4. The distinctive characteristic of a Scheme Decree lies in its continuing operation. It is not exhausted by its initial implementation. Rather, it governs the institution prospectively until modified, varied or superseded by a competent authority acting in accordance with law.

26.5. Such a Scheme ordinarily prescribes the constitution of the managing body, the manner of appointment of office-bearers, the tenure of management, the mode of administration, financial accountability and other matters necessary for ensuring the proper governance of the institution. Its object is not merely to resolve an existing dispute but to secure the orderly administration of the institution for the future.

26.6. A judicial Scheme therefore possesses a continuing juridical identity independent of the particular dispute which originally necessitated its framing. Once settled by a competent Court, it becomes the governing instrument regulating the administration of the institution unless lawfully altered.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE EFFECT OF SUBSEQUENT LEGISLATION UPON A SCHEME DECREE

26.7. The enactment of a subsequent statute does not, by itself, obliterate every pre-existing judicial order or decree governing an institution. Judicial decrees and statutory enactments operate in different normative spheres. A decree continues to bind the parties and regulate the institution unless the Legislature expressly or by necessary implication alters its legal consequences.

26.8. It is a settled principle of public law that subsequent legislation may modify the legal environment within which an earlier judicial decree operates without necessarily extinguishing the decree itself. The legislative change may alter the manner in which particular powers are exercised, substitute statutory authorities or introduce new regulatory requirements. None of these consequences, however, necessarily results in the extinction of the Scheme as a judicial instrument.

26.9. The juridical existence of the Scheme and the legal incidents flowing from particular clauses of the Scheme are therefore distinct concepts. A statutory enactment may affect the latter without destroying the former.

SURVIVAL OF THE SCHEME IS DISTINCT FROM ITS MODE OF OPERATION

26.10. It is important to distinguish between the continued existence of a Scheme Decree and the manner in which it operates after statutory reform. These are separate legal enquiries.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

26.11. The first concerns the continued juridical validity of the Scheme itself. Unless lawfully modified or superseded, the Scheme continues to exist as the governing judicial instrument regulating the administration of the institution.

26.12. The second concerns the legal consequences flowing from particular clauses contained in the Scheme after the enactment of a later statute. Those consequences necessarily depend upon the statutory framework and must be determined by construing the relevant provisions of the enactment.

26.13. Confusion arises when these two enquiries are conflated. The continued existence of the Scheme does not automatically determine the continued operation of every clause contained therein. Equally, statutory modification of particular administrative arrangements does not result in the extinction of the Scheme itself.

THE DISTINCTION BETWEEN THE SCHEME AND THE SCHEME COURT

26.14. A further distinction of fundamental importance must also be recognised. A Scheme Decree and the Scheme Court are not synonymous.

26.15. The Scheme Decree is the judicial instrument framing the administrative code governing the institution. The Scheme Court, on the other hand, is the judicial authority entrusted with supervisory functions under the Scheme. One is the source of the governing rules; the other is the institution entrusted with administering or enforcing those rules.

26.16. These two concepts, though historically connected, are juristically distinct. The continued existence of the Scheme does not necessarily imply the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

continued exercise of every administrative function by the Scheme Court. Conversely, even if the jurisdiction of the Scheme Court undergoes statutory modification, the Scheme itself does not thereby cease to exist.

26.17**.** Failure to maintain this distinction has been responsible for much of the apparent confusion surrounding the present controversy. The legal survival of the Scheme and the institutional survival of the Scheme Court are separate questions requiring separate answers.

SURVIVAL OF THE SCHEME DOES NOT NECESSARILY MEAN SURVIVAL OF EVERY POWER

26.18**.** A Scheme Decree ordinarily contains several categories of provisions. Some regulate the constitution of the institution, others prescribe the duties of office-bearers, still others deal with accounts, administration, audits, elections or appointments.

26.19**.** The enactment of a comprehensive statutory framework may affect some of these matters while leaving others untouched. Whether any particular clause continues to operate depends upon the relevant statutory provisions governing that subject.

26.20**.** It therefore cannot be assumed that because a Scheme survives, every administrative power originally exercisable under it necessarily continues to be exercised by the same authority in the same manner. Equally, it cannot be assumed that because one administrative function undergoes statutory

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

modification, the entire Scheme disappears.

26.21. The proper approach is to recognise the continued existence of the Scheme while separately examining the legal consequences flowing from the statutory framework in relation to particular powers reserved therein.

THE CONTINUING RELEVANCE OF JUDICIAL SCHEMES

26.22. Judicial schemes continue to perform an important legal function even after statutory reform. They preserve the institutional identity of the waqf, regulate matters not inconsistent with the governing statute and continue to provide the administrative framework for the institution unless and until modified by competent authority.

26.23. Such schemes are not historical relics. They remain living judicial instruments regulating the internal administration of institutions which have been the subject of judicial supervision. Their continuing relevance must therefore be acknowledged unless the Legislature has unmistakably directed otherwise.

THE CONSEQUENCE FOR THE PRESENT REFERENCE

26.24. The immediate consequence of the foregoing discussion is limited but important. The Court holds that the coming into force of the Act does not, by itself, extinguish or render non-existent a judicial Scheme Decree governing a waqf. The Scheme continues to survive as a juridical instrument unless lawfully modified, varied or superseded in accordance with law.

26.25. At the same time, this conclusion does not answer the further

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

question whether every administrative power originally exercisable under the Scheme continues to be exercised by the same authority after the enactment of the Act. That enquiry belongs to the field of statutory interpretation and must be answered by examining the relevant provisions of the statute.

26.26**.** The analysis undertaken above yields the following conclusions:

(i) A judicial Scheme Decree is a continuing judicial instrument regulating the future administration of a waqf.

(ii) Its juridical existence is not extinguished merely because a subsequent statutory enactment has come into force.

(iii) The survival of the Scheme and the legal consequences flowing from particular clauses of the Scheme are distinct questions.

(iv) The continued existence of the Scheme does not necessarily imply the continued exercise of every administrative function by the Scheme Court.

(v) Equally, statutory modification of particular administrative powers does not result in the extinction of the Scheme itself.

(vi) The distinction between the survival of the Scheme and the survival of the Scheme Court constitutes the key to understanding the subsequent statutory analysis.

26.27**.** Having recognised that judicial Scheme Decrees continue to survive as binding juridical instruments while distinguishing that question from the continued exercise of particular administrative powers, we shall next examine how

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Parliament has expressly recognised such deeds, decrees, Court orders and schemes within the statutory framework itself and the legal significance of that legislative recognition.

27.THE JURISTIC NATURE OF A SCHEME DECREE

27.1. The conclusion reached in the preceding paras that a judicial Scheme Decree survives the coming into force of the Act naturally gives rise to a further question, namely, the true juristic character of such a Scheme. It is only by appreciating the legal nature of a Scheme Decree that one can properly understand the extent to which it continues to regulate the administration of the institution and the circumstances in which its provisions may be modified, superseded or cease to operate.

27.2. The enquiry is therefore confined to the legal incidents of a Scheme Decree as a judicial instrument. We are not presently concerned with the statutory consequences flowing from any particular provision of the Act. The immediate objective is to ascertain the character of a Scheme Decree in the eye of law, the distinction between modification, supersession and extinction, and the extent to which such a Scheme continues to bind the institution until lawfully altered.

A SCHEME DECREE IS A CONTINUING JUDICIAL INSTRUMENT

27.3. A Scheme Decree is unlike an ordinary civil decree declaring the rights of parties as on the date of adjudication. It is prospective in character. It creates an enduring framework for the governance of a public religious or charitable institution and is intended to regulate its administration continuously into the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

future.

27.4. The Court framing a Scheme does not merely resolve an existing dispute. It formulates a judicial code of administration governing the institution until changed by competent authority. The Scheme therefore derives its authority not from the consent of the parties but from the judicial determination of the Court acting in the exercise of its jurisdiction over public religious endowments.

27.5. Because the object of a Scheme is the orderly and efficient administration of the institution, its operation is necessarily continuing. It governs successive generations of office-bearers and remains operative irrespective of changes in the personnel entrusted with the management of the institution.

27.6. A Scheme Decree thus possesses a continuing juridical identity. It is not exhausted by the first appointment made under it nor by the first committee constituted pursuant to its provisions. Its operative force endures until the Scheme is lawfully altered in the manner recognised by law.

THE SOURCE OF ITS BINDING CHARACTER

27.7. The binding force of a Scheme Decree flows from the adjudicatory authority of the Court which framed it. Once a competent Court settles a Scheme after hearing the parties concerned, the Scheme becomes the governing legal instrument regulating the administration of the institution.

27.8. Its binding nature is not contractual, consensual or administrative. It is judicial. Consequently, every person claiming to administer the institution under the Scheme derives his authority subject to the conditions prescribed

WEB COPY

therein.

27.9. Equally, the institution itself continues to be governed by the Scheme until the legal foundation upon which the Scheme rests is altered through a process recognised by law. Mere administrative convenience, subsequent practice or long usage cannot by themselves efface the binding character of a judicial Scheme.

MODIFICATION IS NOT EXTINCTION

27.10. The law recognises that a Scheme Decree is capable of modification. Indeed, the very nature of a continuing administrative Scheme requires that provision be made for its adaptation to changing circumstances whenever necessity demands.

27.11. Modification, however, does not destroy the identity of the Scheme. A modified Scheme remains the same Scheme, albeit in an altered form. The juridical continuity of the Scheme survives notwithstanding changes introduced in particular clauses or administrative arrangements.

27.12. Thus, alteration of the mode of election, revision of the tenure of office, restructuring of the management committee or redistribution of administrative functions may amount to modification of the Scheme without resulting in its extinction.

27.13. The distinction is fundamental. Modification preserves continuity while introducing change. Extinction, on the other hand, terminates the Scheme altogether. The two concepts cannot be conflated.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

SUPERSESSION IS DISTINCT FROM MODIFICATION

27.14. A further distinction must be drawn between modification and supersession. Modification proceeds upon the continued existence of the original Scheme. It alters particular provisions while preserving the underlying judicial framework.

27.15. Supersession, by contrast, replaces the existing Scheme with another legally recognised arrangement. The original Scheme ceases to regulate the institution because another governing framework has lawfully taken its place.

27.16. Supersession therefore contemplates substitution. The earlier Scheme is not treated as though it never existed; rather, its operative force comes to an end because another legally valid framework has been substituted in its place.

27.17. Whether such supersession has occurred is necessarily a question of law to be determined with reference to the relevant statutory provisions or judicial orders. It cannot be presumed merely because the Legislature has enacted a comprehensive regulatory statute.

EXTINCTION IS A DISTINCT LEGAL CONSEQUENCE

27.18. Extinction stands upon a different footing altogether. A Scheme is extinguished only when it ceases to possess any operative legal existence.

