Reserved On : 11/08/2026
Pronounced On : 14/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1002 of 2026

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/FIRST APPEAL NO. 1002 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
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KUTUBUDDIN FAKRUDDIN FARUQUI & ORS.
Versus
THE GUJARAT STATE WAQF BOARD & ORS.

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Appearance:
SAQUIB S ANSARI(7152) for the Appellant(s) No. 1,2,3,4
JIGNESHKUMAR P PANDAV(8297) for the Defendant(s) No. 2
MEET R MODI(8744) for the Defendant(s) No. 3
MR MANISH S SHAH(5859) for the Defendant(s) No. 1
MR RAJESH N MODI(1956) for the Defendant(s) No. 3
MR SP MAJMUDAR(3456) for the Defendant(s) No. 4
VIRAL R AGRAWAL(7956) for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. Draft Amendment is allowed. Necessary amendment to be carried out forthwith.

2. By order dated 21.04.2026, notice was issued for final hearing. Consequently, the learned counsels appearing for the respondents have waived service of notice.

2.1. Admit.

3. With consent of learned counsels appearing for the parties, the present First Appeal is taken up for final hearing.

4. This appeal under Section 83 of the Waqf Act, 1995, has been preferred by the appellants assailing the judgment and order dated 09.02.2026 passed by the Gujarat State Waqf Tribunal, Gandhinagar (for short “the Waqf Tribunal”) in Waqf Appeal No. 15 of 2025, whereby the Waqf Tribunal was pleased to reject Waqf Appeal No.15 of 2025 and confirm the order dated 24.04.2025 passed by the Waqf Board, passing Resolution No.11A, as well as the order dated 30.04.2025 passed by the Chief Executive Officer (for short “CEO”) of the Waqf Board assigned the reasons to Resolution No. 11A.

FACTUAL MATRIX

5. The facts born out from the impugned judgment and order as well as from the record and proceedings, are summarized as under:

5.1 The dispute concerns the holy shrine/property known as “Maulana Mehbub Dargah Masjid and Kabrastan” (per appellants)/ “Maulana Yaqub Saheb Dargah and Dawoodi Bohra Kabrastan” (per respondents), bearing Registration No.B-97/Mehsana, situated in Survey No.935 of village

Anavada, Taluka and District, Patan, admeasuring about 1 Acre 21 Gunthas.

5.2 According to the appellants, in 1377 A.D. (798 A.H.), Hazrat Maulana Mehbub died in village Anavada and was buried in the land bearing Survey No. 935. A Dargah was thereafter constructed over his grave, along with the graves of his family members, who were "Mujawar", and other "Sufi Saints". The holy shrine has historically been known as "Maulana Mehbub Dargah Masjid and Kabrastan", has followed the Hanafi-Sunni-Barelvi creed, and has been managed by the predecessors of the appellants. This assertion regarding its 14th-century origin and denominational character has been disputed by the respondents.

5.3 Nanibai, widow of Jamaluddin Qutbuddin, in her capacity as "Mujawar", submitted an application under Section 18 of the Bombay Public Trusts Act, 1950, (for short "the Act") to the Charity Commissioner for registration of the public trust. The said application was made after the Act, came into force in the State of Gujarat, pursuant to the process of registration of holy shrines that had been in existence for a long period.

5.4 At the time of registration of the public trust, Nanibai, widow of Jamaluddin Qutbuddin, described/named the holy shrine as "Maulana Mehbub Dargah Masjid and Kabrastan", showing Revenue Survey No.935 of village

Anavada and admeasuring approximately 1 Acre and 21 Gunthas as trust’s immovable property. The registration referred to religious activities such as Urs, Fatehawani, Namaz and other related observances.

5.5 The Deputy Charity Commissioner, Ahmedabad, initiated an inquiry in Application No. 236 and appointed assessors, namely, S.M. Faruki, A.A.Maulvi and M.S. Kadri . By order dated 22nd January, 1953, the Deputy Charity Commissioner registered the public trust as B-97/Mehsana.

5.6 Upon the Wakf Act, 1995 coming into force, the registration of the trust was transferred to the Gujarat State Waqf Board.

5.7 Upon the death of Nanibi, her daughter, Badibi Jamaluddin Faruqui,claimed and succeeded her as “Mujawar”. Nanibi died on 11th February, 1960. Thereafter, Badibi, daughter of Nanibi, succeeded to the office of “Mujawar”. The record reflects that the change was recorded in favour of Badibi as “Mujawar” on the basis of her statement dated 01.03.1960 and the change was approved on 10.03.1960.

5.8 On 20.12.2001, Badibi Jamaluddin Faruqui filed Change Report No.286 of 2002 before the Wakf Board, seeking deletion of her name and inclusion of the names of Kutubuddin Fakruddin Faruqui, Asrafuddin Fakruddin Faruqui, Jamaluddin Fakruddin Faruqui and Muniruddin

Fakruddin Faruqui. However, no final order appears to have been passed on the said Change Report. The record also reflects that Badibi sought a change in the description of her status from “Mujawar” to “Mutawalli”.

5.9 From the record, it appears that, in the year 2001, a member of the Dawoodi Bohra community raised a complaint before the Wakf Board and the police authorities regarding the alleged collection of amounts from persons visiting the holy shrine for Ziyarat. It further appears that a committee was constituted in the year 2003 to report on the condition of the holy shrine.

5.10 An application dated 28.06.2004, was made by the Collector, Patan, to the Chairman of the Wakf Board, seeking appropriate action in relation to what the Collector alleged to be irregularities in the post-1951 mutation entry in favour of Nanibi and her successor.

5.11 On 16.07.2011, Mohammad Hassan Poonawala and Murtaza Sirajbhai Vohra alias Samiyawala, claiming to act on behalf of Maulana Yaqub Saheb Dargah, the Dawoodi Bohra community and the concerned burial ground, submitted an application before the Wakf Board. By the said application, the applicants sought amendment in the Wakf Register so as to correct the name appearing therein to “Holy Shrine of Maulana Yaqoob, Lakhab Mehboob, Peer-no-Mubarak Roza and Masjid” instead of “Maulana Mehbub Dargah Masjid and Kabrastan”.

5.12 The said application also sought orders concerning the composition of the trusteeship, the mode of succession to the office of trustees and “Mujawar”, and other arrangements, including the appointment of a receiver, etc. The same came to be registered as Change Report/Miscellaneous Proceeding No.36 of 2011.

5.13 Meanwhile, by order dated 8.08.2011, an Administrator/Executive Officer was appointed by the Waqf Board for a period of one year. Badibi and Jamaluddin Fakruddin Faruqui challenged the said action of the Wakf Board before the High Court of Gujarat by filing Special Civil Application No. 12350 of 2011.

5.14 By an interim order dated 25.04.2012, the High Court of Gujarat stayed the operation of the order dated 08.08.2011 and directed maintenance of *status quo ante* in the manner indicated in the said order. The Waqf Board unsuccessfully challenged the interim order by filing Letters Patent Appeal No.790 of 2012. Subsequently, Special Civil Application No.12350 of 2011 was disposed of on 11.02.2013, as having become infructuous on the ground that the term of the appointed Administrator had expired.

5.15 As an offshoot of the aforesaid proceedings, Civil Suit No.156 of 2012 was filed. However, the same came to be rejected under Order VII Rule 11 of the Code of Civil

Procedure on the ground that the Civil Court had no jurisdiction in respect of proceedings relating to the Waqf.

5.16. Since Change Report No.3620 of 2011, filed by the followers of the Dawoodi Bohra community, was not decided by the Waqf Board, in Special Civil Application No.10267 of 2016, the High Court, by order dated 02.08.2019, directed the Waqf Board to decide the Change Report within a period of three months.

5.17. In the proceedings concerning the Change Report, the appellants filed written submissions opposing the change in the name as well as creed of the holy shrine, contending that the same was unconstitutional and time-barred. It was further contended that the holy shrine was registered as belonging to the Sunni-Hanafi-Barelvi community and that its conversion to the Shia creed is unconstitutional. It was also contended that the Change Report was time-barred, as the Waqf had been registered in the year 1953 and had remained undisputed until 2011.

5.18 It further appears from the record that, on 19.02.2020, the Chairman of the Waqf Board removed the appellants and appointed an administrator. The said action was challenged before the High Court by filing Special Civil Application No.5044 of 2020. By order dated 25.02.2020, the High Court of Gujarat stayed the order passed by the Waqf Board. Subsequently, the Waqf Board withdrew the said order and suspended the consequential notice.

5.19 In another development, one Shri Onali Ismail Agee sought registration of Waqf in respect of "Maulana Yakub Saheb Dargah and Dawoodi Bohra Kabrastan". The same was registered as B-48/Patan. Subsequently, the Waqf Board cancelled the said registration on 23.09.2021. The said cancellation was, however, quashed by the Waqf Tribunal by order dated 22.09.2020 in Waqf Appeal No.30 of 2019, on the ground that the Waqf Board could not review its own order. The order of the Waqf Tribunal was upheld by the High Court of Gujarat in Civil Revision Application No.162 of 2020 by order dated 26.03.2021.

5.20 In the aforesaid background, another facts appeared from records that on 19.07.2021, one follower of the Dawoodi Bohra community, namely, Mudhar Diwanji, separately submitted an application before the Waqf Board seeking impleadment of the Office of His Holiness, the Sole Trustee (53rd) Syedna Saheb, as a party, on the premise that the holy shrine was the property of the Dawoodi Bohra community. The appellants objected to the said impleadment.

5.21. Meanwhile, in parallel proceedings, the appellants filed Change Report No.207 of 2014 on 11.02.2014 before the Waqf Board for entering appellant Nos.2 to 5 as "Mutawallis". The Waqf Board did not take any action thereon, which led the appellant to file Special Civil Application No.8553 of 2015. Nonetheless without noticing existing dispute, the Waqf Board eventually allowed Change Report No.207 of 2014 by order dated 03.11.2015, on the ground that the Change Report had remained uncontested, and appointed the appellants as “Mutawallis”.

5.22. Ultimately, the Waqf Board issued an order dated 09.11.2021, directing alteration of the name of the holy shrine from “Maulana Mehboob Dargah Masjid and Kabristan” to “Maulana Yakub Saheb Dargah and Dawoodi Bohra Kabrastan”. The Board also recognized His Holiness the 53rd Dai-ul-Mutlaq, Syedna Mufaddal Saifuddin, as its sole trustee and directed that the assets and administration of the holy shrine be handed over in terms of the said order.

5.23. Being aggrieved by the said order, the appellants challenged the order dated 09.11.2021 before the Waqf Tribunal by filing Waqf Appeal No.38 of 2021. On 11.11.2021, the Waqf Tribunal passed an interim order staying the implementation of the order passed by the Waqf Board. However, religious access and activities of the members of the Dawoodi Bohra community were permitted under the interim management.

5.24. By judgment dated 24.02.2022, the Waqf Tribunal allowed Waqf Appeal No.38 of 2021 and set aside the material operative portion of the Waqf Board’s order dated 9th November 2021. The Tribunal having found interpolation in revenue entries in regards to holy shrine also directed the Waqf Board to initiate an inquiry regarding the interpolation of the revenue entries. The judgment and order passed by the Waqf Tribunal in Waqf Appeal No.38 of 2021 was challenged before the High Court of Gujarat by filing Civil Revision Application Nos.179 of 2022 and 185 of 2022. The Coordinate Bench of this Court, by order dated 4th April 2022, directed the parties to maintain *status quo* pending consideration of the revision applications.

5.25. Subsequently, during the pendency of the Civil Revision Applications, the parties arrived at a consensus and, by consent, Civil Revision Application Nos.179 of 2022 and 185 of 2022 were disposed of by setting aside the judgment passed by the Waqf Tribunal in Waqf Appeal No.38 of 2021 as well as the order of the Waqf Board dated 09.11.2021. The entire matter was remitted to the Gujarat Waqf Board for fresh adjudication.

5.26. The interim arrangement, under which, the members of the Dawoodi Bohra community were permitted to offer prayers and perform religious activities pending fresh adjudication by the Board, has continued.

5.27. In the fresh proceedings following the remand, the matter was taken up afresh by the Waqf Board on 24.06.2022. On 24.04.2025, the Waqf Board passed Resolution No.11A. Consequently, the Chief Executive Officer of the Waqf Board passed a consequential order on 30.04.2025, setting out the reasons therefore, and passed impugned orders.

5.28. According to the respondents, on 01.05.2025, the said order was served upon the appellants and, consequently, the appellants voluntarily and peacefully handed over possession of the holy shrine. On 02.05.2025, the appellants approached the High Court of Gujarat by filing Special Civil Application No.6484 of 2025, challenging the action arising from the order passed by the Waqf Board.

5.29. By order dated 08.05.2025, the Coordinate Bench of this Court disposed of the Special Civil Application by directing both parties to maintain status quo until 15th May 2025 and permitting the appellants to avail the remedy of appeal available before the Waqf Tribunal.

5.30. Pursuant thereto, the appellants instituted Waqf Appeal No.15 of 2025 before the Waqf Tribunal. On 09.02.2026, the Waqf Tribunal, by its comprehensive impugned judgment and order, dismissed Waqf Appeal No.15 of 2025 and upheld the Resolution No.11A dated 24.04.2025 passed by Waqf Board and reasons dated 30.04.2025 supplied by CEO to support Resolution No.11A. Simultaneously, the Waqf Tribunal also held that the lands bearing Revenue Survey Nos.911, 915, 935 and 936 of Village Anawada, Taluka and District Patan, are Government wasteland. In addition thereto, the action of the Waqf Board, accepting Change Report No.207 of 2014 as uncontested and appointing the named appellants as “Mutawallis” was also set aside.

5.31. Being aggrieved, appellants have preferred the present appeal.

APPEARANCE OF LEARNED COUNSELS FOR THE PARTIES:

6. Heard learned counsel Mr.M.T.M.Hakim assisted by learned counsel Mr.Saquib Ansari and learned counsel Mr.Ezzazuddin B. Huseni for the appellants, learned counsel Mr. G.H.Virk assisted by learned counsels Mr.Manish Shah and Ms.Devanshi Kariel for respondent No.1, learned senior counsel Mr.Shalin Mehta assisted by learned counsels Mr.Viral Agrawal and Mr.Jignesh P. Pandav for respondent No.2, learned counsel Mr.Sunit Shah with learned counsels Mr.Rajesh Modi and Mr.Meet R. Modi for respondent No.3 and learned senior counsels Mr.Mihir Joshi assisted by learned counsels Mr.S.P.Majmudar and Mr.Jamshed Kavina for respondent No.4.

6.1 Besides oral arguments, learned counsels for the respective parties have filed their written submissions alongwith list of authorities, which are taken on record.

SUBMISSIONS OF LEARNED COUNSELS FOR APPELLANTS:

7. Learned counsel Mr. Hakim, appearing for the appellants, submits that, in essence, the appeal raises four independent grounds, any one of which, if allowed, would be sufficient to set aside the impugned judgment:

(i) Neither the Waqf Board, after its reconstitution, nor the Waqf Tribunal ever afforded an oral hearing on merits. Therefore, the orders passed by the Waqf Board as well as the CEO are without affording an opportunity of hearing and are without jurisdiction insofar as they purport to decide any question on merits;

(ii) the impugned judgment and order is vitiated for want of quorum. The order of the Waqf Tribunal is signed by three members (two Members and the Chairman). However, one of the Members, Mr. Pandar, was never a party to the proceedings during the course of the hearing, yet he has signed the judgment as a full concurring author;

(iii) The Waqf Board conspicuously omitted to send the entire record of Waqf Appeal No. 38 of 2021, including the judgment itself, to the Waqf Tribunal, even though the same had been produced by the appellants before the Board;

(iv) The Waqf Tribunal exceeded its jurisdiction by passing an order in respect of Change Report No. 207 of 2014 and recording findings regarding land titles, which were never in issue before it.

7.1 It is further submitted that any one of the aforesaid grounds is sufficient to set aside the impugned judgment.

7.2 Mr.Hakim/Mr.Ansari, learned counsel further submitted that the Waqf Tribunal conspicuously failed to consider the documents adduced on record by the appellants, including the revenue records and other records of the Waqf, as also the earlier judgment of the learned Tribunal in Waqf Appeal No.38 of 2021 and the findings recorded therein.

7.3 On the scope of the appeal, learned counsel argued that the impugned judgment and order passed by the Waqf Tribunal is vitiated at the very threshold by a fatal defect of quorum. It is further submitted that the final arguments were concluded on 14.10.2025 before a Bench comprising two Members (the Hon'ble Chairman and the Hon'ble Member), and the matter was reserved for judgment. The third Member was appointed only in or around December 2025, after the hearing of the Waqf Appeal had concluded. He neither heard the arguments nor participated in the proceedings at any stage. Nevertheless, the third Member signed the judgment dated 09.02.2026. According to learned counsel, this constitutes a fundamental defect.

7.4 He further argued that, as per the settled principle governing judicial and quasi-judicial proceedings, only the authority which has heard a matter is competent to decide it.

Oral hearing is not an empty formality; it enables clarification of issues and application of mind to the rival submissions, and a Member who has not heard the parties cannot subsequently join in the decision merely by perusing the record or a draft judgment.

7.5 In support of the aforesaid submissions, learned counsel for the appellants has relied upon the decision of the Hon'ble Supreme Court in and argued that if one person hears the matter and another decides it, the personal hearing afforded to the parties becomes an empty formality.

7.6 Relying upon the judgment of this Court in ***Bhavan Sanga Gamara v. Rajkot Municipal Commissioner*****, 2022(0) AIJEL-HC 244591**, learned counsel for the appellants argued that this Court has applied the very same principle and held that the person who heard the matter alone should pass the order, and the decision cannot be that of a person other than the one who heard it. In line with this argument, learned counsel further argued that the participation of a Member in signing the judgment, who never heard the parties vitiates the adjudicatory process and, consequently, the judgment itself, rendering it a nullity in law.

7.7 Learned counsel for the appellants further argued that the third Member of the Tribunal, appointed in December 2025, has nowhere recorded that he was abstained, dissented, or otherwise refrained from participating in the decision-making process. On the contrary, he has signed the judgment as a full concurring author thereof, which negates any contention that the impugned judgment and order was concurred in by only two of the three Members. Therefore, it is submitted that, on this preliminary ground alone, the appeal deserves to be allowed.

7.8 Learned counsel for the appellants assails the impugned judgment and order on the ground of denial of a hearing on merits before the Waqf Tribunal and the Waqf Board. The argument is that the Waqf Board stood dissolved on 14.09.2022 and was reconstituted by notifications dated 07.11.2023 and 18.11.2023. It is submitted by learned counsel that, from the date of reconstitution onwards, no hearing on merits was ever conducted. No hearing took place on 29.05.2024; the matter was adjourned for want of quorum on 05.06.2024; no hearing took place on 27.11.2024; on 04.12.2024, though the quorum was present, no hearing on merits took place and only time was sought; and again, no hearing took place on 08.01.2025. Therefore, at no point after the reconstitution of Waqf Board, was any hearing on the merits of Change Report No. 3620 of 2011 conducted.

7.9 Learned counsel further submitted that, on 12.02.2025, the appellants filed an application before the Waqf Board seeking adjudication of the preliminary issue regarding the jurisdiction and maintainability of Change Report No.3620 of 2011. The respondents sought time, and the Waqf Board, while granting time, adjourned the matter to 25.02.2025. Thereafter, no hearing was conducted on the said application seeking adjudication of the preliminary issue. Instead of deciding the preliminary issues so raised, the Waqf Board passed Resolution dated 24.04.2025 directly on the ground that the meeting of the Waqf Board was duly quorated and attended by eight members, and the meeting was therefore for the ordinary purpose of transacting the agenda business and not for hearing the preliminary objections or the matter on merits.

7.10 Learned counsel for the appellants consistently maintained the contentions regarding non-grant of an opportunity of hearing and, therefore, did not argue on the merits of the dispute because the learned Waqf Tribunal dismissed the appeal on merits. Therefore, he argued that the present appeal deserves consideration, and the impugned orders are liable to be set aside on the ground of denial of an opportunity of hearing, which is a violation of the principles of natural justice as well as the doctrine of *audi alteram partem*.

7.11 Learned counsel further submitted that, since the Waqf Board had never afforded an opportunity of hearing on merits at any stage, and no such opportunity was given, no material could be placed on record regarding the religious character of the Waqf, the allegation of fraud, or the entitlement of the appellants as “Mutawalli”, and none of these issues could have been properly argued for as much decided. It is further submitted that, since no material was placed on record before the Waqf Board, the reasons arrived at by the Waqf Board on the aforesaid issues are bad in law. As far as the order of the CEO dated 30.04.2025 is concerned, it is submitted that, since the CEO had not provided an opportunity of hearing before passing the reasoned order, any attempt to decide such questions is, therefore, without jurisdiction.

7.12 Learned counsel for the appellants further argued that the CEO’s communication dated 30.04.2025 allegedly supplied the reasons for the Resolution dated 24.04.2025 and that, on the very next day, i.e. 1st May 2025, the respondents, accompanied by approximately 100 police personnel, took forcible possession of the Waqf property. It is also argued that, while dealing with the issue of the Waqf, the learned Tribunal reconstructed the origin and character of the institution almost entirely on the basis of the documents produced by the respondents, without considering the contemporaneous Revenue Records dating back to 1916-17, which pre-date both the dispute and Independence on 15th August 1947, and establish that the holly shrine was managed by the predecessors of the appellants, who claimed the Sunni Waqf. The learned Tribunal has also failed to consider its own judgment dated 24.02.2022 in Waqf Appeal No.38 of 2021, wherein interpolation in the Revenue Entries relied upon by the respondents was recorded and an inquiry was directed to be conducted by the Collector, Patan. Though the direction for conducting the inquiry by the Collector, Patan, was subsequently set aside with the consent of both parties, the finding regarding interpolation continued to form part of the judicial record between the parties and could not simply have been disregarded.

7.13 The next submission canvassed by learned counsel for the appellants is that the record of Waqf Appeal No. 38 of 2021 was never forwarded to the Waqf Tribunal. Even the judgment and order dated 24.02.2022 passed in Waqf Appeal No. 38 of 2021 in first round of litigation was not provided to the Waqf Tribunal at the time of deciding the impugned judgment and order. The entire record of Waqf Appeal No.38 of 2021 was conspicuously omitted while deciding the impugned judgment and order passed by the Waqf Board, although the appellants themselves had produced the complete record and proceedings of Waqf Appeal No.38 of 2021 before the Board. Therefore, the omission of the entire previous proceedings between the same parties, in which the earlier Waqf Tribunal had specifically recorded a finding regarding interpolation in the revenue records of the respondents and directed an inquiry to be conducted by the Collector, Patan, has made impugned judgment of Waqf Tribunal wholly infructuous. It reflects suppression of material evidence adverse to the respondents and warrants a direction for an inquiry into the manner in which the records and proceedings of the Waqf Board are maintained and transmitted.

7.14 Learned counsel for the appellants submitted that the appellants had filed certified copies of the five-yearly Revenue Records from 1916-17, obtained on 3rd January 2004, wherein the entry was recorded as "Pir Malansh Saheb Devsthan, Anawad, Taluka Patan". The subsequent Revenue Entry, obtained on 29.06.2011, records the name of the holy shrine as "Maulana Yakub Saheb Dargah and Dawoodi Bohra Kabrastan". This change of name appearing in the two sets of Revenue Entries, one earlier and the other later, without any explanation, raises serious doubts and suspicion. This issue has not been properly examined by the learned Waqf Tribunal; rather, it indicates interpolation in the Revenue Record to favour the respondents.