27.19. Such extinction cannot readily be inferred. A judicial Scheme does not disappear merely because circumstances have changed or because another

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

legal regime now regulates certain aspects of the institution's administration.

27.20. Extinction requires a clear legal foundation. It ordinarily follows either from an express statutory provision abolishing the Scheme, a judicial order terminating it or another legal process which unequivocally brings its existence to an end.

27.21. In the absence of such legal foundation, the Court cannot presume that a Scheme has become non-existent. The law favours continuity of judicial orders until they are lawfully displaced.

CONTINUITY OF THE SCHEME AS A JURISTIC CONCEPT

27.22. The concept of continuity occupies a central place in the law relating to Scheme Decrees. The institution continues, the Scheme continues and successive office-bearers derive their authority under the continuing framework established by the Court.

27.23. This continuity ensures stability in the administration of public religious and charitable institutions. It protects the institution from uncertainty and preserves the judicial safeguards incorporated in the Scheme for the benefit of the beneficiaries and the public.

27.24. Consequently, changes in administration do not ordinarily interrupt the continuity of the Scheme. The Scheme continues to regulate the institution unless lawfully modified or replaced through recognised legal processes.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE PRESUMPTION OF CONTINUED OPERATION

27.25**.** Every judicial order is presumed to remain operative until lawfully varied, set aside or superseded. A Scheme Decree is no exception to this principle.

27.26**.** The presumption of continued operation serves an important public purpose. It ensures certainty in administration and avoids institutional vacuum. Public religious endowments cannot be left without a governing framework merely because legislative or administrative changes have occurred elsewhere.

27.27**.** Accordingly, unless a competent authority acting under law modifies or supersedes the Scheme, those administering the institution remain bound by its provisions.

THE CONSEQUENCE FOR THE PRESENT ENQUIRY

27.28**.** The analysis undertaken above establishes that a judicial Scheme is a living juridical instrument possessing continuing legal efficacy. It remains binding not because it is immune from change but because the law recognises continuity until lawful alteration takes place.

27.29**.** This conclusion is of considerable significance. It demonstrates that the existence of a statutory regulatory framework does not, by itself, terminate the Scheme. Any effect upon particular clauses of the Scheme must arise from the operation of law and not from an assumption that the Scheme has silently disappeared.

27.30**.** The Court must therefore approach every controversy concerning a

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Scheme-governed waqf by first recognising the continued juridical existence of the Scheme and thereafter determining the legal effect of the relevant statutory provisions upon the particular matter in issue.

27.31**.** The discussion thus leads to the following conclusions:

(i) A judicial Scheme Decree is a continuing judicial instrument regulating the future administration of a public religious or charitable institution.

(ii) Its binding character flows from the judicial authority of the Court which framed it and not from administrative practice or private agreement.

(iii) Modification of a Scheme does not destroy its juridical identity but merely alters particular provisions while preserving continuity.

(iv) Supersession is distinct from modification; it substitutes another legally recognised framework in place of the existing Scheme.

(v) Extinction is a separate legal consequence and cannot be presumed in the absence of clear statutory language or a competent judicial determination.

(vi) A judicial Scheme therefore continues to bind the institution and those administering it until it is lawfully modified, superseded or otherwise brought to an end in accordance with law.

27.32**.** Having determined the juristic nature of a Scheme Decree and the principles governing its continued operation, we shall now examine why Parliament, while enacting the Act, expressly referred to deeds of waqf, decrees of Court, orders of Court and schemes of management, and the legal significance of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

that legislative recognition.

28.LEGISLATIVE RECOGNITION OF EXISTING DEEDS, DECREES, COURT ORDERS AND SCHEMES OF MANAGEMENT

28.1. Having concluded that a judicial Scheme Decree is a continuing juridical instrument which survives unless lawfully modified, superseded or extinguished, the next question is whether Parliament itself recognised the continued existence of such instruments while enacting the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995. This enquiry assumes considerable significance because the legislative treatment accorded to existing deeds, decrees, Court orders and schemes furnishes a reliable guide to the intention of Parliament.

28.2 The enquiry is thus confined to the legislative recognition accorded by Parliament to pre-existing legal instruments governing waqfs. At this stage, we are not concerned with identifying the precise legal consequences flowing from such recognition. The present exercise is limited to determining whether Parliament chose to acknowledge the continued existence of such instruments or intended to obliterate them upon the coming into force of the Act.

THE LEGISLATURE WAS FULLY CONSCIOUS OF THE EXISTENCE OF PRE-EXISTING LEGAL REGIMES

28.3. Parliament enacted the Act against the backdrop of a long historical evolution of waqf administration. By the time the legislation was introduced, numerous waqfs throughout the country were already being governed by deeds of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

waqf executed by founders, decrees passed by competent Civil Courts, judicial orders made in proceedings relating to the administration of waqfs and comprehensive schemes of management framed over several decades.

28.4. These instruments were neither isolated nor exceptional. They constituted an established feature of waqf administration. Parliament must therefore be presumed to have legislated with full awareness of their existence and of the legal consequences flowing therefrom.

28.5. The legislative response to this historical reality is reflected in the language employed in the Act itself. Instead of ignoring these pre-existing juridical arrangements, Parliament expressly referred to them in the statutory text.

THE EXPRESS ENUMERATION OF LEGAL INSTRUMENTS

28.6. A striking feature of the Act is that Parliament has not employed vague or general expressions while referring to pre-existing arrangements. Instead, it has expressly enumerated four distinct juridical instruments, namely:

(i) deeds of waqf;

(ii) decrees of Court;

(iii) orders of Court; and

(iv) schemes of management.

28.7. This enumeration is deliberate and precise. Each of these instruments possesses a distinct legal character and originates from a different juridical source. A deed represents the intention of the founder; a decree and an order

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

emanate from judicial adjudication; a scheme of management constitutes a continuing judicial framework governing the administration of the institution.

28.8. By specifically referring to each of these instruments, Parliament acknowledged their continued legal existence. Had the legislative intention been to disregard or extinguish them, no occasion would have arisen to refer to them expressly in the statutory text.

EXPRESS RECOGNITION IS A LEGISLATIVE ACT OF ACKNOWLEDGEMENT

28.9. Express statutory recognition is a significant legislative technique. When Parliament expressly refers to an existing legal institution or juridical instrument, the Court must ordinarily proceed on the basis that the Legislature intended to acknowledge its continued existence within the statutory framework.

28.10. Such recognition is not merely descriptive. It is an affirmative legislative acknowledgment that the identified instruments continue to possess legal relevance and must therefore be taken into account while administering the statute.

28.11. It follows that the express reference to deeds, decrees, Court orders and schemes cannot be treated as surplusage. Every category deliberately mentioned by Parliament must be assigned an independent legislative purpose.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

LEGISLATIVE ACCOMMODATION RATHER THAN LEGISLATIVE DISPLACEMENT

28.12**.** The statutory language indicates that Parliament adopted a policy of legislative accommodation rather than legislative displacement.

28.13**.** Legislative accommodation proceeds upon the principle that existing legal arrangements need not be destroyed merely because a comprehensive regulatory statute has been enacted. Instead, the Legislature incorporates those arrangements into the new statutory framework by recognising their continued existence while prescribing the manner in which they are thereafter to operate.

28.14**.** Legislative displacement, on the other hand, would require Parliament to abolish or extinguish the existing legal arrangements altogether and replace them with an entirely new legal regime.

28.15**.** The language employed by Parliament does not indicate such displacement. On the contrary, the express recognition accorded to deeds, decrees, Court orders and schemes demonstrates that the Legislature chose to accommodate those existing juridical arrangements within the framework of the new enactment rather than to erase them from the legal landscape.

THE SIGNIFICANCE OF PARLIAMENT'S DRAFTING CHOICE

28.16**.** The drafting technique adopted by Parliament is itself instructive. The Legislature did not refer merely to waqfs generally. It specifically referred to the legal instruments under which particular incidents of administration had historically arisen.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

28.17. Such drafting reflects legislative precision. Parliament distinguished between the institution of the waqf and the juridical instruments governing its administration. The former was brought within the comprehensive statutory framework; the latter were expressly recognised as continuing legal realities.

28.18. Courts are not at liberty to disregard this legislative distinction. To do so would amount to treating deliberate statutory language as though it had never been enacted.

THE EFFECT OF EXPRESS STATUTORY RECOGNITION

28.19. Express statutory recognition does not freeze the legal consequences of every deed, decree, Court order or scheme exactly as they existed before the enactment of the statute. Recognition and perpetuation are distinct legal concepts.

28.20. Recognition signifies that Parliament acknowledges the continued juridical existence of the identified instruments and accepts them as part of the legal framework within which the Act is to operate.

28.21. The legal consequences flowing from those instruments must thereafter be determined in accordance with the statutory provisions governing the particular subject. Thus, while Parliament has recognised the continued existence of these instruments, it has also provided a statutory framework within which their future operation is to be understood.

28.22. Express recognition therefore preserves juridical continuity without necessarily preserving every historical administrative arrangement unchanged.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE LEGISLATIVE INTENTION DISCLOSED BY THE ACT

28.23**.** The cumulative effect of the statutory language is unmistakable. Parliament neither ignored nor repudiated the existing body of deeds, decrees, Court orders and schemes governing waqfs.

28.24**.** Instead, the Legislature consciously incorporated them into the statutory framework by expressly referring to them and by providing a legal mechanism governing their continued operation.

28.25**.** Such legislative treatment reflects an intention to preserve continuity while simultaneously introducing a modern statutory system for the regulation of waqf administration. The enactment therefore proceeds upon the coexistence of the statutory framework and the pre-existing juridical instruments recognised therein.

THE CONSEQUENCE FOR THE PRESENT REFERENCE

28.26**.** The significance of this conclusion is considerable. Once Parliament has expressly recognised deeds, decrees, Court orders and schemes of management, the Court cannot proceed upon the assumption that those instruments have ceased to possess legal existence.

28.27**.** Their continued recognition by Parliament necessarily requires the Court to assign them an appropriate place within the statutory framework rather than treating them as impliedly extinguished or legally irrelevant.

28.28**.** The precise legal consequences flowing from that recognition must, of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

course, be determined by construing the relevant provisions of the Act. However, the foundational proposition remains that Parliament has consciously acknowledged the continued juridical existence of those instruments.

28.29. The foregoing discussion leads us to the following conclusions:

(i) Parliament enacted the Act with full awareness of the existence of deeds of waqf, decrees of Court, judicial orders and schemes of management governing numerous waqfs.

(ii) The express reference to those instruments in the statutory text constitutes a deliberate legislative acknowledgment of their continued juridical existence.