7.15 Learned counsel for the appellants submitted that the learned Waqf Tribunal conveniently relied upon the interpolated Revenue Entries produced by the respondents and reached to the conclusion to change the name of the holy shrine. According to learned counsel, this was a egregiously erroneous approach on the part of the learned Waqf Tribunal as well as the Waqf Board. Elaborating on this issue, learned counsel submitted that, during the hearing of Waqf Appeal No.38 of 2021, the appellants had produced certified copies of the five-yearly Revenue Records, obtained on 3rd January 2004, wherein the entry was recorded as "Pir Malansha Saheb Dargah Sthan, Vyavasthapan Anavala". On the other hand, the certified copy of the very same Revenue Record obtained on 29th June 2011, by which time the entry had come to read as

"Maulana Yakub Saheb Dargah and Daudi Bohra Kabrastan". It was upon finding a discrepancy between the two certified copies of the very same record, in the proceedings of Waqf Appeal No.38 of 2021, that the Waqf Tribunal called for the original Revenue Record and recorded a specific finding of interpolation.

7.16 He would further submit that, since the initial application for changing the character of the Waqf was itself made on 05.07.2011 before the Waqf Board, the Revenue Record, a certified copy of which was obtained on 29.06.2011, i.e. only a few days before the respondents submitted the change report, was therefore presumed to have been altered with the purpose of aiding the respondents. Learned counsel further submitted that, once the interpolation had been judicially noticed, the disputed entry ceased to enjoy an unqualified presumption of correctness, and the burden lay upon the respondents to independently establish its authenticity by producing primary evidence.

7.17 Learned counsel would further submit that, in the proceedings culminating in the impugned judgment and order, the learned Waqf Tribunal proceeded as Waqf Appeal No.38 of 2021 as well as judgment and order had never existed and accepted the version of the respondents on the basis of the interpolated Revenue Entries. He would further submit that whether a particular institution is a Sunni or Shia Waqf is a question that must be decided on the basis of evidence specific to that institution, and no general or assumed sectarian character can be attributed to it.

7.18 In support of the aforesaid submission, reliance is placed upon the judgment in case of ***A.P. State Waqf Board v. All India Shia Conference*, (2000) 3 SCC 528**. Learned counsel for the appellants therefore submitted that the erroneous historical finding formed the foundation of the subsequent conclusions of the learned Tribunal regarding fraud, limitation, religious character, etc. He would further submit that, since the primary finding of the learned Waqf Tribunal is erroneous, all subsequent conclusions *ipso facto* become erroneous.

7.19 Coming back to the argument regarding the denial of sufficient opportunity of hearing, learned counsel argued that, after the reconstitution of the Waqf Board, no further notice of hearing was ever issued, and the impugned Resolution dated 24.04.2025 was passed through in a duly quorate meeting of the Board attended by eight members. Nonetheless, the said meeting was a meeting of the Board convened for transacting its ordinary business and was not convened for the purpose of providing an opportunity of hearing or conducting a hearing on the subject matter. Learned counsel submitted that no notice of hearing was issued to the appellants for that date, and no opportunity was afforded to them to address the Waqf Board before the Resolution was passed.

7.20 It is argued that the presence of a quorum for a meeting cannot substitute the requirement of providing a fair opportunity of hearing. It is further argued that, in any event, the preliminary objection dated 12.02.2025 remained undecided independently. It is also argued that the proceedings relating to the change report were conducted by the Chairman and/or a single member, in breach of the requirement of Regulation 5 of the Gujarat State Waqf Regulations, 2000, which prescribes a quorum of five members for the Board to transact any business. The Rojkam dated 04.12.2024 is the only occasion on which the requisite quorum is recorded as being present at that stage. Therefore, this constitutes a defect distinct from and in addition to the denial of a fair opportunity of hearing on 24.04.2025.

7.21 It is further argued by learned counsel for the appellants that the learned Waqf Tribunal has conflated an internal meeting of the Board with the conduct of a judicial hearing and has examined the legality of the ultimate decision while overlooking the illegality in the decision-making process that preceded it. It is then argued that a breach of the principles of natural justice ordinarily results in real prejudice and vitiates the order.

7.22 A strong reliance has been placed upon the judgment of the Hon’ble Supreme Court in ***State of Uttar***

***Pradesh v. Sudhir Kumar Singh*, (2021) 19 SCC 706**. Learned counsel submits that the test laid down by the Hon'ble Supreme Court in the aforesaid judgment squarely applies to the facts of the present case. He would submit that, where denial of hearing has caused real and demonstrable prejudice, as in the present case, the learned Waqf Board has adjudicated upon facts of a historical character concerning the Waqf, the authenticity of the revenue records, and the very jurisdiction of the Board has been seriously and substantially disputed. Questioning the authority of the CEO to pass the order dated 30.04.2025, learned counsel submits that no hearing on merits was ever afforded to the appellants at any stage, either before the Waqf Board or before the learned Tribunal. Further, there was nothing on record on the basis of which the CEO could have arrived at a reasoned determination regarding the religious character of the Waqf, the allegation of fraud, or the entitlement of the appellants to act as "Mutawalli". Therefore, the order dated 30.04.2025 passed by the CEO, insofar as it purports to decide all such questions, is without jurisdiction.

7.23 He would further submit that the Resolution dated 24.04.2025 did not discuss any issue. The order dated 30.04.2025 passed by the CEO records the resolution as the operative order and supplies reasons for such operative order. This demonstrates a jurisdictional error, as reasons could be assigned to the resolution and made part of the operative order only after affording an opportunity of hearing to the other party. It is further argued that the validity of an order must be judged on the basis of the reasons stated therein, and that supplementary reasons introduced subsequently cannot cure the defect. In support of this submission, reliance is placed upon the judgments of the Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405,** as well as ***State of Bihar v. Shyama Nandan Mishra,* (2022) 17 SCC 420.**

7.24 It is argued that recording of reasons is an inseparable part of a *quasi-judicial* order and that such reasons cannot be supplied after the event by the CEO, who himself had not heard the party.

7.25 Relying upon the judgment of the Co-ordinate Bench in ***Daudbhai Pirbhai Belim v. Waqf Board*, SCA No.2555 of 2016, order dated 08.03.2016,** and referring to Section 27 as well as Section 32(2) of the Waqf Act, learned counsel for the appellants argued that the Waqf Act expressly bars delegation of the functions of the Board. Therefore, the order passed by the CEO canceling the “Mutawalli” of the appellants is manifestly without jurisdiction. It is submitted that the Board contended before the Waqf Tribunal that the CEO had merely authenticated its decision; however, the Tribunal has treated the order of the CEO as the decision itself. This precisely demonstrates the division of responsibility between the person who hears the matter and the person who decides it, which vitiates the *quasi-judicial* process.

7.26 The next point argued by learned counsel for the appellants relates to the power of review and limitation. Learned counsel submitted that, before invoking fraud to reopen a registration that had attained finality decades earlier under the Bombay Public Trusts Act, 1950, the Waqf Tribunal was required first to identify a judicial finding of fraud and the statutory provision under the Waqf Act empowering the Board to reopen such registration. He further submitted that the Waqf Tribunal neither identified any such finding nor pointed out any provision of the Waqf Act empowering the Board to reopen the registration merely on an allegation of fraud. He further submitted that the Waqf Board has no power to review or recall its own order of registration and that, even where fraud or misrepresentation is alleged, the only remedy available to the aggrieved party is an appeal under Section 83 of the Waqf Act and not a fresh review by the Board.

7.27 Reliance is placed upon the judgment of the Co-ordinate Bench in ***Gujarat State Waqf Board v. Shaikh Aunali Ismailji, 2021 (4) GLR 3172,*** by learned counsel for the appellants and submitted that, even assuming that an authority possesses an inherent power to review its order where fraud is established, such power can be exercised only after affording an opportunity of hearing to the affected party on specific allegations. However, such condition has admittedly not been fulfilled in the present case.

7.28 Reliance is also placed upon the judgment of the Hon'ble Supreme Court in ***Mohammed Khalil v. U.P. Sunni Central Waqf Board*, Writ (C) No.67820 of 2013**. Learned counsel Mr.Hakim/Mr.Ansari for the appellants submitted that the plea of fraud raised to overcome limitation requires the fraud to be specifically pleaded and established, including the date of its discovery, and cannot be presumed. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in ***Saranpal Kaur Anand v. Praduman Singh Chandhok*, (2022) 8 SCC 401**.

7.29 In view of the aforesaid submissions, he submitted that the absence of jurisdiction to reopen a settled registration would, by itself, vitiate the consequential order. Reliance is placed upon the judgment in ***M.P. Waqf Board v. Subhan Shah, (2006) 10 SCC 696,*** by learned counsel for the appellants and argued that once a property stands registered, it cannot simply be de-registered by administrative fiat.

7.30 Reliance was also placed upon the judgment in ***Mohammed Naushad v. Bihar State Sunni Waqf Board, CWJC No.1531 of 2012***. Learned counsel for the appellants then argued that the order directing fresh registration of the Waqf under a different name, sect, and mode of appointment of "Mutawalli" cannot be sustained as a mere "amendment" of the Register without identifying the statutory source of such power. Therefore, the finding which conflates limitation with jurisdiction cannot be sustained.

7.31 The Places of Worship (Special Provisions) Act, 1991, was also raised in the submissions. First of all, learned counsel argued that, in view of Section 3 of the Act, the Act protects the religious character of a place of worship as it existed on 15th August 1947. He further submitted that the Waqf Tribunal had treated the challenge as being confined to the physical existence of the institution, without appreciating that alteration of its sect from Sunni to Shia would, by itself, alter its protected religious character. The revenue records of the appellants from 1916-17 demonstrates Sunni administration well before the cut-off date. However, the said records have not been properly analyzed, and no reasons have been assigned for preferring the version put forward by the respondents over such contemporaneous documentary evidence. Therefore, the finding that the provisions of the Places of Worship (Special Provisions) Act, 1991 are not applicable is erroneous and, accordingly, unsustainable.

7.32 Learned counsel Mr.Hakim/Mr.Ansari also argued on the issue of forcible dispossession and submitted that the Waqf Tribunal committed a serious error in holding that the absence of physical resistance amounted to voluntary surrender of possession, without appreciating the coercive circumstances in which possession changed hands. The order dated 30.04.2025 was not supplied to the appellants on the date on which it was passed and, on the next date, i.e. 01.05.2025, the respondents arrived at the Dargah with approximately 100 police personnel and took over possession before the appellants could even examine the order or avail themselves of the statutory remedy. The contemporaneous written protests of the appellants, which form part of the record, have not been considered. Most significantly, the Waqf Tribunal has not examined compliance with the mandatory procedure for recovery of possession prescribed under Section 68 of the Waqf Act, which is the only mode by which the Board may lawfully take possession. The Tribunal has, therefore, wrongly treated the deployment of police force as a legally sufficient mode of execution and thereby committed a serious error.

7.33 While canvassing the aforesaid arguments, learned counsel for the appellants submitted that, on multiple grounds, the impugned order passed by the Waqf Tribunal confirming the order of the Waqf Board is not sustainable, namely, absence of quorum, denial of hearing, absence of reasons in the resolution, the questionable invocation of fraud to review the registration, misapplication of the Places of Worship (Special Provisions) Act, 1991, by passing the procedure prescribed under Section 68 of the Waqf Act for taking forcible possession, and overlooking the earlier finding of the Tribunal regarding interpolation. Learned counsel submitted that the Waqf Tribunal committed serious and manifest errors in confirming the resolution dated 24.04.2025 passed by the Board and the order passed by the CEO on 30.04.2025.

7.34 Lastly, on the issue of jurisdictional excess, learned counsel Mr.Hakim/Mr.Ansari submitted that, in Waqf Appeal No.15 of 2025, the issue involved was with regard to the resolution dated 24.04.2025 and the order dated 30.04.2025, both of which were traceable to Change Report No.3620 of 2011. However, the Waqf Tribunal, in excess of its jurisdiction, defaced Change Report No.207 of 2014, whereby the appellants were appointed as “Mutawalli”, although the said Change Report was never impugned/challenged before the Tribunal, no relief in that regard was ever claimed, and no issue was framed. Similarly, the Tribunal rendered a finding that Survey Nos.911, 915, 935 and 936 were Government wasteland, although the issue of title to the said lands never formed part of the dispute between the parties.

7.35 In view of the aforesaid submissions, as summarised from the written submissions, the appellants prayed for allowing appeal by quashing and setting aside the impugned judgment and order dated 09.02.2026 passed by the learned Waqf Tribunal in Waqf Appeal No.15 of 2025 and Resolution dated 24.04.2025 and the order dated 30.04.2025.

SUBMISSIONS OF LEARNED COUNSELS FOR RESPONDENT - GUJARAT STATE WAQF BOARD:

8. Representing the Gujarat State Waqf Board – respondent No.1, learned counsel Mr. G.H. Virk, assisted by learned counsel Mr. Manish Shah, mainly supporting the

impugned judgment and order, argued that, by way of this appeal, the appellants are substantially seeking a re-hearing on facts by presenting procedural objections as jurisdictional errors. He would submit that the impugned judgment is a reasoned adjudication, and no finding material to the religious identity or administration of the Waqf is shown to be unsupported by the record.

8.1 Learned counsel Mr.Virk submitted that the controversy between the parties is not whether the appellants (Faruqi family) had physically managed the premises for some period of time, but whether such management as a “Mujawar” (caretaker) created an inheritable right to the Mutawalli-ship, and whether the 1953 register correctly recorded the historical identity of the holly shrine.

8.2 He would submit that the contemporaneous record answers both questions against the appellants, and those questions have been comprehensively examined by the CEO as well as by the Waqf Tribunal while confirming the order of the Waqf Board.

8.3 It is argued by learned counsel Mr.Virk that the oldest public records relied upon by the Board and accepted by the Tribunal, including the pre-independence Pahani/Revenue Entries from 1916-1917 onwards and the inscription at the site, record the premises as “Maulana Yaqub

Saheb Dargah and Dawoodi Bohra Kabrastan" and "Malanasha Pir-ni-Jago".

8.4 He would further submit that the description of the holy shrine as "Maulana Mehboob Dargah Masjid and Kabrastan" appears only with or after the registration proceedings initiated by Nanibi in 1952-1953.

8.5 He would further submit that the statutory cut-off under the Places of Worship (Special Provisions) Act, 1991 assists the respondents rather than the appellants, as it recognises and preserves the pre-15th August 1947 Dawoodi Bohra character of the place. He would further submit that, neverthless the impugned order does not convert a Sunni place into a Shia place.

8.6 Insofar as the Registration of the Waqf in 1952-1953 is concerned, he submits that there is no Waqf deed; founder's instrument; or independent material showing the creation of a Sunni Waqf or hereditary Sunni Waqf, nor is there any source/documented information regarding the Wakif recorded which may favour the case of the appellants' family. On the contrary, Nanibi's statement before the Charity Authority records that she was administering the Dargah, Masjid and Kabrastan, and her appointment was made by the Muslims of the nearby locality. The revenue records described Nanibi, her daughter Bidibi, or their predecessors only as

"Mujawar". He would further submit that a "Mujawar", in view of the treatises on Muslim law, is merely a caretaker and has no proprietary right or hereditary interest in the Waqf merely because he possessed the shrine as a holy shrine or because his service as a "Mujawar" continued for a long period. Even a "Mutawalli" is not a person having any proprietary right or hereditary interest.

8.7 Learned counsel Mr.Virk submits that, once a Waqf is created, it becomes God's property and no one can claim any personal interest in the property. He would further submit that, in none of the proceedings, has the appellants Faruqui family produced any valid appointment by the Muslims community, competent religious authority, or any resolution of the Muslim congregation converting their service into hereditary Mutawalliship. He further submits that the status of the appellants rests upon Change Report No.207 of 2014, by which the descendants of the recorded "Mujawar" were entered as "Mutawalli". He would further submit that the appointment of a Mutawalli is dealt with by a separate provision of the Waqf Act. The appellants themselves relied upon the Change Report as the source of their authority and preferred previous litigation based upon it; its legality was inseparable from the decision under appeal.

8.8 It is further argued that, in view of Section 83(5) of the Waqf Act, the Tribunal, being vested with the powers of a Civil Court and having the power to mould the relief, was entitled to set aside the consequential entry, which could not survive the finding regarding the original registration and the non-hereditary character of the Mujawar’s office. Therefore, no element of surprise or prejudice can be demonstrated.

8.9 Learned counsel Mr.Virk further argued that any trust registered under the Bombay Public Trusts Act, if it is a Waqf, stood deemed to be registered under Section 43 of the Waqf Act. Its register thereafter remains governed by Sections 37 and 41 of the Act. Therefore, the Waqf Board’s action in amending and correcting the register on the basis of the original registration papers, pre-1947 revenue entries, and the evidence of the parties is not an exercise of an unprovided power of review. Section 41 expressly contemplates the correction of the register, and a foundational misrepresentation cannot acquire indefeasibility merely through the lapse of time.

8.10 It is argued that Sections 64, 68 and 69 of the Waqf Act are not attracted. It is further argued that the Waqf Board did not institute an independent proceeding for the removal of a duly appointed “Mutawalli” or for framing a scheme. Once the register was corrected and the appellants’ asserted appointment was found to be derivative of an invalid hereditary claim, the consequential direction to hand over the records and administration followed from the correction itself. He would further submit that Section 68 cannot be used to preserve possession founded on a status which the competent authority has lawfully rejected.

8.11 It is also argued that the appellants' reliance upon the earlier order in Waqf Appeal No.38 of 2021 is misconceived. By consent order dated 17.06.2022, the High Court of Gujarat being Revisional Court quashed and set aside the Waqf Board's order dated 09.11.2021 and the Tribunal's order dated 24.02.2022, remanded the matter for a fresh decision after hearing all the parties. Therefore, no finding from the order which had already been set aside having attained status of non-existence can be taken into consideration.

8.12 As far as the argument regarding non-quorum or want of quorum is concerned, learned Government Pleader submits that the record reflects repeated hearings from June 2022 to February 2025, production of original revenue records through the Mamlatdar, written submissions by all sides, and repeated arguments at the appellants' instance. He would further submit that the Board meeting dated 24.04.2025 shows that all eight members were present; seven supported the Resolution, while one member did not furnish reasons in opposition. The final statutory decision being taken in majority was thus that of the Board with full quorum.

8.13 It is further argued that the Waqf Tribunal, in any event, did not prejudice the appellants' claim to be

"Mutawalli" of the holy shrine as the decision of appointment of appellants as "Mutawalli" itself was founded upon misrepresentation and based upon unverified aspects. He further submitted that the findings that the pre-1947 religious character was that of the Dawoodi Bohra community, that the appellants had no hereditary "Mutawalliship", and the register required correction remain independently supported and should be affirmed. The same has no concern with the additional declaration concerning the revenue status of Survey Nos. 911, 915, 935 and 946.

8.14 Lastly, it is argued that the management and possession of the holy shrine remain with the Dawoodi Bohra community pursuant to the fully implemented Waqf Board order. A reversal of the same at this stage would alter, rather than preserve, the existing position and would disrupt worship, burial and administration, and confer upon the appellants a relief despite their inability to establish any hereditary or proprietary right. It is, therefore, submitted by learned counsel Mr.Virk that the appeal deserves to be dismissed.

SUBMISSIONS OF LEARNED COUNSELS FOR RESPONDENT NO.2.

9. Learned senior counsel Mr. Shalin Mehta, assisted by learned counsel Mr. Jignesh Pandav and Mr. Viral Agrawal, mainly argued that the present appeal is wholly devoid of merit, both on facts and in law, and deserves to be dismissed

with exemplary costs.

9.1 Learned senior counsel Mr. Shalin Mehta would submit that, pursuant to the specific direction issued by the Co-ordinate Bench of this Court in Special Civil Application No.10267 of 2016, vide order dated 02.08.2019, the Gujarat Waqf Board conducted a comprehensive inquiry. Upon considering the revenue records, records of the Gaekwad State, Waqf records, historical documents, and other material available on record, the Board passed a reasoned and speaking order on 30.04.2025.

9.2 It is further submitted that the Waqf Tribunal, vide its detailed and reasoned judgment dated 09.02.2026, affirmed and upheld the findings of the Waqf Board. The present First Appeal, therefore, has been filed against the concurrent findings of fact and law recorded by the two authorities, namely, the Waqf Board and Waqf Tribunal. In the absence of any jurisdictional error, perversity, or involvement of any substantial question of law, no interference is warranted in this appeal, which is essentially assume character of Second Appeal.

9.3 Learned senior counsel Mr. Mehta submitted that the original registration of the Waqf trust in the year 1952-53 was obtained by fraud, suppression of material facts, and manipulation of public records. He would submit that the appellants are attempting to divert attention from this fundamental issue by raising technical objections with regard to limitation, jurisdiction, and procedure. He further submitted that Nanibi obtained the registration in the year 1952-53 without disclosing the source or origin of the Waqf or the procedure for appointing the "Mutawalli", and by manipulating the revenue records to procure registration of the Waqf under a different name.

9.4 It is further submitted that the official revenue records dating back to 1906, being records of the Gaekwad State, along with the Waqf records and Government documents, conclusively establish that the institution existed under its original historical identity long prior to the fraudulent registration of 1952-53.

9.5 On the issue of the status of appellants, whether as "Mujawar" or "Mutawalli", learned senior counsel argued that the appellants had completely failed to produce any legal document or evidence demonstrating that Kutubuddin Jalaluddin or his successors were ever appointed as "Mutawalli" by any competent authority. The historical and official records consistently describe the appellants or their predecessors as "Munjawar" and not as legally appointed "Mutawalli". The claim of Mutawalliship set up by the appellants is self-proclaimed, legally unsupported, and contrary to the official public records.

9.6 It is further submitted by learned senior counsel that it is a fundamental and settled principle of law that "fraud vitiates every solemn act". Once the foundation of the registration in 1952-53 is established as fraudulent, every subsequent change report, succession entry, mutation, or consequential action automatically becomes *void ab initio*, and no person can be permitted to derive any legal benefit or perpetuate an advantage obtained through his or her own fraud. The fraud constitutes a continuing wrong; therefore, technical pleas such as limitation cannot be invoked to defeat justice or protect fraudulent acts.

9.7 Learned senior counsel submitted that, insofar as the jurisdiction of the Waqf Board is concerned, Co-ordinate Bench of this Court specifically directed the Waqf Board, in Special Civil Application No.10267 of 2016, to finally decide the application challenging the registration in accordance with law. The said order was never challenged before any higher forum. The appellants, having never challenged the order dated 02.08.2019 passed in Special Civil Application No.10267 of 2016, are legally incompetent to raise the issue that the Waqf Board had no jurisdiction to decide the dispute relating to the registration. The appellants are, therefore, precluded and estopped from questioning the authority or statutory jurisdiction of the Board. Nonetheless, under the provisions of the Waqf Act, the Gujarat State Waqf Board possesses statutory power to examine the correctness of Waqf registration, rectify illegal or fraudulent entries, and protect Waqf properties. The Board acted strictly within its statutory bound and mandate and, in compliance with the direction of

Co-ordinate Bench of this Court; therefore, it cannot be said that the Board had no power to review or rectify its earlier order, or Board has acted in excess of its jurisdiction.

9.8 It is further submitted that, on 01.05.2025, the appellants voluntarily submitted a written communication before the Gujarat Waqf Board confirming that peaceful and actual possession of the property had been handed over. This written communication constitutes a clear admission. The subsequent allegations raised by the appellants regarding use of force, coercion, or illegal dispossession are false, self-contradictory, and legally unsustainable.