(iii) The enumeration of those instruments is neither incidental nor redundant but reflects a conscious legislative choice.

(iv) The Act adopts a policy of legislative accommodation rather than legislative displacement.

(v) Express statutory recognition preserves the juridical continuity of those instruments while permitting their future operation to be regulated by the statutory framework.

(vi) Parliament therefore intended the statutory regime and the recognised pre-existing juridical instruments to coexist within a unified legal framework.

28.30. Having determined the significance of Parliament's express recognition of deeds, decrees, Court orders and schemes of management, we shall

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

next examine the legislative purpose underlying the requirement that the State act only after consultation with the Waqf Board and the institutional significance of that consultative mechanism.

29.CONSULTATION WITH THE WAQF BOARD: ITS NATURE, PURPOSE AND LEGAL SIGNIFICANCE

29.1. One of the most significant features of Section 66 is the statutory requirement that the powers contemplated therein shall be exercised by the State **after consultation with the Waqf Board**. Parliament did not merely identify the authority competent to exercise those powers; it simultaneously prescribed the procedure by which that authority is to arrive at its decision. The requirement of consultation is therefore an integral component of the legislative scheme and not a matter of procedural formality.

29.2. The enquiry now is confined to the legal significance of the consultative process contemplated by Parliament. We are not presently concerned with the substantive powers exercisable under Section 66, but only with the institutional purpose underlying the mandatory consultation with the Board and the legal consequences flowing from Parliament's choice of the expression "consultation".

THE LEGISLATIVE CHOICE OF THE WORD "CONSULTATION"

29.3. Statutory language is presumed to be deliberate. When Parliament employs a particular expression while prescribing a decision-making process, the Court must attribute meaning to that choice. The Legislature could have

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

dispensed with consultation altogether. Equally, it could have required the concurrence or approval of the Board. It has done neither.

29.4. Instead, Parliament has adopted an intermediate course by requiring the State to consult the Waqf Board before exercising the powers contemplated by Section 66. The deliberate use of the expression "consultation" therefore reflects a conscious legislative choice and cannot be treated as an empty formality.

29.5. The significance of this drafting choice lies not merely in the procedure prescribed but in the institutional relationship which Parliament intended to establish between the State and the Waqf Board.

THE NATURE OF CONSULTATION

29.6. Consultation, in its ordinary legal sense, contemplates a genuine process of deliberation between the authority empowered to take the decision and the authority whose views the Legislature considers relevant for informed decision-making.

29.7. The essence of consultation lies in the exchange of views. It requires the decision-making authority to obtain the opinion of the consultative body, to consider that opinion with due seriousness and to arrive at an independent decision after such consideration.

29.8. Consultation therefore presupposes meaningful engagement. It is not satisfied by merely forwarding papers or mechanically inviting comments. Nor does it permit the consultative process to be reduced to an empty ritual completed only to satisfy the letter of the statute.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

29.9. At the same time, consultation does not transfer the decision-making authority from one institution to another. The final statutory responsibility continues to rest with the authority designated by Parliament.

THE INSTITUTIONAL PURPOSE OF CONSULTATION

29.10. The requirement of consultation serves an important institutional purpose. Parliament recognised that the Waqf Board is the specialised statutory body entrusted with the supervision of waqfs and possesses institutional knowledge concerning their administration, history, customs, governance and religious obligations.

29.11. The State , while exercising the statutory powers entrusted to it, may not necessarily possess the same degree of institutional familiarity with the affairs of every individual waqf. Parliament therefore considered it appropriate that governmental decision-making should be informed by the specialised expertise available with the Board.

29.12. The consultative mechanism thus combines two institutional strengths. The State contributes governmental authority and administrative accountability, while the Board contributes specialised knowledge and experience in waqf administration.

29.12. The legislative object is therefore to secure informed decision-making by ensuring that the authority exercising the statutory power acts after considering the views of the specialised body constituted for the administration of waqfs.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

CONSULTATION DISTINGUISHED FROM CONCURRENCE

29.13**.** It is equally important to distinguish consultation from concurrence.Consultation requires the decision-maker to seek and consider the opinion of another authority before taking a decision. Concurrence, on the other hand, requires the affirmative approval of the consultative authority as a condition precedent to the validity of the decision.

29.14 The distinction is one of substance. Under a consultative process, the authority taking the final decision remains responsible for the exercise of statutory power, though it is obliged to consider the opinion tendered by the consultative body. Under a concurrence model, the decision cannot ordinarily be taken without obtaining the approval of the other authority.

29.15**.** Parliament has consciously employed the former expression and not the latter. The Court must therefore respect the legislative distinction and refrain from converting consultation into concurrence or reducing consultation to a mere procedural formality.

29.16**.** The legal consequence is that while the opinion of the Board must be obtained and duly considered, the ultimate statutory responsibility continues to remain with the authority designated by Parliament.

WHY PARLIAMENT REQUIRED CONSULTATION

29.17**.** The requirement of consultation is itself indicative of legislative intent. If Parliament had intended the Board alone to exercise the powers contemplated by Section 66, no occasion would have arisen to require

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

consultation with the Board. Equally, if Parliament had intended the State Government to act entirely independently, the consultative requirement would have been unnecessary.

29.18. The Legislature instead adopted a balanced institutional model. It entrusted the power to one authority while simultaneously requiring that authority to obtain the considered opinion of another specialised statutory body before exercising that power.

29.19. Such a legislative design reflects the recognition that decisions affecting the administration of waqfs should neither be divorced from governmental accountability nor from institutional expertise. Consultation therefore serves as the connecting bridge between these two complementary considerations.

29.20. The statutory requirement thus promotes informed administration, institutional coordination and balanced decision-making without disturbing the respective statutory roles assigned to the participating authorities.

CONSULTATION AS A SAFEGUARD

29.21. Consultation also serves an important protective function within the statutory framework. By requiring the State to seek the views of the Board, Parliament has introduced an institutional safeguard against uninformed or arbitrary exercise of statutory power.

29.22. The Board, being entrusted with the continuing supervision of waqfs, is in a position to place before the State the relevant factual background, the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

history of the institution, the requirements of the waqf, the interests of the beneficiaries and such other considerations as may be necessary for an informed decision.

29.23. The consultative process therefore enhances the quality of administrative decision-making while preserving the statutory autonomy of the decision-making authority.

THE LEGISLATIVE BALANCE

29.24. The requirement of consultation demonstrates Parliament's intention to achieve institutional balance rather than institutional exclusivity.

29.25. The Legislature has neither concentrated every function in a single authority nor fragmented responsibility without coordination. Instead, it has adopted a coordinated model in which distinct statutory authorities perform distinct functions while remaining institutionally connected through the mechanism of consultation.

29.26. Such a framework promotes accountability, expertise and administrative coherence simultaneously. The statutory design therefore reflects legislative confidence in cooperative institutional functioning rather than exclusive institutional control.

THE CONSEQUENCE OF THE CONSULTATIVE REQUIREMENT

29.27. The consultative requirement has an important interpretative consequence. It demonstrates that Parliament consciously envisaged the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

continued and meaningful participation of the Waqf Board even in matters where the ultimate statutory power is exercised by another authority.

29.28**.** The Board is therefore neither excluded from the decision-making process nor elevated into the final decision-maker. Parliament has assigned to it an advisory and consultative role of statutory significance, thereby ensuring that its specialised expertise informs the exercise of the relevant powers.

29.29 The consultative mechanism thus reflects legislative coordination rather than legislative substitution. Each authority performs the role specifically entrusted to it without usurping the functions assigned to the other.

29.30**.** The consultative role assigned to the Waqf Board thus reinforces the legislative design of coordinated institutional functioning. We shall now proceed to examine the broader institutional architecture of the Act and the distinct roles assigned by Parliament to the State , the Waqf Board, the Mutawalli, the Waqf Tribunal and the Civil Courts within the statutory framework.

30.THE INSTITUTIONAL ARCHITECTURE OF THE ACT: DISTINCT STATUTORY ROLES OF THE BOARD, THE STATE , THE MUTAWALLI, THE WAQF TRIBUNAL AND THE CIVIL COURTS

30.1**.** The Act is not merely a collection of substantive rights and obligations. It is an institutional statute. Parliament has consciously distributed powers among different authorities, each entrusted with a distinct statutory function. The legislative objective is not the concentration of every power in a single institution, but the creation of a coordinated framework in which each authority performs the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

role specifically assigned to it.

30.2. The controversy before this Full Bench has largely arisen because the distinct institutional functions contemplated by the Act have occasionally been viewed as overlapping. Before determining the precise legal consequences flowing from the relevant provisions, it is therefore necessary to appreciate the institutional architecture created by Parliament.

30.3. The Act recognises five principal institutional actors, namely:

(i) the Waqf Board;

(ii) the State Government ;

(iii) the Mutawalli;

(iv) the Waqf Tribunal; and

(v) the Civil Court in those areas where its jurisdiction has neither been expressly nor impliedly excluded.

Each performs an independent statutory function. None is intended to absorb or replace the other.

THE WAQF BOARD – THE STATUTORY REGULATOR

30.4. The Waqf Board occupies the central regulatory position within the statutory framework. Parliament has constituted the Board as a permanent statutory body possessing institutional continuity, specialised expertise and continuing supervisory responsibility over waqfs.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

30.5. The Board is entrusted with ensuring that waqfs are properly administered, their properties protected, their income utilised for the objects for which they were created and their management conducted in accordance with law. Its statutory responsibilities extend beyond individual disputes.

30.6.The Board functions as the institutional guardian of waqf administration throughout the State. Its duties are continuous, preventive as well as corrective, and are intended to preserve the integrity of waqf administration as a whole.The Board therefore functions primarily as the regulator of waqf administration rather than merely as a litigant or an appointing authority. Its role is institutional, supervisory and regulatory.

THE STATE GOVERNMENT – THE STATUTORY EXECUTIVE AUTHORITY

30.7. Parliament has simultaneously assigned important responsibilities to the State Government under various provisions of the Act. The State Government is not an external authority functioning outside the statutory framework; it forms an integral component of the legislative scheme.

30.8. The functions entrusted to the State are executive in character. They involve the discharge of statutory responsibilities expressly assigned by Parliament and are exercised within the limits prescribed by the Act.

30.9. The Legislature has consciously recognised that certain matters affecting waqf administration require governmental oversight in addition to institutional supervision by the Board. The statutory responsibilities entrusted to the State must therefore be viewed as complementary to, rather than competitive

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

with, those entrusted to the Board.

30.10. The State thus performs the role of the executive authority wherever Parliament has expressly entrusted it with statutory functions.