9.9 It is also argued that the appellants repeatedly filed identical applications solely with a view to delaying the final adjudication and prolonging the proceedings. Full opportunity of hearing was granted to all parties, the documentary evidence was thoroughly evaluated, and there was no violation of the principles of natural justice.

9.10 In support of his submissions, learned senior counsel relied upon the following judgments:

(i) Lazarus Estates Ltd. v. Beasley (1956)1QB 702;

(ii) S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1;

(iii) A.V.Papayya Sastry v. Government of A.P., (2007) 4 SCC 221;

(iv) R.Ravindra Reddy v. H.Ramaiah Reddy,(2010) 3 SCC 214;

(v) Chandro Devi v. Union of India(2017) 9 SCC 469;

(vi) Ex. Sig. Man Kanhaiya Kumar v. Union of India, (2018) 14 SCC 279

9.11 In view of the aforesaid submissions, learned senior counsel has prayed to dismiss the present First Appeal with exemplary costs.

SUBMISSIONS OF LEARNED COUNSEL FOR RESPONDENT NO.3

10. Learned counsel Mr. Sunit Shah, while encompassing the core controversy, submitted that the appellants claim to be Sunni Muslims and Dargah is that of their Pir, Maulana Mehboob (Saint), and the appellants are the "Mutawalli" of Dargah Maulana Mehboob, pursuant to a resolution passed by their family members during the lifetime of their mother, Badi Bi.

10.1 It is further submitted that Opponent No.3 is a member of the Dawoodi Bohra community and the holy shrine in question is that of their Saint, Maulana Yakub. The members of the Dawoodi Bohra community visit the said

Dargah for Ziyarat. The appellants are the sons of Badibi, who was the sole heir of her mother, Nanibi, her brother being mentally incapacitated. The appellants or their predecessors were performing Diva-batti and Phool-Fatiya at the Dargah in the capacity of "Mujawar" (servants/caretakers), having no proprietary right in the Dargah, Masjid, or Kabrastan.

10.2 It is further submitted that, during the proceedings before the Waqf Tribunal, the opponent relied upon unimpeachable and authentic historical works and literature, including "Gujarat no Rajkiya ane Sanskrutik Itihas" (Granth 4, Chapter 14), "Rasamala/Gujarat Prant no Itihas" (Part 1, Chapter 3), and the "Journal of the Asiatic Society of Bengal" (1837). These works state that Saint Maulana Yakub, a Wali of the Dawoodi Bohra community and the first successor after Maulana Abdullah, is buried at Patan and his followers are called Dawoodi Bohra.

10.3 As against this unimpeachable positive evidence pertaining to Maulana Yakub, the appellants have not produced any evidence to establish that Saint Maulana Mehboob was a different Saint who was born and lived in the past. Learned counsel Mr.Sunit Shah further submits that word "Mahabub" used to reverse/respect Maulana Yakub, has been misapplied to create confusion. He submits that thus, there is no evidence to support the case of the appellants.

10.4 Learned counsel Mr. Sunit Shah referred to the Village Form No.7/12 extract of Survey No.935, produced along with the registration papers by Nanibi, and submitted that even the said document refers to “Maulana Mehbub no Rojo urfe Maulana Yakub”. In view of the said undisputed endowment reflected in the Village Form No.7/12 extract produced by the ancestor of the appellants at the time of registration, it is established that the holy shrine is that of Saint Maulana Yakub. He would further submit that not only the Village Form No.7/12 extract of Survey No.935, but also the Padani Patrak and revenue records maintained by the Gaekwad State, known as the Gaekwad State Revenue Records (from 1925 onwards), as well as the revenue records pertaining to Survey No.935, confirm that the holy shrine is dedicated to Saint Maulana Yakub.

10.5 He would further submit that the land in question was historically governed by the Gaekwad State under the Gaekwadi Rule, and that the Padani Patrak, being an official revenue record maintained by the Gaekwad State from the year 1915 onwards, explicitly records the name of Maulana Yakub in relation to the subject property. Thus, the appellants’ bald contention that the said revenue records are fabricated is baseless, unsubstantiated, and unsupported by any documentary evidence.

10.6 He would further submit that the appellants, at different points in time and according to their convenience, have raised bald contentions, firstly, that the revenue records were fabricated and, secondly, regarding the character of the holy shrine.

10.7 Learned counsel Mr.Shah further submits that the revenue records and other records connected therewith unequivocally establish that the appellants or their ancestors were merely “Mujawar” and were taking care of the holy shrine are appointed only as caretaker of holy shrine. Badibi, on 01.03.1960 and 19.02.1962, admitted before the Deputy Charity Commissioner and the Mamlatdar, Patan, that she and Nanibi were merely “Mujawar” appointed for performing daily rituals (Diva-batti and Phool-Fatiya) and for cleaning the holy shrine, and had given a specific undertaking that she would never claim ownership or trusteeship.

10.8 In continuation of this argument, learned counsel Mr. Sunit Shah submits that, not only before the revenue authorities, revenue officers, or the Charity Commissioner, but even before the Co-ordinate Bench of this Court in Special Civil Application No.12350 of 2011, the appellants submitted an affidavit on oath wherein they admitted that they were “Mujawar” and explicitly stated that they had never claimed to be “Mutawalli”. Therefore, it can safely be concluded that, from the inception until the filing of SCA No.12350 of 2011, the appellants themselves claimed to be “Mujawar” and not “Mutawalli”. This unequivocal admission made in judicial proceedings is contrary to the stand now taken by the appellants in the present appeal.

10.9 He would further submit that, in view of Wilson's Glossary of Judicial and Revenue Terms, a "Mujawar" is merely a servant, caretaker, or sweeper of a shrine or tomb.

10.10 Learned counsel Mr. Sunit Shah submits that, apart from the absence of any contemporaneous documentary evidence supporting the case of the appellants, the findings recorded by the learned Court below, the Waqf Board, and the Waqf Tribunal are supported by the record. He would further submit that the appellants, for their own convenience, fabricated documents. He would submit that the appellants produced a backdated resignation of Badibi dated 27.08.2000 and a resolution appointing the appellants, namely, Jalaluddin, Kutbuddin, Ashrafuddin, Jamaluddin, and Manuruddin, as trustees/Mutawallis, which is completely contrary to Badibi's own letter dated 31.12.2002. Moreover, the so-called resolution was passed only by family members of Badibi. Change Report No.207 of 2014, which was based upon such resolution, was fraudulently obtained as an uncontested report by suppressing the active objection dated 14.05.2014, as well as the pending Change Report of the Dawoodi Bohra community and the earlier Change Report Nos.286 of 2002 and 3620 of 2011.

10.11 It is further argued that, in view of the consensus order passed with the consent of all the parties to avail of a fresh decision from the Waqf Board on the issue after washing out the effect and applicability of earlier order; and consequent upon the disposal of Civil Revision Application No.179 and 185 of 2022 by this High Court, the appellants are now precluded from reverting to the earlier litigation.

10.12 It is also argued that Sections 40, 64, and 69 of the Waqf Act are inapplicable. Section 64 applies to the removal of a legally appointed "Mutawalli"; however, in the present case, the appellants were never legally appointed as "Mutawalli". They were merely "Mujawar" who obtained revenue entries by fraud. Thus, the present case concerns rectification or amendment of the register under Section 41 and not the removal of "Mutawalli" under Section 64.

10.13 In connection with the next argument regarding violation of the principles of natural justice, it is argued that such submission is untenable in view of the judgments rendered by the Apex Court in ***Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria (Dead) through LRs.*, (2012) 5 SCC 370,** as well as in ***Himalaya Vintrade Private Limited v. Md. Zahid*, AIR 2021 SC 5749**. It is submitted that a caretaker, watchman, or servant can never acquire title or interest in the property, irrespective of the length of possession, and must hand over possession upon demand. The Court cannot protect the possession of a caretaker or servant, as a caretaker or agent holds the property strictly on behalf of the principal and acquires no independent right or interest therein. Nonetheless, the appellants participated in the fresh proceedings before the Waqf Board and placed their detailed written submissions on record even on merits, which reflects that ample and fair opportunity of hearing was provided to the appellants by the Waqf Board as well as by the Waqf Tribunal.

10.14 Learned counsel Mr. Sunit Shah further argued that it is not the case of the appellants that notices were not issued to them prior to the commencement of the proceedings. He further submitted that an oral hearing is not an absolute right of a party. It is further submitted that raising a preliminary objection and seeking a hearing on such preliminary objection is a matter within the discretion of the authority, and a litigant cannot claim such hearing as a matter of right. According to him, the appellants adopted dilatory tactics, and the filing of preliminary objections and seeking a separate hearing thereon in second round of litigation, intended only to derail or delay the proceedings.

10.15 As regards the remaining issues, learned counsel Mr. Sunit Shah adopted the submissions canvassed by the other learned counsel appearing for the respective respondents. In support of his submissions, he relied upon the following authorities:

> ***(i) State of Punjab v. Shamlal Murari*, (1976) 1 SCC 719 and**

***(ii) Sangram Singh v. Election Tribunal*, AIR 1955 SC 425.**

SUBMISSIONS OF LEARNED COUNSEL FOR RESPONDENT NO.4

11. Learned senior counsel Mr. Mihir Joshi, assisted by learned counsels Mr. S.P. Majmudar and Mr. Jamshed Kavina, appearing for respondent No.4, submitted that the appointment of, or acceptance of, Change Report No.207 of 2014, whereby the appellants were appointed as “Mutawalli”, is wholly erroneous and ignores the statement of Badibi dated 01.03.1960, wherein it was stated that Nanibi was a “Mujawar”. The names of the appellants came to be entered as “Mutawalli” on the basis of the resolution recording the resignation of Badibi, which bore the signatures of the appellants and other family members. According to learned senior counsel, such procedure runs contrary to the rules governing the appointment of a Mutawalli, as a Mutawalli was required to be appointed by the congregation or members of the community. Therefore, the learned Waqf Tribunal rightly held that a person who is a “Mujawar” cannot become a “Mutawalli” unless such person is appointed as a Mutawalli by the members of the community or congregation, in accordance with the mode of succession registered in registration of Trust. He would further submit that appellants were never appointed as “Mutawalli” following provisions laid in Waqf Act.

11.1 Learned senior counsel Mr. Mihir Joshi argued that the learned Waqf Tribunal rightly held that, when Nanibi, widow of Jamaluddin Kutbuddin, was a “Mujawar” from the date of registration of the trust, her daughter Badibi alias Faruki Badibi could not have been a “Mutawalli”, and her claim in that regard was never accepted. The appellants have conveniently changed their status from “Mujawar” to “Mutawalli”, which is contrary to the stand taken by them before the Coordinate Bench in the Special Civil Application, wherein they had asserted that they were “Mujawar”.

11.2 Supporting the judgment of the Waqf Tribunal, learned senior counsel submitted that there is absolutely no evidence to establish that Jamaluddin Kutubuddin was appointed as a “Mujawar” and, thereafter, his widow Nanibi and subsequently his daughter Badibi were appointed as such, except for their names appearing in the revenue records. He further submitted that the appellants themselves are unaware as to how such entries came to be made and are asserting their rights on the basis of contradictory stands.

11.3 He further submitted that the Waqf Tribunal rightly held that, in the revenue records immediately preceding Revenue Entry No.245, the name of “Maulana Yakub Laqab Mehboob Pir Mubarak Rojo and Mosque” was recorded in favour of the Dawoodi Bohra community, and the appellants and their ancestors had fraudulently attempted to get their names entered in the revenue records in respect of the said land. It is further submitted that, as reflected in the historical records of the “Padhni Patrak” maintained by the Gaekwad Government from 1915 till 1956-58, the name of “Dargah of Maulana Yakub Saheb” and “Dawoodi Bohra Kabrastan” are mentioned.

11.4 With regard to the finding of the Waqf Tribunal concerning the declaration of the property as trust property pursuant to RTS Case No.27 of 1996, learned senior counsel submitted that, in respect of Survey No.935, the name of Nanibi was entered on 15.04.1954 as caretaker/Mujawar of Pir Maulana. Seven years after the death of Nanibi, her daughter Badibi attempted to get her name entered in respect of Survey No.935, despite the earlier rejection of Entry Nos.245 and 400. Entry No.1236 was subsequently rejected on the basis of the order passed in RTS Case No.27 of 1996, and Entry No.2069 was thereafter posted to declare the property as trust property. However, learned senior counsel submitted that such finding is wholly erroneous.

11.5 He further submitted that it is a settled principle of law that fraud vitiates all acts. As categorically recorded by the learned Waqf Tribunal, fraud had been perpetrated by the appellants and their predecessors. In support of his submission, he relied upon the judgment of the Hon’ble Supreme Court in ***Vishnu Vardhan @ Vishnu Pradhan v. State of Uttar Pradesh & Ors.,*** **(2025) 0 AIJEL-SC 75620**.

11.6 Learned senior counsel submitted that when a caretaker or servant claims ownership over the property, particularly behind the back of the true owner, such conduct amounts to fraud. Fraud cannot confer any title or right of possession upon a caretaker. Therefore, according to him, the appellants have absolutely no right, title or interest in any of the land. In support the the submission, he has relied upon the judgment of the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.**

11.7 Learned senior counsel argued that name of "Hajrat Maulana Mehboob Dargah, Masjid and Kabrastan" and the name of "Mujawar" Jamaluddin were never reflected in the revenue records until Nanibi submitted an application in 1953 for registration of the trust/Waqf. He further submitted that, during the proceedings, Nanibi made a statement that she was administering the Dargah, Masjid and Kabrastan and the "Mutawalli" was required to be appointed by the local community or congregation. Therefore, her name was entered only as a "Mujawar". From the very beginning, the application submitted by Nanibi disclosed that she had applied in the capacity of "Vahivat Karta" only.

11.8 It is further submitted that, in the revenue records from 1916-17 to 1948-49, the land was recorded in the names of "Bohra Kabrastan Maulana Yaqub Saheb Dargah Dawoodi Pir ni Jago" and "Malansha Pir ni Jago". According to learned senior counsel, these records do not support the appellants' claim that the holy shrine was a burial place of Sunni-Hanafi-Barelvi followers. It is also argued that the appellants identify themselves as adherents of the Barelvi sect of Qadriya Silsila, whereas Maulana Mehboob, the Saint whom the appellants claim to be buried at the holy shrine, admittedly belongs to the Chishtiya order, according to the appellants themselves. It is submitted that this demonstrates a complete disconnect and renders the appellants' claim doctrinally unsustainable, historically unfounded and legally untenable. According to learned senior counsel, the present case is one of unlawful usurpation of Waqf property by the appellants, without any legitimate spiritual or sectarian entitlement. It is further argued that the ancient inscription on the property in question refers to Maulana Yakub and not to Maulana Mehboob.

11.9 Learned senior counsel argued that the contention of the appellants regarding manipulation of the revenue records was rightly rejected, as the case came to be dismissed by the learned Judicial Magistrate, Patan, on 15.03.2022, and the criminal inquiry was accordingly closed. The said order was thereafter confirmed by the Sessions Court, Patan, in Criminal Revision No.24 of 2022 on 25.05.2025 and the order of the Sessions Court has not been challenged before this Court.

11.10 Learned senior counsel submitted that the correct identification of the holy shrine, as reflected in the revenue records from 1916-17 to 1948-49, was "Maulana Yakub Saheb

Dargah and Dawoodi Bohra Kabrastan Pir ni Jago", whereas misapply by Nanibi and in absence of close scrutiny it was subsequently registered as "Maulana Mehboob Dargah, Masjid and Kabrastan". He submitted that, where a question arises as to whether the Waqf is a Sunni Waqf or a Shia Waqf, the Waqf Board has the power to inquire into the matter and amend the Waqf Register at any time in accordance with Sections 40 and 41 of the Waqf Act, 1995. However, in case on hand, the Waqf Board had passed no order changing the creed of the Waqf.

11.11 With regard to the impleadment of Shri Mudar Diwanji and His Holiness (53rd) Syedna Saheb, as the sole trustee, as parties to the proceedings, learned Senior Counsel submitted that the holy shrine belongs to the "Dawoodi Bohra" community and that the sole trustee of all Dawoodi Bohra organisations is His Holiness (53rd) Syedna Saheb. Therefore, it was imperative to implead him as a necessary party. He submitted that the impleadment of the office-holder, namely His Holiness (53rd) Syedna Saheb, was necessary in observance of the principles of natural justice and in view of the requirement of impleading a necessary party under Order I Rule 10 of the Code of Civil Procedure.

11.12 It is also argued that a woman cannot be a "Mujawar" unless there exists a custom permitting the same, and that, in the present case, there is no such custom. On the other issues, learned Senior Counsel adopted the submissions advanced by the other learned counsels appearing for the respondents.

11.13 Lastly, relying upon the judgment of the Hon’ble Supreme Court in ***General Manager, Eestern Railway v. Jawal Prasad Singh,*** reported in **(1970) 1 SCC 103**, learned senior counsel submitted that the substitution of one member of a committee by another member during the course of an inquiry would not, by itself, affect the validity of the proceedings or amount to a violation of the principles of natural justice. The mere fact that one member of the Inquiry Committee was changed after the inquiry proceedings had commenced and some evidence had already been recorded would not make any difference to the validity of the proceedings.

11.14 In support of his submissions, learned senior counsel Mr.Mihir Joshi relied upon the following decisions:

(i) Sunni Muslim Idgah Masjid Trust v. Hardik Sitaram Patel, 2025(0)AIJEL HC 252505;

(ii) Bengal Waterproof Ltd. v. Bombay Waterproof Manufacturing Company, 1997(1)SCC 99;

(iii) Ramesh B. Desai v. Bipin Vadilal Mehta, 2006(5)SCC 638;

(iv) Rasiklal Manickchand Dhariwal v. M.S.S. Food Products, 2012(2) SCC 196;

11.15 In view of the aforesaid submissions, learned senior counsel Mr. Mihir Joshi submitted that the present

Appeal is devoid of merit and the appellants have failed to establish any legal right or entitlement in respect of the Waqf property. He, therefore, prayed that the appeal be dismissed with costs.

REPLY BY LEARNED COUNSEL FOR APPELLANTS

12. In response to the submissions canvassed by the learned senior counsels appearing for the respondents, learned counsel Mr. M.T.M. Hakim for the appellants referred to page No. 67 of the record and proceedings and submitted that a petition preferred by Mohammed Ahsan Murtuza Sirajbhai Bhora was registered as Change Report No.3607 of 2011. He submitted that the first relief sought therein, namely, the change in the name of the holy shrine, falls within the purview of Section 41 of the Waqf Act. He further submitted that the reliefs sought in paragraphs 9(A) and 9(B), concerning the incorporation of lands bearing Survey Nos.911, 915 and 936 as Waqf properties, fall within the purview of Section 40 of the Waqf Act. He further submitted that the relief sought in paragraph 9(C), concerning the appointment of a Board of Trustees of the trust in question, falls within the purview of Sections 69(C) and 69(D) of the Waqf Act.

13 He submitted that, in view of the aforesaid specific enumeration of the reliefs sought, it cannot be contended that the proceedings initiated were for the limited purpose of

amending the register of the Trust. According to learned counsel for the appellants, the proceedings were not confined merely to an amendment of the trust or Waqf register. Learned counsel Mr. Hakim further submitted that the proceedings constituted an attempt on the part of the respondents to convert the land belonging to Hanafi-Sunni-Barelvi creed into property belonging to the Shia creed, in derogation of the provisions of the Places of Worship (Special Provisions) Act.

14 On the aforesaid submissions, learned counsel appearing for the appellants prayed that the impugned order passed by the Waqf Tribunal be quashed and set aside and consequently, the resolution passed by the Waqf Board, as well as the order passed by the Chief Executive Officer, be quashed and set aside.

15. Learned senior counsels appearing for the respondents, on the other hand, prayed for dismissal of the appeal and confirmation of the orders passed by the authorities below.

THE ANALYSIS

16. I have heard learned counsels appearing for the respective parties and perused the record and proceedings.

17. On going through the chequered history of the dispute between the Faruqi family, on the one hand, and the Dawoodi Bohra community, on the other hand, it appears that the dispute concerns the identity, character, administration and management of the holy shrine situated at Village Anawada, Taluka and District Patan, principally comprising land bearing Revenue Survey No.935, admeasuring approximately 1 acre and 21 gunthas, and situated in the vicinity of the River Saraswati. A dargah, masjid and burial ground are situated at or associated with the holy shrine. There is, however, a fundamental dispute between the parties as to the historical identity of the religious institution/holy shrine its denominational character, and the person entitled to administer and manage the same.

18. The ancillary issues arising for consideration are:

(i) whether the appellants were afforded a sufficient and effective opportunity of hearing;

(ii) whether, by passing the impugned resolution, the Waqf Board has reviewed or recalled its own earlier order;

(iii) whether there has been a forcible conversion of the holy shrine from one creed to another;

(iv) whether there has been any violation of Section 3 of the Places of Worship (Special Provisions) Act;

(v) whether the removal of the appellants as Mutawallis is contrary to law; and

(vi) whether the learned Waqf Tribunal committed an error in dismissing the Waqf Appeal and thereby confirming the resolution passed by the Waqf Board as well as the order passed by the Chief Executive Officer.

19. Before adverting to the rival submissions canvassed by the learned counsels for the parties, at the outset, it would be apposite to understand the meaning and scope of the expression "Waqf". Section 3(r) of the Waqf Act reads as under:

"3(r) "waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

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

(ii)a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

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

(iv)a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,and "waqif" means any person making such dedication;

20. Subsequently, by way of amendment to the Waqf Act, the definition of "Waqf", insofar as it related to "Waqf by user", came to be deleted. The Hon'ble Supreme Court, *In Re: The Waqf Amendment Act, 2025*, reported in **2025 LiveLaw (SC) 909**, while passing an interim order, *prima facie* did not find the deletion of the said provision to be arbitrary.

21. The Mussalman Wakf Validating Act, 1913 (Act No.VI of 1913), also defined "Wakf" as follows:

> *"Wakf means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable."*

22. In *Mulla's Principles of Mahomedan Law*, 22nd Edition, published by LexisNexis, the term "Wakf" has been explained with reference to the principles enunciated by Mahomedan jurists. Section 173, contained in Chapter XII, provides as under:

> *The term waqf literally means detention. Basically, the whole institution of waqf has Jenved its authority from a tradition reported in Bukhari Sharif. Bukhari' has recorded the tradition reported of Hazrat Umar in several chapters of his sahih. It is narrated that "Umar came in the presence of the Prophet for taking his advice about the land that he (Umar) had obtained in Khaybar." He said, "O Prophet! The land that I obtained in Khaybar is the best of the properties I ever got. What are your instructions about putting the same into use in the name of Allah." The Prophet said "If you wish, confine the real and make propitiatory offering of its usufruct." Umar, accordingly, made the propitiatory offerings of the same with the condition that the land must not be sold away or given away in gift nor it be open to inheritance. Its income (alone) should be spent on the poor and the relatives and on freeing the slaves and on services rendered to travellers and on hospitality. The person who*

shall manage the land shall with propriety take some of its income for self and the rest of it he shall spend on feeding others. He shall not amass its income for self and thus try to become wealthy. The legal meaning of waqf, according to Abu Hanifa, is the detention of a specific thing in the ownership of the waqif or appropriator, and the devoting or appropriating of its profits or usufruct "in charity on the poor or other good objects." According to the two disciples, Abu Yusuf and Muhammad, waqfsignifies the extinction of the appropriator's ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied "for the benefit of mankind." (Baillie, 557-558. See Hedaya, 231, 234). A wagf, extinguishes the right of the waqif or dedicator and transfers the ownership to God."