THE MUTAWALLI – THE MANAGER OF THE WAQF

30.11. The Mutawalli occupies an entirely different position within the statutory framework. Unlike the Board and the State Government, the Mutawalli is not a regulatory authority. He is the manager and administrator of the individual waqf.

30.12. The office of the Mutawalli is fiduciary in nature. The Mutawalli administers the waqf not for personal benefit but for the fulfilment of the religious, charitable and pious purposes for which the waqf has been created.

30.13. The Mutawalli is therefore the primary executive functionary of the individual institution. He manages its day-to-day affairs, safeguards its properties, administers its finances and ensures that the objects of the waqf are faithfully carried out.

30.14. The Mutawalli neither exercises the Board's supervisory jurisdiction nor performs the executive functions assigned to the State Government. His authority is institution-specific and confined to the administration of the particular waqf entrusted to his management.

THE WAQF TRIBUNAL – THE SPECIALISED ADJUDICATORY FORUM

30.15. The Act also establishes specialised Waqf Tribunals for the

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

adjudication of disputes falling within the jurisdiction conferred upon them by Parliament.

30.16**.** The Tribunal performs a judicial function. It neither administers waqfs nor exercises supervisory powers over their management. Its responsibility is confined to adjudicating disputes brought before it in accordance with the jurisdiction conferred by the Act.

30.17**.** The Tribunal thus serves as the specialised judicial forum created to ensure expeditious and expert resolution of disputes concerning waqfs. Its function is adjudicatory and not administrative.

30.18**.** The distinction between administration and adjudication is fundamental. Administrative authorities regulate and supervise institutions; Tribunals determine disputes arising between parties. Parliament has consciously maintained this distinction throughout the Act.

THE CONTINUING ROLE OF THE CIVIL COURTS

30.19**.** Although the Act creates specialised institutions, it does not proceed upon the assumption that every function historically performed by Civil Courts automatically disappears.

30.20**.** Civil Courts continue to exercise such jurisdiction as remains vested in them under the general law except to the extent that Parliament has expressly or by necessary implication transferred particular matters to specialised statutory authorities or Tribunals.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

30.21. Historically, Civil Courts played an important role in framing schemes, settling disputes concerning public religious endowments and protecting charitable institutions. The enactment of the present statute undoubtedly introduced specialised institutions for many aspects of waqf administration. Nevertheless, the continued existence of Civil Court jurisdiction in appropriate matters cannot be ignored unless the statute clearly provides otherwise.

30.22. The Civil Court therefore continues to occupy its constitutional position within the judicial system while functioning subject to the jurisdictional distribution enacted by Parliament.

DISTINCT FUNCTIONS – NOT COMPETING AUTHORITIES

30.23. A careful examination of the institutional framework demonstrates that Parliament did not intend these authorities to compete with one another for administrative supremacy.

30.24. The Board supervises.

30.25. The State Government exercises executive functions specifically entrusted to it.

30.26. The Mutawalli administers the individual waqf.

30.27. The Tribunal adjudicates disputes falling within its statutory jurisdiction.

30.28. The Civil Courts continue to exercise such jurisdiction as the law preserves.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

30.29. These functions are complementary rather than overlapping. The institutional design of the Act is founded upon the distribution of responsibility rather than concentration of authority.

LEGISLATIVE COORDINATION RATHER THAN INSTITUTIONAL EXCLUSIVITY

30.30. Modern regulatory statutes increasingly adopt the model of coordinated governance. Parliament entrusts different aspects of administration to different institutions according to their respective expertise and constitutional character.

30.31. The Act reflects precisely such an approach. The Legislature has created an integrated administrative structure in which regulatory supervision, executive action, institutional management, judicial adjudication and constitutional oversight are distributed among separate authorities.

30.32. Such distribution promotes accountability, institutional competence and effective administration. Each authority functions within its own statutory sphere while contributing to the common legislative objective of protecting and properly administering waqfs.

THE SIGNIFICANCE FOR THE PRESENT REFERENCE

30.33. The present reference cannot be answered by assuming that every function connected with waqf administration must necessarily vest in a single authority. Such an assumption would be inconsistent with the institutional architecture deliberately created by Parliament.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

30.34. The Act itself demonstrates that Parliament has consciously distributed powers among multiple statutory institutions. Consequently, the identification of the authority competent to perform a particular function must depend upon the specific legislative assignment of that function rather than upon any general assumption of institutional exclusivity.

30.35. Recognition of the distinct institutional roles contemplated by the Act therefore provides the necessary framework within which the remaining interpretative questions must be answered.

30.36. The institutional architecture of the Act thus reinforces the conclusion that Parliament consciously adopted a model of coordinated governance founded upon distinct statutory responsibilities. Having identified the respective institutional roles, we shall now examine the practical consequences that would follow if either of the rival interpretations advanced before us were accepted in their absolute form, and whether those consequences accord with the legislative design of the Act.

31.THE CONSEQUENCES OF THE COMPETING INTERPRETATIONS

31.1. The function of statutory interpretation extends beyond a literal examination of individual provisions. Once the language of the statute admits of more than one plausible construction, the Court is entitled to examine the practical and legal consequences flowing from each competing interpretation. Such an exercise is not directed towards substituting judicial preference for legislative intent but towards identifying the construction that best preserves the coherence, workability and internal consistency of the enactment.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

31.2. The rival submissions advanced before this Full Bench represent two competing interpretative approaches. The petitioners contend that the powers contemplated under Section 66 exclusively govern every matter arising from deeds of waqf, decrees, Court orders and schemes of management. The respondents, on the other hand, contend that the Board's general supervisory jurisdiction under Section 32 is so comprehensive that it substantially governs every aspect of waqf administration, including matters historically regulated by such instruments.

31.3. This discussion examines the logical consequences of both approaches if each were accepted in its widest possible form. The purpose is not to criticise either submission but to determine whether either extreme is capable of sustaining the legislative scheme enacted by Parliament.

CONSEQUENCES OF ACCEPTING THE PETITIONERS' INTERPRETATION IN ITS WIDEST FORM

31.4. If the petitioners' construction were accepted without qualification, every waqf governed by a deed of waqf, decree of Court, judicial order or scheme of management would stand governed exclusively by the statutory mechanism contemplated under Section 66 in respect of the matters falling within those instruments.

31.5. Such an interpretation would inevitably result in the creation of two substantially different systems of administration within the same enactment - one applicable to waqfs governed by judicial schemes or similar instruments and another applicable to all remaining waqfs.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

31.6. The inevitable consequence would be that the statutory role of the Board in relation to such institutions would become substantially dependent upon whether the waqf happened to be governed by a historical judicial scheme or by ordinary administrative arrangements. Parliament has nowhere indicated that the supervisory framework governing waqfs should vary merely because the institution has historically been the subject of judicial regulation.

31.7. A further consequence would be that the Board's continuing institutional responsibility over such waqfs would become significantly attenuated notwithstanding Parliament's express recognition of its supervisory jurisdiction over all waqfs. Such a result would produce an unnecessary fragmentation of the regulatory framework established by the Act.

31.8. The petitioners' interpretation, if extended to its logical conclusion, would also tend to elevate the special mechanism contemplated for identified situations into the dominant mode of administration for an entire class of waqfs. Such an expansion would extend the operation of the special provision beyond the limited field for which Parliament appears to have enacted it.

CONSEQUENCES OF ACCEPTING THE RESPONDENTS' INTERPRETATION IN ITS WIDEST FORM

31.9. The respondents' interpretation, if accepted in its fullest amplitude, presents difficulties of a different character.

31.10. Under this construction, the Board's general supervisory jurisdiction would become the exclusive source of authority governing every aspect of waqf

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

administration, irrespective of whether Parliament had enacted specific provisions dealing with particular situations.

31.11**.** Such an interpretation would substantially diminish the independent legislative significance of provisions specifically enacted to govern defined situations. Wherever Parliament has consciously identified a particular subject and prescribed a distinct statutory mechanism, that mechanism would become unnecessary if every question were capable of being answered solely by reference to the Board's general supervisory powers.

31.12**.** The consequence would be that several carefully drafted provisions would cease to perform any independent legislative function. The statutory framework would become heavily concentrated around one general provision notwithstanding Parliament's deliberate decision to enact several specific provisions addressing distinct situations.

31.13**.** More importantly, the respondents' construction would make the legislative choice reflected in the designation of particular statutory authorities for particular functions substantially redundant. The carefully calibrated institutional distribution created by Parliament would yield to an interpretation based primarily upon institutional centralisation.

THE ANOMALIES CREATED BY THE EXTREME POSITIONS

31.14**.** The Court must next consider whether either of these extreme constructions can satisfactorily explain the structure of the Act as a whole.

31.15**.** If the petitioners' interpretation is accepted in its widest form, the Board's

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

statutory role over waqfs governed by historical judicial arrangements becomes unduly restricted, notwithstanding Parliament's express intention to create a comprehensive supervisory authority.

31.16. If the respondents' interpretation is accepted in its widest form, the specific statutory mechanisms enacted by Parliament lose much of their independent significance, and the careful legislative distribution of functions among different authorities becomes difficult to sustain.Thus, both constructions, when pressed to their logical extremes, produce institutional imbalance.

31.16. One interpretation tends towards excessive fragmentation of the statutory framework by treating the special mechanism as an alternative administrative regime. The other tends towards excessive centralisation by treating the general supervisory provision as the answer to every administrative question arising under the Act. Neither consequence appears consistent with the balanced legislative architecture identified in the preceding discussion.

THE IMPACT UPON THE COHERENCE OF THE STATUTE

31.17. Statutory interpretation must always strive to preserve the internal coherence of the enactment. An interpretation which creates unnecessary institutional overlap or renders carefully drafted provisions practically ineffective should ordinarily be avoided where another construction preserves the legislative balance.

31.18. The Act reveals a deliberate distribution of responsibilities among several statutory institutions. That distribution cannot be ignored by treating one

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

provision as exclusively governing every conceivable situation or by treating another as establishing an entirely separate administrative code.

31.19**.** The competing interpretations, when examined in their absolute form, therefore reveal that each captures only one aspect of the legislative scheme while overlooking the complementary role assigned to the other statutory provisions.

THE NEED FOR A BALANCED CONSTRUCTION

31.20**.** The anomalies identified above demonstrate that the controversy cannot be resolved by choosing one extreme over the other.

31.21**.** The legislative design instead points towards a balanced construction in which each provision performs the function consciously assigned to it by Parliament without encroaching upon the field occupied by another provision.

31.22**.** Such an interpretation preserves the institutional role of the Board, respects the legislative choice reflected in the designation of other statutory authorities, maintains the integrity of the specialised mechanisms enacted by Parliament and enables the statutory framework to function as an integrated whole.