23. In ***Vidyavaruthi v. Balusami,*** reported in AIR 1922 Privy Council 123, the Privy Council observed as under:

"As pointed out by the Privy Council-"... the Mahomedan Law relating to trusts differs fundamentally from the English law. It owes its origin to a rule laid down by the Prophet of Islam; and means 'the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings. When once it is declared that a particular property is waqf, or any such expression is used as implies waqf, or the tenor of the document shows, as in the case of Jewun Doss v. Shah Kubeer-ood-deed," that a dedication to a pious or charitable purpose is meant, the right of the waqif is extinguished and the ownership is transferred to the Almighty. The donor may name any meritorious object as the recipient of the benefit."

There is no prohibition in Muslim law to create a charitable trust as in English law." Distinction between a waqf and an English Charitable trust is pointed out below:

To constitute a valid waqf, whether religious or charitable, except in the case of donations to neighbours or charitable public utilities, the beneficiaries should be Muslims.

24. "Wakf by immemorial user" has been dealt with under Section 188, in *Principles of Mahomedan Law*, which provides as under:

> ***"188. Waqf by immemorial user-*** *If land has been used from time immemorial for a religious purpose, e.g. for a mosque, or a burial ground or for the maintenance of a Mosque, then the land is waqf by user although there is no evidence of an express dedication.*

25. In ***Khati v. Mirza Hossain*, AIR 1962 Ori. 95,** it was held that "Land used from time immemorial for the purpose of a masjid and for its courtyard which form part and parcel of the land of masjid, or for celebration of Moharram festivals, can be held to constitute a Waqf by user."

26. In order to constitute a valid dedication of a public nature, certain conditions are required to be satisfied. Firstly, the founder must declare his intention to dedicate the property for the purpose of a Waqf. No particular form of declaration is necessary, and such declaration may be inferred from the conduct of the founder, whether express or implied. Secondly, the founder must completely divest himself of ownership of the property. Such divestment may be inferred from the fact that possession of the property has been delivered to the Mutawalli or Imam.

27. A conjoint reading of the aforesaid provisions and principles of law makes it clear that a Waqf is a permanent dedication by a person professing Islam of any property, whether movable or immovable, for a pious, religious or charitable purpose. Upon such dedication, the property is treated as being dedicated to Almighty God and ceases to remain the private property of the founder. The usufruct of

such property is to be applied for the intended religious, pious or charitable purposes. The concept of Waqf by user arises where a property has been used from time immemorial for a religious purpose, such as for a masjid or burial ground. Ordinarily, a Waqf requires an express dedication; however, where a property has been used from time immemorial for a religious purpose, it may constitute a Waqf by user even in the absence of evidence of an express dedication.

28. The appellants claim that the holy shrine situated on Survey No.935 is more than 400 years old. According to the appellants, the Dargah belongs to the Sunni-Hanafi-Barelvi creed and is known as “Maulana Mahboob Dargah, Masjid and Kabrastan”. The respondents, on the other hand, claim that the holy shrine is known as “Maulana Yaqub Saheb Dargah and Dawoodi Bohra Kabrastan”, while “Mahboob Dargah, Masjid and Kabrastan” is a separate entity. Upon consideration of the rival claims, both the authorities below, namely, the Waqf Board as well as the Waqf Tribunal, have recorded findings in favour of the respondents.

29. It is an admitted position that the holy shrine was registered by Nanibi on 22.01.1953. At the relevant time, the Bombay Public Trusts Act, 1950 had come into force and various religious and charitable institutions were being registered as public trusts. Nanibi submitted an application dated 22.05.1952 before the Deputy Charity Commissioner, Ahmedabad, seeking registration of the trust under Section 18

of the Bombay Public Trusts Act, 1950. Nanibi was the wife of Jamaluddin Kutubuddin. The documents relating to registration of the trust are placed in Paper-book Volume II at Page No.259. The prescribed form of application for registration of the public trust is placed on record at Page No.262. The said application was registered as Application No.1511 of 1952.

30. In the application for registration, Nanibi, widow of Jamaluddin Kutubuddin, furnished the particulars of the trust and described the public trust as “Maulana Mahboob Dargah, Masjid and Kabrastan”.

31. With regard to the mode of succession to the trusteeship and managership, she stated that the same was to be decided by the members of the family and, in respect of the masjid, by the congregation of Muslims or Mohammedans. The objects of the trust were stated to be Urs, Bandagi and Fatiha, etc. <u>In Column IV(a), relating to the particulars of the document creating the trust, it was stated as “not available”. In Column IV(b), relating to particulars other than documents concerning the origin or creation of the trust, the details were again stated as “not available”. In Column V, relating to particulars of any scheme concerning the trust, it was once again stated as “not available”.</u> In Column VI, relating to details of movable property, the entry was “Gilaf 1, price or value Rs.25”. <u>In the columns relating to income and expenditure and particulars of the title deeds pertaining to the</u>

trust property and the name of the trustee in possession thereof, the particulars were stated as "not available".

32. Nanibi submitted the said application in her capacity as, and claiming herself to be, the "Mujawar" of the trust along with the application form for registration of the public trust, she annexed a copy of Village Forms Nos.7, 7A and 12. In the column relating to the Kabjedar, the entry was recorded as "Malan Shah Pir Ni Jago - Government Wasteland at Mouje Anawada, Taluka Patan". The Survey Number mentioned therein was Survey No.935, admeasuring 1 acre and 21 gunthas. In the extract of Village Forms Nos.7, 7A and 12 annexed to the application for registration of the public trust, an endorsement "Maulana Mahboob no Rozo, Maulana Yaqub..." (see Page No.265, Paper-book Volume II).

33. A Haq Chokshi notice under Section 19 of the Bombay Public Trusts Act, 1950 was thereafter issued. The notice specifically recorded that the names and addresses of the trustees or managers had not been supplied, that no document relating to the creation of the trust had been produced, and that no specific document showing the mode of succession had been furnished.

34. During Inquiry No.1511 of 1952, Nanibi made a statement on oath that she was administering the holy shrine, that she had submitted the application form in that regard,

and Mutawalli was required to be appointed by the congregation of Muslims. Three assessors were appointed during the inquiry, namely, Mr. S.N. Farooqui, Shri A.A. Maulana and Mr. M.S. Kadri. During the inquiry proceedings, the Deputy Charity Commissioner, after appointing the three assessors, also raised several questions concerning the availability of supporting documents.

35. The record at Page Nos.271 to 274 (Paper-book Volume-II) reflects that most of the points for determination remained unanswered. The material questions which remain unanswered including whether there were any particulars of a document creating the trust; whether any other documents or particulars concerning the creation or origin of the trust were available; whether any scheme relating to the trust was available; and whether particulars of the title deeds pertaining to the trust property and the name of the trustee in possession thereof were available. Nevertheless, the inquiry ultimately culminated in the registration of the holy shrine as a religious trust (B-57, Mehsana), on the application submitted by Nanibi in her capacity as “Mujawar”.

36. Upon the death of Nanibi, her daughter Badibi claimed her right as a “Mujawar”, and her claim and status as a “Mujawar” came to be recorded on 01.03.1960. Up to this stage, Nanibi, who initiated the proceedings for registration of the trust, consistently claimed that she was a “Mujawar”. Consequently, after her death, her daughter Badibi also

claimed that she was a “Mujawar” and sought to have her name entered as a “Mujawar” in the records of the trust.

37. The expression “Mujawar” is not defined under the Waqf Act.

38. Wilson’s Legal Glossary (A Glossary of Judicial and Revenue Terms), by Professor H.H. Wilson, defines a “Mujawar” as a servant or sweeper of a Mohammedan temple or shrine. *Halsbury’s Laws of India*, Volume 29(2), published by Butterworth India, defines a “Mujawar” under the heading “Dargah” (290.373) as follows:

> *“Mujawar” is the person who is the servant of the Dargah. It is further stated that, since the concept of intercessor between God and man is opposed to Muslim law, a claim of hereditary succession to the office of Mujawar is not maintainable merely in the absence of long user [see Md. Oosmaan v. Essak Salemabomed, (1938) ILR Bom. 184]. The office of Mujawar as an integral part of a Dargah is not known to Mahomedan Law.*

39. In *Mohammedan Law*, by B.R. Verma, 13th Edition, Law Publishers (India) Pvt. Ltd., Section 205 defines the office of “Mujawar” as “Mujawar is a servant of a Mohammedan shrine or mosque. The claim of a Mujawar to act as an intermediary or as an intercessor between God and man is opposed to Islamic teaching. The office of Mujawar as an integral part of Dargah is not known to Mohammedan Law. Even if such office is known to the law, where there is no clear proof of long user, there can be no claim to it by hereditary succession. A Mujawar has ordinarily no claim to offerings

made at a Dargah. These offerings are to be dealt with by the trustees, in accordance with the scheme for the upkeep of the Dargah, or the provisions of the "Waqfinama."

40. In ***Abdul Aziz Valad Haji Subhan v. Mohammed Ibrahim Ghatkari***, **AIR 1939 Bombay 487**, the Division Bench of the Bombay High Court also held that a "Mujawar" is a servant at the tomb who performs service thereat and that the property of the tomb does not vest in him.

41. In ***Charity Commissioner, Maharashtra State v. Shaikh Kasam Shaikh Hussain, 1988(1) Bombay C.R. 400***, it was held that the offerings made at the tomb, even though received by the non-applicants in their capacity as "Mujawar", cannot be treated as their private property, but must be treated as the property of the public trust.

42. In *Wakf Law in India*, Seventh Edition, published by Law Publishers India Private Limited, Justice S.A. Chafri, at Page No.221, under the caption "Position of a Mujawar", has stated that a "Mujawar" is a servant of a Mohammedan shrine or mosque. The claim of a "Mujawar" to act as an intermediary or intercessor between God and man is opposed to Islamic teaching. It is further stated that there can be no claim to hereditary succession to the office of a "Mujawar" merely on such basis.

43. At this juncture, certain other documents on record also deserve consideration. Before the Mamlatdar, Patan, Badibi made a statement on 17.04.1962 that she was a Mujawar. She requested that her name be entered in the records of the trust as a “Mujawar” and further assured that she would not claim ownership over the land or the holy shrine. She stated that she would continue to perform “dhoop-Vati, and Phhol-Fatiya” and her name may continue to be recorded as “Mujawar” of the holy shrine so long she continue to perform such duties. There are several other documents on record which indicate that, up to the time of Badibi, the members of the family consistently claimed to be “Mujawar” of the trust. In the Change Report of the trust, at Page No.343 of Paper-book Volume II, the name of Badibi was also entered as a “Mujawar”.

44. In view of the aforesaid commentaries and judicial decisions on record, it is evident that a “Mujawar” is a servant or caretaker of a shrine. Beyond such status, a Mujawar cannot claim any proprietary right in the Waqf property. In any event, no person can claim any proprietary right in Waqf property, since upon valid dedication, the property ceases to belong to the individual and is dedicated to Almighty God, while only the usufruct thereof is to be utilised for the purposes of the Waqf.

45. Turning back to the case on hand, the appellants claim that the holy shrine, known as “Maulana Mehboob

Dargah and Kabrastan”, has existed for more than 400 years. A specific claim is made that Hazrat Maulana Mehboob died at Village Anawada, that he was buried on the land bearing Survey No.935, and that a Dargah was constructed over his grave in 1377 A.D. (798 A.H.). The registration of the trust took place pursuant to the application submitted by Nanibi in 1952. Though she described the holy shrine as “Hazrat Maulana Mehboob Dargah and Kabrastan”, she failed to produce any document, Wakfnama or other deed of dedication evidencing the creation of the Waqf, any scheme governing the Waqf, or any document evidencing dedication of the property as Waqf including documents evidencing the holly shrine as “Maulana Mahboob Dargah and Kabrastan”.

46. The entire factual scenario indicates that the registration of the holy shrine was founded upon the concept of Waqf by user. Upon the enactment of the Waqf Act, the holy shrine, which had earlier been registered as a public trust, came to be treated as a Waqf. Even at that stage, however, no document was placed on record to establish the creation of the trust, any scheme governing the trust, or any deed evidencing dedication of the property as Waqf.