31.23**.** The Court is therefore unable to accept either submission in its widest amplitude. Both interpretations, when carried to their logical conclusion, produce consequences which the Legislature cannot reasonably be presumed to have intended.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE INTERPRETATIVE LESSON

31.24**.** The practical consequences examined above reinforce an important interpretative principle. Statutory provisions should not be construed in isolation so as to produce institutional imbalance or legislative incongruity.

31.25**.** Where two competing constructions are possible, the Court should prefer that interpretation which enables each provision of the Act to perform its intended function without rendering another provision ineffective or creating avoidable anomalies in the statutory scheme.

31.26**.** The present reference provides a clear illustration of that principle. The apparent conflict disappears once the competing provisions are understood as operating within distinct but complementary fields rather than as rival sources of exclusive authority.

31.27**.** The consequences examined here thus reinforce the conclusion already emerging from the statutory text, the legislative structure and the reconciled precedents. The Act does not contemplate institutional exclusivity but coordinated statutory functioning. We shall next examine the presumption against redundancy and its relevance in preserving the efficacy of every substantive provision enacted by Parliament.

32.THE PRESUMPTION AGAINST REDUNDANCY: EVERY WORD, EVERY PROVISION AND EVERY INSTITUTION MUST BE GIVEN EFFECT

32.1**.** One of the most enduring principles governing statutory interpretation is the presumption that the Legislature does not enact meaningless words or

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

unnecessary provisions. Every enactment is presumed to have been drafted with deliberation, every expression is presumed to have been consciously employed, and every substantive provision is presumed to have been inserted for a definite legislative purpose. The Court must therefore endeavour to assign meaning to every part of the statute rather than adopt an interpretation which renders any portion of it superfluous.

32.2. This principle assumes particular significance in the present reference. The controversy before this Full Bench is not merely concerned with the interpretation of isolated provisions but with preserving the coherence of an elaborate statutory framework. If the construction adopted by the Court renders any substantive provision redundant, the interpretation would fail to give full effect to the legislative intention manifested in the enactment.

32.3. This enquiry is therefore directed towards the principle against redundancy, the presumption that every section has a distinct legislative function, and the importance of legislative economy in construing the Act.

EVERY WORD EMPLOYED BY PARLIAMENT HAS A PURPOSE

32.4. The Legislature is presumed to employ words with precision and purpose. The Court cannot proceed upon the assumption that Parliament has used expressions casually or inserted statutory language without intending legal consequences to flow therefrom.

32.5. Every word occurring in an enactment contributes to the legislative design. Some words confer powers; others impose duties; still others prescribe

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

conditions, limitations or procedural safeguards. The function of the Court is to identify the legislative purpose served by each expression and to interpret the statute in a manner that enables every material word to perform that purpose.

32.6. An interpretation which deprives statutory language of practical content or reduces carefully chosen expressions to mere surplusage must therefore be avoided unless the statutory context leaves no alternative.

32.7. The presumption is particularly strong where Parliament has deliberately employed different expressions in different provisions of the same enactment. Variations in legislative language ordinarily indicate variations in legislative intention. Courts should therefore resist interpretations which obliterate distinctions consciously maintained by Parliament.

EVERY SUBSTANTIVE SECTION IS PRESUMED TO HAVE WORK TO PERFORM

32.8. The same principle applies at the level of the statutory provision. Every substantive section enacted by Parliament is presumed to perform an independent legislative function.

32.9. Modern statutes frequently consist of a general framework supplemented by several specific provisions addressing particular situations. Each provision contributes to the overall legislative scheme by regulating a distinct aspect of the subject-matter.

32.10. It follows that one section should not ordinarily be interpreted in a manner which renders another substantive provision ineffective or unnecessary.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Such a construction would amount to attributing to Parliament the intention of enacting provisions devoid of independent operation—an intention which the Court should not lightly presume.

32.11. The Court must therefore identify the legislative function performed by every substantive provision and preserve that function so far as the language of the statute reasonably permits.

THE PRINCIPLE OF LEGISLATIVE ECONOMY

32.12. The presumption against redundancy is closely connected with the principle of legislative economy. Parliament is presumed to legislate efficiently. It is not expected to repeat itself unnecessarily, to duplicate statutory mechanisms without reason or to enact elaborate provisions for purposes already fully achieved elsewhere in the enactment.

32.13. Where the Legislature has chosen to enact a separate substantive provision dealing with a defined subject, the Court should ordinarily proceed upon the basis that Parliament intended that provision to perform work which could not adequately be performed by the general provisions of the statute alone.

32.14. Legislative economy therefore requires the Court to recognise the distinct contribution made by each provision to the statutory scheme. The judicial task is not to compress the enactment into the fewest possible provisions but to understand why Parliament considered each provision necessary.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

AVOIDANCE OF SURPLUSAGE

32.15. The doctrine against surplusage is a natural consequence of these principles. Courts should avoid interpretations that convert substantive statutory language into unnecessary repetition. Surplusage arises when a provision is interpreted in such a manner that it performs no independent legislative function or when its operative content is entirely absorbed by another provision.

32.16. Such a construction should not readily be accepted. Parliament cannot ordinarily be presumed to have enacted elaborate statutory provisions merely to restate what had already been sufficiently provided elsewhere in the Act.

32.17. Equally, the Court should avoid interpretations which require treating carefully drafted statutory qualifications, procedural safeguards or institutional arrangements as devoid of legal significance. Every component of a substantive provision is presumed to have been inserted for a reason.

REDUNDANCY MAY ARISE AT DIFFERENT LEVELS

32.18. Redundancy is not confined to statutory language alone. It may arise at several levels within an enactment. A particular word may become redundant if deprived of independent meaning. A phrase may become redundant if interpreted as adding nothing to the legislative command. An entire section may become redundant if another provision is construed as occupying the whole field.

32.19. Even an institutional arrangement created by Parliament may become redundant if judicial interpretation concentrates all statutory functions in a single authority despite the Legislature having consciously distributed those

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

functions among several institutions.

32.20. The Court must therefore examine the statute at each of these levels to ensure that the legislative design is preserved in its entirety.

THE APPLICATION OF THE PRINCIPLE TO THE PRESENT ENACTMENT

32.21. The Act under consideration reveals a carefully structured legislative framework. Parliament has enacted general provisions, specific provisions, procedural safeguards, institutional mechanisms and specialised adjudicatory arrangements. Each forms part of an integrated legislative design. The Court must therefore resist every interpretation which renders any of these components unnecessary.

32.22**.** If a construction deprives a substantive provision of independent operation, diminishes the significance of carefully prescribed statutory procedures or renders institutional arrangements purposeless, such construction must be approached with considerable caution.

32.23**.** Conversely, an interpretation which enables every provision to perform its intended function while preserving the coherence of the enactment is more likely to reflect the legislative intention.

PRESERVING THE COHERENCE OF THE ACT

32.24**.** The doctrine against redundancy is ultimately directed towards preserving the internal coherence of the statute.

32.25**.** A coherent enactment is one in which every provision contributes to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

the legislative objective without unnecessary duplication or internal contradiction. Courts achieve that coherence not by rewriting the statute but by assigning to each provision the field which Parliament appears to have intended it to occupy.

32.26**.** Such an approach respects legislative craftsmanship. It recognises that Parliament, having devoted careful attention to the structure of the enactment, intended every substantive provision to have practical effect.

THE INTERPRETATIVE CONSEQUENCE

32.27**.** The interpretative consequence of the foregoing discussion is clear. Whenever two competing constructions are reasonably possible, the Court should ordinarily prefer that interpretation which:

(i) gives meaningful operation to every material word;

(ii) preserves the independent function of every substantive section;

(iii) respects the institutional arrangements deliberately created by Parliament;

(iv) avoids duplication, inconsistency and surplusage; and

(v) enables the statute to function as an integrated legislative instrument.

32.28**.** This principle does not authorise the Court to rewrite the statute in order to avoid every conceivable overlap. It merely requires the Court to attribute purpose to the language consciously enacted by Parliament and to avoid interpretations which unnecessarily reduce parts of the enactment to legislative redundancy.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

32.29**.** The presumption against redundancy thus reinforces the conclusions already reached in the preceding discussion. The Legislature has created a carefully balanced statutory framework in which every provision has meaningful work to perform. The final stage of the interpretative exercise is therefore to identify the overarching legislative purpose which informs the enactment and to ensure that the construction adopted by this Court advances, rather than defeats, that purpose.

33.PURPOSIVE INTERPRETATION: ADVANCING THE LEGISLATIVE OBJECT OF THE ACT

33.1. The interpretative exercise undertaken thus far has principally proceeded upon the text, structure and institutional architecture of the Act. Those tools of interpretation, however, must ultimately converge upon the legislative purpose which the enactment seeks to achieve. Statutory interpretation is not an exercise in linguistic analysis alone; it is equally an endeavour to give practical effect to the legislative policy embodied in the statute.

33.2**.** The Court is therefore required to identify the purpose which Parliament intended to achieve and to adopt that construction which best advances the objects of the enactment. A construction that frustrates the legislative purpose, creates administrative uncertainty or defeats the statutory scheme must ordinarily yield to an interpretation that enables the Act to operate effectively and harmoniously.

33.3**.** This enquiry is accordingly directed towards four interrelated objectives discernible from the Act itself, namely: (i) the protection of waqfs and

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

waqf properties; (ii) the establishment of an efficient system of administration; (iii) the preservation of institutional continuity; and (iv) respect for existing legal arrangements recognised by Parliament.

THE LEGISLATIVE PURPOSE OF THE ACT

33.4. The Act is a comprehensive regulatory legislation intended to provide a uniform statutory framework for the administration, supervision, protection and better governance of waqfs. It seeks to replace fragmented administrative practices with an integrated institutional structure while preserving the essential religious and charitable character of waqf institutions.

33.5. Parliament did not enact the legislation merely to create statutory authorities. The larger object was to ensure that waqfs are administered efficiently, their properties are protected from mismanagement and encroachment, their income is properly utilised and the intentions of the waqif are faithfully carried into effect.

33.6. The legislative purpose is therefore protective as well as regulatory. It is designed not merely to confer powers upon public authorities but to secure the proper administration of religious and charitable endowments for the benefit of the community and the purposes for which the waqfs were originally created.

PROTECTION OF WAQFS AS THE DOMINANT LEGISLATIVE OBJECT

33.7. The protection of waqfs constitutes one of the central objectives running throughout the enactment. Parliament has repeatedly emphasised the need to preserve waqf properties, prevent their misuse, ensure proper

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

management and safeguard the charitable and religious purposes underlying the dedication.

33.8. This protective objective extends beyond the preservation of physical properties. It embraces the protection of the institution itself, the integrity of its administration, the observance of the founder's intention and the interests of the beneficiaries for whose benefit the waqf exists.

33.9. An interpretation that weakens institutional safeguards, creates uncertainty in administration or unnecessarily diminishes statutory oversight would therefore be inconsistent with the protective purpose underlying the enactment.

33.10. Equally, a construction that unnecessarily disrupts existing arrangements without clear legislative mandate may itself undermine the stability essential for effective protection of waqfs. Protection and continuity are complementary aspects of the same legislative objective.

EFFICIENT ADMINISTRATION AS A LEGISLATIVE OBJECTIVE

33.11. Parliament also intended to establish a system of administration that is efficient, coordinated and capable of responding effectively to the diverse needs of waqf institutions.

33.12. Efficiency in administration is achieved not merely by concentrating every power in a single authority but by allocating distinct responsibilities to institutions best suited to perform them. Modern regulatory legislation frequently adopts such a model of distributed institutional competence.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

33.13. The Act reflects this legislative approach. It creates specialised institutions, prescribes defined responsibilities, establishes consultative mechanisms and provides adjudicatory forums for the resolution of disputes. These features collectively demonstrate Parliament's intention to create an efficient administrative structure founded upon institutional coordination rather than administrative exclusivity.

33.14. The Court must therefore prefer an interpretation that preserves the effectiveness of this institutional arrangement and enables each statutory authority to discharge the responsibilities specifically entrusted to it.

RESPECT FOR EXISTING LEGAL ARRANGEMENTS

33.15. Equally significant is the legislative treatment accorded to existing legal arrangements governing waqfs. Parliament enacted the Act against the background of numerous waqfs already regulated by deeds of waqf, judicial decrees, Court orders and schemes of management.

33.16. Instead of treating these arrangements as obstacles to statutory reform, Parliament expressly recognised their existence and incorporated them into the legislative framework. Such recognition reflects a legislative preference for continuity over disruption and for integration over displacement.

33.17. Respect for existing legal arrangements serves an important public purpose. It preserves institutional stability, protects legitimate expectations and avoids unnecessary disruption in the administration of long-established religious and charitable institutions.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

33.18. The Court should therefore be slow to attribute to Parliament an intention to unsettle or extinguish existing juridical arrangements unless such intention is expressed in clear and unmistakable language.

THE OBJECT OF CONTINUITY WITH REFORM

33.19. The Act represents a legislative synthesis between continuity and reform. Parliament intended to modernise the administration of waqfs by creating specialised statutory institutions, introducing regulatory mechanisms and establishing an integrated framework for governance.

33.20. At the same time, the Legislature did not proceed upon the basis that every historical legal arrangement should be discarded. Rather, it consciously preserved those arrangements which continued to possess legal significance while integrating them into the new statutory framework.

33.21. The legislative policy is therefore evolutionary rather than revolutionary. It seeks to improve administration without unnecessarily severing the legal continuity of institutions historically governed by deeds, decrees and judicial schemes.

PURPOSIVE INTERPRETATION IN THE PRESENT CONTEXT

33.22. When the Act is viewed through the prism of its legislative purpose, a coherent interpretative pattern emerges. The protection of waqfs requires effective statutory supervision. Efficient administration requires coordinated institutional functioning. Institutional stability requires respect for existing legal arrangements recognised by Parliament.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

33.23**.** These objectives are not mutually inconsistent. On the contrary, they reinforce one another and collectively reveal the legislative design underlying the enactment. An interpretation that advances all these objectives simultaneously is therefore more likely to reflect the true intention of Parliament than one which promotes one objective at the expense of the others.

AVOIDING DEFEAT OF THE LEGISLATIVE PURPOSE

33.24**.** The Court must equally avoid interpretations which inadvertently defeat the legislative purpose. A construction which unnecessarily fragments the statutory framework, creates institutional uncertainty or renders recognised legal arrangements ineffective without express legislative mandate would diminish the effectiveness of the Act.

33.25**.** Likewise, an interpretation which concentrates every statutory function in a single authority despite Parliament having consciously distributed responsibilities among several institutions would distort the carefully balanced administrative structure established by the Legislature.

33.26**.** Purposive interpretation therefore requires the Court to preserve the equilibrium consciously created by Parliament and to ensure that the statutory objectives are advanced in a balanced and integrated manner.

THE INTERPRETATIVE RESULT

33.27**.** The purposive approach adopted throughout this judgment confirms the conclusions already emerging from the textual and structural analysis.The Act is directed towards better governance of waqfs, stronger institutional supervision,

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

efficient administration and respect for legally recognised arrangements governing individual institutions.

33.28. These objectives are best achieved by an interpretation that preserves the operation of every substantive provision, respects the institutional architecture created by Parliament and allows existing legal arrangements to continue except to the extent lawfully modified by the statute.

33.29.The purposive interpretation of the Act thus completes the interpretative framework necessary for answering the Reference. Before formulating the final ratio, it remains only to identify the constitutional values informing the enactment and the broader principles which reinforce the legislative scheme adopted by Parliament.

34.THE CONSTITUTIONAL DIMENSION: RULE OF LAW, INSTITUTIONAL CONTINUITY, SEPARATION OF POWERS AND LEGISLATIVE SUPREMACY

34.1. Although the present reference arises from the interpretation of a statutory enactment, the issues involved cannot be viewed entirely in isolation from the broader constitutional principles that govern the relationship between legislation, judicial decrees and statutory institutions. Every statute operates within the constitutional framework, and every exercise of statutory interpretation must ultimately remain faithful to the constitutional values that underlie the legal system.

34.2. The questions before this Full Bench concern neither the constitutional validity of the Act nor the competence of Parliament to enact it.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Those matters do not arise for consideration. The constitutional dimension of the present controversy lies elsewhere. It concerns the manner in which statutory reform interacts with pre-existing judicial decrees, the extent to which legislative policy should be respected by the judiciary and the constitutional balance between the Legislature, the Executive and the Courts.

34.3. The interpretative exercise must therefore be informed by certain foundational constitutional principles, namely: the Rule of Law, institutional continuity, the doctrine of separation of powers, respect for judicial decrees and the constitutional supremacy of legislation enacted by Parliament within its legislative competence.

THE RULE OF LAW

34.4. The Rule of Law constitutes one of the basic postulates of the Constitution. It requires that public power be exercised in accordance with law, that legal rights and obligations be determined by legal authority and that governmental action remain subject to constitutional and statutory limitations.

34.5. The administration of waqfs, though relating to religious and charitable endowments, is not exempt from this constitutional discipline. Every statutory authority created under the Act derives its powers from law and must exercise those powers within the limits prescribed by Parliament.

34.6. Equally, persons administering waqfs derive their authority either from the governing legal instruments or from statutory provisions enacted by Parliament. Their powers are neither inherent nor absolute but regulated by law.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

34.7. The Rule of Law therefore requires the Court to identify the true legal source of every power, to preserve the integrity of the statutory framework and to avoid interpretations that create uncertainty regarding the exercise of statutory authority.

INSTITUTIONAL CONTINUITY AS A CONSTITUTIONAL VALUE

34.8. Constitutional governance values continuity as much as reform. Public institutions cannot be subjected to uncertainty merely because legislative changes have occurred. Unless the Legislature clearly directs otherwise, legal continuity is presumed.

34.9. This principle assumes particular importance in relation to public religious and charitable institutions which often function across generations. Stability in their administration is itself a matter of public interest.

34.10. The Constitution does not contemplate unnecessary disruption of existing legal arrangements whenever legislative reform takes place. Rather, statutory reform ordinarily proceeds by integrating existing institutions into the new legal framework unless Parliament expressly decides otherwise.

34.11. Institutional continuity therefore promotes legal certainty, protects legitimate expectations and ensures uninterrupted administration of institutions established for public religious and charitable purposes.

34.12. The Court must accordingly adopt an interpretation which preserves continuity wherever such construction is consistent with the statutory language and legislative intent.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

SEPARATION OF POWERS

34.13. The present controversy also engages the constitutional doctrine of separation of powers. Under our constitutional framework, Parliament enacts the law, the Executive administers it and the Judiciary interprets and applies it.

34.14. Each organ performs a distinct constitutional function. The Judiciary cannot substitute its own institutional preferences for those consciously adopted by Parliament. Equally, the Executive cannot exercise powers beyond those conferred by statute. The Legislature alone determines the distribution of statutory powers among the institutions created by law.

34.15. Consequently, when Parliament has consciously distributed responsibilities between the Waqf Board, the State Government, the Tribunal and other statutory authorities, the Court must respect that legislative allocation. Judicial interpretation cannot legitimately reassign statutory functions merely because another institutional arrangement may appear preferable.

34.16. The constitutional duty of the Court is therefore to ascertain and give effect to the legislative distribution of powers rather than to redesign the institutional architecture established by Parliament.

RESPECT FOR JUDICIAL DECREES

34.17. Judicial decrees occupy an important position within the constitutional order. They are not administrative directions but authoritative judicial determinations rendered by Courts acting within their jurisdiction.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

34.18. Respect for judicial decrees is an essential component of the Rule of Law. Until modified, varied, superseded or otherwise displaced in accordance with law, judicial orders continue to command legal obedience.

34.19. This principle applies with equal force to judicial Scheme Decrees governing public religious and charitable institutions. Such decrees continue to regulate the institutions for which they were framed unless their legal consequences are altered through constitutionally recognised processes.

34.20. At the same time, respect for judicial decrees does not imply constitutional immunity from legislative reform. Courts must distinguish between recognising the continuing authority of judicial determinations and acknowledging the constitutional competence of Parliament to regulate the legal consequences flowing from those determinations through valid legislation.

34.21. Thus, fidelity to judicial decrees and fidelity to legislative enactments are not competing constitutional values. Both operate within the constitutional framework and must be harmonised wherever possible.

LEGISLATIVE SUPREMACY IN STATUTORY REFORM

34.22. Within the sphere of legislative competence, Parliament possesses the constitutional authority to enact, amend or repeal laws governing the administration of waqfs. The policy underlying such legislation is a matter entrusted by the Constitution to the legislative wisdom of Parliament.

34.23. Courts do not sit in judgment over the wisdom of legislative policy. Their constitutional function is confined to interpreting and applying the law

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

enacted by Parliament, provided it is constitutionally valid.

34.24. Consequently, where Parliament has consciously introduced statutory reforms affecting the administration of waqfs, those reforms must receive full judicial recognition according to their true meaning. Courts cannot preserve historical legal arrangements by ignoring legislative changes, nor can they infer legislative displacement beyond what Parliament has actually enacted.

34.25. Legislative supremacy in statutory reform therefore requires faithful implementation of the legislative will as expressed in the statute, while remaining equally faithful to the constitutional limitations governing legislative action.

HARMONISING CONSTITUTIONAL VALUES

34.26. The constitutional principles discussed above are not mutually inconsistent. On the contrary, they reinforce one another. The Rule of Law requires adherence to statutory authority. Institutional continuity promotes stability in public administration.

34.27. Separation of powers requires judicial respect for legislative allocation of functions. Respect for judicial decrees preserves the authority of the judicial process. Legislative supremacy ensures that statutory reform enacted within constitutional limits receives full legal effect. The Court's task is therefore not to elevate one constitutional value at the expense of another but to adopt an interpretation that enables each to operate within its proper constitutional sphere.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

THE CONSTITUTIONAL BALANCE IN THE PRESENT CASE

34.28**.** The constitutional balance emerging from the present reference is both clear and coherent. The Judicial Scheme Decrees deserve respect because they represent binding judicial determinations regulating the administration of public religious institutions.

34.29**.** Parliament's enactment deserves equal respect because it represents the legislative will expressed through a constitutionally valid statute. The proper constitutional response is neither to disregard the judicial Scheme nor to minimise the statutory reforms enacted by Parliament. Rather, both must be given effect in accordance with their respective constitutional status.

34.30**.** Such an approach preserves the authority of the Judiciary, respects the supremacy of Parliament in matters of statutory policy and maintains the constitutional equilibrium between the different organs of the State.

THE CONSTITUTIONAL CONSEQUENCE

34.31**.** The constitutional principles discussed above reinforce the interpretative conclusions already reached in the preceding discussion. They discourage constructions founded upon implied displacement where Parliament has expressly recognised existing legal arrangements.

34.32**.** They equally discourage interpretations that preserve historical arrangements by ignoring the legislative reforms consciously introduced by Parliament. The Constitution instead requires the Court to respect both judicial continuity and legislative reform by assigning to each its proper constitutional

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

place within the legal system.

34.33. The constitutional analysis thus confirms the conclusions reached through the textual, structural and purposive interpretation of the Act. The Court has now completed the interpretative exercise. It remains only to formulate the governing principles emerging from the entire discussion before returning the answers to the questions referred for the opinion of this Full Bench.

35.FORMULATION OF THE GOVERNING PRINCIPLES

35.1. In the interpretative exercise undertaken by us ,we have examined the statutory text, the legislative history, the institutional architecture of the Act, the principles governing statutory interpretation, the evolution of judicial precedents, the constitutional framework and the practical consequences flowing from the rival constructions advanced before this Full Bench. It now becomes necessary to crystallise the legal principles emerging from the foregoing discussion.

35.2. The following propositions do not introduce any new principle beyond what has already been analysed. They merely synthesise the conclusions already reached and formulate the governing principles which shall regulate the interpretation of the relevant provisions of the Act.

THE GOVERNING PRINCIPLES

35.3. From the cumulative analysis undertaken in this judgment, the following principles emerge:

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Principle No.1

The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 is a comprehensive and self-contained statute intended to establish an integrated legal framework for the administration, supervision, protection and regulation of waqfs.

Principle No.2

The Act must be construed as a coherent and integrated enactment. Every substantive provision enacted by Parliament is presumed to have been inserted deliberately and must, so far as possible, be assigned an independent field of operation.

Principle No.3

Section 32 constitutes the principal provision establishing the Waqf Board as the statutory authority entrusted with the "**general superintendence"** of waqfs throughout the State.

Principle No.4

The expression "**general superintendence**" denotes continuing institutional supervision over waqfs and is directed towards ensuring proper administration, protection of waqf properties, faithful implementation of the objects of the waqf and regulatory oversight.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Principle No.5

General supervisory jurisdiction is conceptually distinct from the exercise of a specific statutory power. The existence of the former does not, by itself, determine the repository of every individual statutory power created elsewhere in the Act.

Principle No.6

The Explanation appended to Section 32(1) expressly recognises in the said sub-section that waqfs governed by deeds of waqf, decrees, judicial orders and schemes of management continue to fall within the supervisory jurisdiction of the Board or the State.

Principle No.7

Section 66 is an independent substantive provision enacted by Parliament to govern a specifically identified class of powers arising under deeds of waqf, decrees, Court orders and schemes of management.

Principle No.8

The speciality of Section 66 lies not in its institutional importance but in the precision with which Parliament has confined its operation to a specifically defined field.

Principle No.9

The maxim *generalia specialibus non derogant* applies to the relationship

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

between Sections 32 and 66. The general supervisory jurisdiction created under Section 32 and the special statutory mechanism created under Section 66 operate within their respective legislative fields without displacing one another.

Principle No.10

The non obstante clause occurring in Section 66 secures the effective operation of that provision only within the field expressly assigned to it by Parliament. It does not enlarge the substantive scope of Section 66 nor authorise the displacement of other provisions beyond what is necessary for its effective operation.

Principle No.11

A judicial Scheme Decree is a continuing judicial instrument regulating the administration of the institution for which it has been framed. Such a Scheme survives until lawfully modified, superseded or otherwise brought to an end in accordance with law.

Principle No.12

The survival of a judicial Scheme is legally distinct from the continued exercise of every administrative function originally vested in the Scheme Court. These constitute separate legal enquiries and must not be conflated.

Principle No.13

Modification, supersession and extinction of a judicial Scheme are distinct juridical concepts. A Scheme cannot be presumed to have become extinct merely

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

because Parliament has enacted a comprehensive regulatory statute.

Principle No.14

Parliament has consciously recognised deeds of waqf, decrees, Court orders and schemes of management within the statutory framework. Such recognition reflects legislative accommodation of existing juridical arrangements rather than their implied displacement.

Principle No.15

The statutory requirement of consultation with the Waqf Board is a substantive component of the legislative scheme. Consultation requires meaningful consideration of the Board's views but is distinct from concurrence. The ultimate statutory responsibility remains with the authority designated by Parliament.

Principle No.16

The Act establishes a coordinated institutional framework in which the Waqf Board, the State Government, the Mutawalli, the Waqf Tribunal and the Civil Courts perform distinct statutory functions. The Legislature has deliberately distributed responsibilities among these institutions and has not concentrated every function in any single authority.

Principle No.17

Neither the petitioners' construction nor the respondents' construction can be accepted in its widest form. The former unnecessarily fragments the statutory

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

framework, while the latter substantially diminishes the independent operation of specific statutory provisions. Both extremes disturb the legislative balance established by Parliament.

Principle No.18

The Court must avoid interpretations that render statutory language, substantive provisions or institutional arrangements redundant. Every material word, every substantive section and every statutory mechanism must be given meaningful operation wherever reasonably possible.

Principle No.19

The dominant legislative purpose underlying the Act is the protection of waqfs, the efficient administration of waqf institutions, the preservation of institutional continuity and the integration of existing legal arrangements into a modern statutory framework.

Principle No.20

The constitutional values of the Rule of Law, institutional continuity, separation of powers, respect for judicial decrees and legislative supremacy in statutory reform require the Court to adopt an interpretation that simultaneously preserves the authority of valid judicial determinations and gives full effect to the legislative policy enacted by Parliament.

Principle No.21

The earlier authorities recognising the continuing juridical existence of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

judicial Scheme Decrees continue to represent good law within the sphere of the questions actually decided therein.

Principle No.22

The Division Bench decisions emphasising the centrality of the statutory framework likewise continue to hold the field within the limits of the propositions actually decided.

Principle No.23

The later Single Judge decisions require to be understood in the factual and legal context in which they were rendered. Their precedential value extends only to the ratio necessary for deciding the controversies before the respective Courts.

Principle No.24

The decision in ***B.T. Noordeen***[92]continues to govern the factual controversy decided therein. However, the broader observations contained in the judgment require clarification to the extent they are understood as laying down propositions of universal application beyond the issues directly arising for determination in that case.

Principle No.25

The apparent conflict among the earlier authorities, the Division Bench decisions and the later Single Judge decisions is substantially one of emphasis rather than of irreconcilable legal principle. Properly understood, the authorities

92 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

are capable of reconciliation by identifying the precise ratio decidendi of each decision.

Principle No.26

The legislative design of the Act is founded upon coexistence rather than exclusion. General supervisory powers, specific statutory powers, judicial schemes and statutory institutions are intended to function together within an integrated legal framework.

Principle No.27

The Act neither contemplates the implied repeal of Section 66 by Section 32 nor the implied exclusion of the Board's supervisory jurisdiction by reason of Section 66. Both provisions continue to operate according to the legislative fields assigned to them.

Principle No.28

The judicial function is to preserve the legislative balance consciously created by Parliament by giving meaningful effect to every substantive provision of the Act rather than permitting one provision to absorb or extinguish another.

THE CUMULATIVE LEGAL POSITION

35.4**.** The foregoing principles collectively establish that the controversy before this Full Bench does not admit of resolution by adopting an interpretation founded upon institutional exclusivity. The Act does not proceed upon the premise that every function connected with waqf administration should vest in one

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

authority to the exclusion of all others. Rather, Parliament has consciously designed a system of coordinated governance in which distinct statutory authorities discharge distinct statutory responsibilities within a unified legislative framework.

35.5. The cumulative effect of the statutory text, the legislative history, the institutional structure, the recognised principles of interpretation and the reconciled judicial precedents therefore leads to a single coherent conclusion. The Legislature intended every substantive provision enacted by it to continue to perform meaningful work within its own legislative sphere while contributing to the common objective of ensuring the proper administration and protection of waqfs.

TRANSITION TO THE FULL BENCH RATIO

35.6. The governing principles having now been formulated, nothing further remains except to state the authoritative ratio decidendi of this Full Bench and to answer the questions referred for our consideration.

36.THE FULL BENCH RATIO

36.1. The present Reference has afforded this Full Bench an opportunity to examine the legislative architecture of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, the relationship between Sections 32 and 66, the continued relevance of judicial Scheme Decrees, and the apparent divergence among the judicial precedents rendered by this Court over the years.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

36.2. We have analysed from the statutory text to the legislative history, from the institutional structure to the constitutional framework, and from the earlier authorities to the later judicial pronouncements. The Court has consciously refrained from approaching the controversy as a choice between competing provisions or competing precedents. Instead, the endeavour has been to ascertain the legislative intention by giving meaningful operation to every substantive provision enacted by Parliament.

36.3. We are accordingly of the considered opinion that the apparent conflict giving rise to the present Reference substantially disappears once the statute is read as an integrated legislative instrument and each judicial precedent is confined to the ratio actually decided therein.

THE AUTHORITATIVE RATIO DECIDENDI

36.4. The authoritative ratio emerging from this judgment may be stated thus:

The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 establishes a comprehensive statutory framework governing the administration of waqfs. Within that framework, Section 32 and Section 66 occupy distinct yet complementary fields. Section 32 constitutes the principal source of the Waqf Board's general supervisory jurisdiction over all waqfs, including those governed by deeds of waqf, decrees of Court, judicial orders and schemes of management. Section 66, on the other hand, is an independent special provision governing only the specific powers expressly contemplated therein. Neither provision displaces nor exhausts the field occupied by the other. Both continue to

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

operate harmoniously according to the legislative design reflected in the Act.

36.5. The existence of a judicial Scheme Decree does not cease merely because the Act has come into force. A Scheme Decree continues to exist as a binding judicial instrument until lawfully modified, superseded or otherwise brought to an end in accordance with law. However, the continued existence of the Scheme is legally distinct from the identity of the authority competent to exercise particular statutory powers after the enactment of the Act. Those powers must necessarily be exercised in accordance with the statutory framework enacted by Parliament.

36.6. The relationship between the Act and pre-existing judicial schemes is therefore one of legislative integration rather than legislative obliteration. Parliament has consciously accommodated existing deeds, decrees, Court orders and schemes within the statutory framework while simultaneously prescribing the manner in which the powers arising therefrom are to be exercised after the enactment of the Act.

THE LEGAL POSITION DECLARED BY THIS FULL BENCH

36.7. In exercise of the jurisdiction vested in this Full Bench, we declare the law as follows:

(i) Section 32 is the principal provision governing the Board's general superintendence over all waqfs.

(ii) The Explanation appended to Section 32(1) expressly includes in the said sub-section those waqfs governed by deeds of waqf, decrees of Court, judicial

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

orders and schemes of management within the supervisory jurisdiction of the Board or the State.To understand the supervisory jurisdiction of the State over the aforesaid category of waqfs, section 32(1) should be read in conjunction with Section 66.

(iii) Section 66 is an independent special provision confined to the specific powers expressly contemplated therein.

(iv) The non obstante clause contained in Section 66 operates only within the legislative field assigned to that provision and cannot be construed as enlarging its substantive scope.

(v) Judicial Scheme Decrees continue to survive as binding juridical instruments until lawfully modified, superseded or otherwise brought to an end in accordance with law.

(vi) The survival of a judicial Scheme is distinct from the question of the authority competent to exercise particular statutory powers after the enactment of the Act.

(vii) The Act recognises and accommodates existing deeds, decrees, Court orders and schemes of management rather than impliedly extinguishing them.

(viii) The statutory framework is founded upon coordinated institutional functioning and not upon institutional exclusivity.

(ix) Neither Section 32 nor Section 66 renders the other redundant. Both continue to operate harmoniously within their respective legislative fields.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

(x) The apparent conflict among the earlier authorities stands resolved in the manner indicated in this judgment.

BINDING EFFECT OF THIS JUDGMENT

36.8**.** The legal principles declared in this judgment constitute the authoritative pronouncement of this Full Bench on the questions referred.

36.9**.** The interpretation placed herein upon the relationship between Sections 32 and 66, the legal status of judicial Scheme Decrees and the precedential value of the earlier authorities shall govern all subsequent cases involving similar questions unless altered by a larger Bench or by the Supreme Court.

36.10**.** All Benches of co-equal or lesser strength shall apply the principles declared in this judgment while determining disputes concerning waqfs governed by deeds of waqf, decrees of Court, judicial orders and schemes of management.

"The foregoing discussion leads us to the following authoritative answers to the Reference, which shall constitute the ratio decidendi of this Full Bench."

37. ANSWERS TO THE REFERENCE

37.1. In view of the foregoing discussion, the Reference is answered as follows:

(a) Section 32 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 continues to govern the Board's general

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

superintendence over all waqfs within the State, including waqfs governed by deeds of waqf, decrees of Court, judicial orders and schemes of management, as expressly recognised by the Explanation appended to Section 32(1).

(b) Section 66 is an independent and special provision confined to the exercise of the specific statutory powers expressly contemplated therein and operates within the limited legislative field consciously assigned to it by Parliament.

(c) The expression "**general superintendence**" occurring in Section 32(1) and the expression "**superintendence**" employed in Section 66 are used by Parliament in different statutory contexts and denote distinct species of statutory power. The former confers upon the Waqf Board a continuing, overarching and regulatory supervisory jurisdiction over all waqfs, whereas the latter is confined to the exercise of the specific statutory powers contemplated under Section 66. The two expressions are neither synonymous nor interchangeable and must receive their ordinary statutory meaning in the context in which each has been employed.

(d) Sections 32 and 66 are complementary provisions operating in distinct legislative fields and must be construed harmoniously so as to give full effect to both. Section 32 neither eclipses nor renders Section 66 otiose, and Section 66 does not curtail or derogate from the Board's general supervisory jurisdiction under Section 32 except to the limited extent expressly provided by the Act.

(e) Judicial Scheme Decrees continue to survive the coming into force of the Act and remain binding juridical instruments unless lawfully modified, superseded or otherwise brought to an end in accordance with law. The continued

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

existence of a judicial Scheme is distinct from the question of the statutory authority competent to exercise particular powers under such Scheme after the enactment of the Act.

(f) The Act does not effect either an implied repeal of judicial Scheme Decrees or an implied extinction of the rights and obligations arising thereunder. The relationship between the Act and pre-existing deeds of waqf, decrees, Court orders and schemes of management is one of legislative accommodation and statutory integration rather than legislative displacement.

(g) The earlier authorities, the Division Bench decisions and the later Single Judge decisions stand reconciled in the manner indicated in this judgment. The decisions in ***Palani Muslim Dharmaparipalana Sangam***[93], ***Executive Committee of Masjid-E-Farkhunda***[94], ***K.S. Sharfudeen***[95], ***I.S. Ibrahim***[96], ***B. Abdul Kadar***[97] and ***Syed MaskoorMohideen***[98] continue to hold the field within the ratio actually decided therein. The decision in ***B.T. Noordeen***[99] is clarified only to the limited extent indicated in this judgment and shall be understood and applied accordingly.

37.2."Accordingly, we answer the reference by holding that the Tamil Nadu Waqf Board does not possess jurisdiction under Section 32 to appoint Mutawallis in respect of waqfs governed by deeds, decrees, court orders or schemes to which

93 Supra 7
94 Supra 8
95 Supra 3
96 Supra 4
97 Supra 1
98 Supra 2
99 Supra 5

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

Section 66 applies. In such cases, the appointing authority shall be the State Government acting in consultation with the Waqf Board in accordance with Section 66."

37.3. The Registry is directed to place the writ petition before the Hon'ble Single Judge having roster for disposal in the light of the law declared by this Full Bench.

38. EPILOGUE

38.1. The law relating to waqf administration reflects the convergence of history, religion, judicial oversight and legislative reform. The task before this Full Bench has been not to choose between the past and the present but to ensure that both are accorded their proper place within the legal order established by Parliament.

38.2. Courts must remain faithful to the legislative text, respectful of earlier judicial determinations and conscious of the constitutional balance between continuity and reform. Where Parliament has consciously woven together historical legal arrangements and modern statutory institutions into a single legislative fabric, the judicial duty is to preserve that fabric rather than unravel it by interpretations founded upon unnecessary exclusivity or implied displacement.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

38.3. The questions referred are answered accordingly. The Registry shall now place the writ petition before the Hon'ble Single Judge having roster for disposal on the merits in the light of the principles declared in this judgment.

(NSK, J), (RV, J) & (LVG, J)
31.07.2026

Index : Yes / No
Internet : Yes / No
Sml
To

1. The Principal Secretary,
   Department of Minority Welfare,
   Fort St. George, Chennai.

2. The Tamil Nadu Waqf Board
   Represented by its Chief Executive officer,
   Jaffer Syrang street,
   Vallalseethakathi nagar,
   Chennai.

3. The Superintendent of Waqf
   Trichy region,
   Tamil Nadu Waqf Board,
   No.8/124, Kaithai Millath Road,
   Palakarai, Trichy.

4. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

W.P.(MD)No.24333 of 2025 and
W.A.(MD)Nos.3073 and 3110 of 2025
and
C.M.P.(MD)Nos.17724, 18502 and 18503 of 2025
and W.M.P.(MD)Nos.19085 to 19087 of 2025

N.SATHISH KUMAR, J.
R.VIJAYAKUMAR, J.
AND
L.VICTORIA GOWRI, J.

R.VIJAYAKUMAR, J.

I have had the benefit of reading the judgment prepared by the learned Sister. I respectfully concur with the conclusion arrived at in Paragraph No.37.2 to the effect that the Waqf Board does not possess jurisdiction under Section 32 to appoint mutawallis in respect of waqfs governed by deeds, decrees, court orders or schemes to which Section 66 applies. In such cases, the appointing authority would be the State Government in consultation with the Waqf Board.

2.I have deemed appropriate to supplement the reasons assigned therein by adding the following:

a). A perusal of Section 32(1) of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (hereinafter "the Act") discloses that the power of general superintendence over all waqf properties (including waqfs governed by schemes framed by any Court of law) stands vested in the Board.

b). Section 32(2)(d) of the Act empowers the Board to settle the scheme of

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

management of a waqf. Section 32(2)(g) confers upon the Board the authority to appoint and remove mutawallis in accordance with the Act.

c). Notwithstanding the foregoing, the aforesaid powers shall not be exercisable by the Board where the waqf deed, an order or decree of a Court, or a scheme of management has expressly excluded the Board therefrom and vested such powers in any other authority or Court of law.

d). Upon such express exclusion of the Board's powers under the aforementioned instruments, the said powers shall be exercisable exclusively by the State Government under Section 66 of the Act.

e).The State Government's power under Section 66 is circumscribed to the matters of appointment and removal of mutawallis, settlement or modification of the scheme of management, or superintendence over the waqf. Furthermore, the exercise of such power is made conditional upon prior consultation with the Board. It is thus manifest that where a waqf deed or subsisting Court decree operates to expressly exclude the Board's jurisdiction, the Legislature, to give full effect to such deed or decree, has deliberately divested the Board of its powers in those limited eventualities and conferred a corresponding, albeit limited, authority upon the State Government. These two provisions therefore operate in mutually exclusive spheres, and no repugnancy arises between them.

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

f).Therefore, in all cases where a waqf deed, order or decree of a Court or a scheme of management expressly excludes the Board from exercising its power, the Board cannot invoke Section 32 to appoint mutawallis. In such cases, only the State Government can exercise the said power under Section 66 of the Act subject to the conditions made therein.

31.07.2026.

msa

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)

WEB COPY

N.SATHISH KUMAR, J.

R.VIJAYAKUMAR, J.

AND

L.VICTORIA GOWRI, J.

Sml

W.P.(MD)No.24333 of 2025 ETC., BATCH

31.07.2026

https://www.mhc.tn.gov.in/judis (Uploaded on: 04/08/2026 04:50:20 pm)