47. Section 3(r) of the Waqf Act defines “Waqf” and also refers to the expression “Wakif”. According to the said provision, “Wakif” means any person making such dedication.

48. It is not even the case of the appellants that the deceased Nanibi was the Wakif or that she had dedicated the land as Waqf. Nanibi, widow of Jamaluddin Kutubuddin, at the time when the Bombay Public Trusts Act came into force, stated that she was serving as a “Mujawar” of the holy shrine. In other words, she was acting as caretaker of the holy shrine. In the form submitted by her for registration of the trust, she did not disclose the source or basis on which she had described the holy shrine as “Maulana Mehboob Dargah and Kabrastan”. Learned counsel appearing for the appellants remained conspicuously silent on this issue throughout their submissions. They failed to point out even a single document demonstrating that Nanibi was a “Wakif” and not merely a “Mujawar”, or any document which could be treated as the source or basis for describing the holy shrine as “Maulana Mehboob Dargah and Kabrastan”.

49. In the aforesaid circumstances, it would be relevant to examine the revenue records, particularly the “Padhani Patrak” maintained during the Gaekwad State period, as the Patan area was then governed by the Gaekwad State.

49.1 Before examining the revenue records, particularly the “Padani Patrak” maintained during the Gaekwad State period, it would be appropriate to consider the presumption of correctness attached to entries in the revenue records. It is a settled proposition of law that revenue entries neither create nor extinguish title and are primarily maintained for fiscal purposes. However, the position would be entirely different where both parties rely upon the revenue entries. Entries in the revenue records prepared and maintained in accordance with the provisions of law raise a presumption of correctness, unless contrary is established on record or revenue entry is rebutted by other convincing cogent and relevant documentary evidence.

50. In **Inder Singh v. Dhanna Singh and Anr.,** reported in **(1952) 2 SCC 574,** the Hon'ble Supreme Court, in paragraph 7, held as under:

> *"7. After hearing Dr Bakshi Tek Chand at some length we have reached the conclusion that there are no grounds for reversing the decision of the High Court on this issue. Entries made in the pedigree table prepared at the settlement of 1904 are a weighty piece of evidence and the High Court was justified in placing reliance on them to prove the plaintiffs' relationship with Daya Singh. Members of thefamily on whose information the settlement officer prepared the pedigree in the year 1904 must be presumed to have given a correct pedigree to him and would have better knowledge in the matter than those on whose information the pedigree was prepared in the year 1928, 24 years afterwards. The learned District Judge took the view that a presumption of correctness attaches to the entries made in the revenue papers prepared at a later date in preference to the entries made in earlier records, as the later entries are supposed to have corrected errors, if any, that might have existed in the earlier records. This proposition does not seem to be sound. In law, presumption of correctness attaches to the records prepared in accordance with the provisions of the Land Revenue Act at whatever period of time they might have been prepared unless the later record in express terms declares that the earlier entries were incorrect.*

51. In **Pratap Singh (Dead) through Legal Representatives & Ors. v. Shiv Ram (Dead) through Legal Representatives,** reported in **(2020) 11 SCC 242,** the Hon'ble Supreme Court summarised the scope of the presumption, as well as the presumption of correctness attached to the record of rights. In paragraphs 21, 23, 25 and 26, it held as under:

> *"**21,** This Court in Vishwa Vijai Bharti v. Fakhrul Hasan & Ors.4 held that the entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. This Court held as under:*
>
> *"14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is the revenue record states but the entry is open to the attack that it was Made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."*
>
> *In a judgment reported as Sodhi Transport Co. and Others v. State of U.P. and Others6, this Court was considering Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 which raises a presumption of sale of goods in a manner prescribed therein. This Court 5 AIR 1994 SC 227 6 (1986) 2 SCC 486 considered Section 4 of the Evidence Act and also the previous judgments and held as under:*
>
> *"14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the*

duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances."

25. The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously (Vishwa Vijai Bharti's case) or where such entry has not been made by following the prescribed procedure (Bhimappa Channappa Kapali (Dead) by LRS. v. Bhimappa Satyappa Kamagouda (Dead) by LRS. and Others 8). Even in Guru Amarjit Singh, where thirty years old lease deed was produced, this Court had not accepted the proof of the relationship between landowner and tenant in absence of receipt of payment of rent.

26. Therefore, we find that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level.

52. In the backdrop of the aforesaid proposition of law, let us examine the revenue records produced on record, which constitute the only piece of evidence available for ascertaining the character and identity of the holy shrine.

53. The Mamlatdar's Office prepared the certified copies on 29.06.2011, duly signed by the Mamlatdar, Patan. The said certified copies were placed on record before the Wakf Tribunal in the appeals arising after remand. They form part of File No.4 at Page Nos.79, 81, 83, 85, 87, 89, 91 and

93. The revenue record placed on record by the Mamlatdar, Patan, in respect of the land bearing Survey No.935 of village Anawada, discloses the following particulars in tabular form:

Year	**Name of owner**	**Holder of Land**	
Samvant 1950-51-52 Means year 1893-94-95	Government	Pa. Mulchand Kalapa	Holder himself
1916-17 to 1920-21	Government Waste Land	Kharaba Land	Mo. Yakub Saheb Dargah Dawoodi Bohra Kabrastan Pir ni Jago
1921-22 to 1925-26	Government Waste Land	Kharaba Land	Mo. Yakub Saheb Dargah Dawoodi Bohra Kabrastan Pir ni Jago
1924-25 to 1928-29	Government Waste Land	Kharaba Land	Mo. Yakub Saheb Dargah Dawoodi Bohra Kabrastan Pir ni Jago
1929-30 to 1933-34	Government Waste Land	Kharaba Land	Mo. Yakub Saheb Dargah Dawoodi Bohra Kabrastan Pir ni Jago
1934-35 to 1938-39	Government Waste Land	Kharaba Land	Malansha Pir ni Jago
1939-40 to 1943-44	Government Waste Land	Kharaba Land	Malansha Pir ni Jago
1944-45 to 1948-49	Government Waste Land	Kharaba Land	Malansha Pir ni Jago

54. The aforesaid revenue record consistently reflects Survey No.935 as Government wasteland and also as Kharaba land. It further records, in the initial years, the entry "Maulana Yaqub Saheb Dargah, Dawoodi Bohra Kabrastan Pir Ni Jago", which was subsequently changed to "Malansha

Pir Ni Jago" from 1934-35 onwards. The Wakf Tribunal, in impugned judgment and order, under the heading "Revenue Record", also examined the relevant revenue entries. By Revenue Entry No.245, the name of Nanibi, widow of Jamaluddin Kutbuddin, was mutated in respect of "Malansha Pir Ni Jago". Subsequently, the said entry was deleted by Revenue Entry No.400, and the land bearing Survey No.935 was recorded as "Pir Ni Jago". The revenue record also records the death of Nanibi on 11.02.1960. Revenue Entry No.549, which was mutated after the registration of the trust on 22.01.1953, records Nanibi as the administrator/Mujawar of Pir Maulana Mehboob Dargah. It is significant that, for the first time after the registration of the trust on 22.01.1953, the name of Pir Maulana Mehboob appeared in relation to the holy shrine.

55. In the subsequent revenue entries, the names of tenants were recorded as cultivators of the land; however, such tenancy status was subsequently discontinued. On 03.02.1988, Revenue Entry No.2069 recorded the name of "Maulana Mehboob Yakub Dargah Masjid and Kabrastan, Patan B/97 Mehsana Trust", with Farooqi Badibi, daughter of Jamaluddin Qutbuddin, shown as trustees. A note was also made regarding the entry of the names of Badibi's heirs in the agricultural account. However, the Collector, Patan, by Revenue Entry No.3982 dated 21.06.2011, deleted the said note.

56. Upon perusal of the aforesaid entries, it is noticeable that, prior to Revenue Entry Nos.245 and 549, the holy shrine was recorded in the name of “Maulana Yaqub Laqub Mehboob Pir Mubarak Roza and Mosque” and in favour of the Dawoodi Bohra community in the land register maintained by the Gaekwad State. The name of the holy shrine was changed only after the registration of the trust. The extracts of Village Forms Nos.7 and 12 for the years 1967-68 to 1971-72 and 1977 onwards record the name of “Malansha Pir Dargah” along with the name of Nanibi. Even up to 1986, the name of “Malansha Pir Dargah”, Nanibi, widow of Jamaluddin Kutbuddin, and the heirs of the Pir are shown in the revenue record.Thereafter, in the extracts of Village Forms Nos.7 and 12, the name of “Hazrat Maulana Mehboob Dargah” came to be entered in place of “Malansha Pir Dargah”, which had earlier been recorded in the name of “Mohammad Yaqub Maulana Yaqub Saheb” and as “Dargah of Maulana Yaqub Saheb and Dawoodi Bohra Kabrastan”.

57. The revenue record subsequent to the registration of the trust discloses the following particulars:

1954-55 to 1965-66	Government Kharaba Land	Malansha Pir ni Jago Administred by Jamaluddin – Nanibi Wd/o. Jamaluddin Kutbuddin. (Entry No.245)
1966-67 to 1976-77	Government Kharaba Land	Malansha Pir ni Jago Administred by Nanibi Wd/o. Jamaluddin Kutbuddin. (Entry No.245, 1236)
1977-78 to	Government	Malansha Pir ni Jago Administred

1985-86	Kharaba Land	by Nanibi Wd/o. Jamaluddin Kutbuddin. (Entry No.1236 & 2069)
1985-86 to 1995-96	Government Kharaba Land	Malansha Pir ni Jago Administred by Nanibi Wd/o. Jamaluddin Kutbuddin. Hazrat Maulana Mehbub argah,Masjid and Kabrastan trustee Badibi Faruqui D/o.Jamaluddin Kutbuddin. (Entry No.1236 & 2069)
1995-96 to 2001-02	Government Kharaba Land	Hazrat Maulana Mehbub Dargah,Masjid and Kabrastan trustee Badibi Faruqui D/o.Jamaluddin. (Entry No.245,1236 & 2069)

58. The aforesaid revenue record was produced by the Mamlatdar, Patan, before the Waqf Tribunal and forms part of File No.1 at Page Nos.43, 45, 47, 49 and 51. Interestingly, the revenue entries do not reflect the name of the holy shrine as “Maulana Mehboob Dargah Masjid and Kabrastan” prior to the registration of the Trust. Up to the years 1929-30 and 1933-34, the revenue record reflects the name of the holy shrine as “Mohammad Yaqub Shah Dargah Dawoodi Bohra Kabrastan Pir Ni Jago”, which was thereafter changed to “Malansha Pir Ni Jago”.

59. It is unclear from the record as to how the name “Mohammad Yakub Saheb Dargah Dawoodi Bohra Kabrastan, Pir Ni Jago” came to be changed to “Malansha Pir Ni Jago”. Neither party has satisfactorily explained this factual aspect. Even after the registration of the trust, the name “Malan Shah Pir Ni Jago” continued to be recorded in respect of the holy

shrine, with an additional entry stating that it was "administered by firstly Jamaluddin and then Nanibi, widow of Jamaluddin". The name "Malan Shah Pir Ni Jago" continued to appear in the revenue record up to 1985-86. From 1985-86 onwards, the name "Hazrat Maulana Mahbub Dargah" appears along with "Malan Shah Pir Ni Jago". Thereafter, from 1995-96 onwards, the name "Malan Shah Pir Ni Jago" recorded in respect of the holy shrine was removed, and only the name "Hazrat Maulana Mahbub Dargah, Masjid and Kabrastan" remained.

60. Upon perusal of the aforesaid documentary evidence, which are the only piece of evidence available on record demonstrating the nature of the holy shrine and the names by which it was described before and after the registration of the trust, it emerges that the relevant documents are in the form of revenue entries produced by the Mamlatdar, Patan, before the Wakf Tribunal. Significantly, the revenue record shows that, during the Gaekwad State era, the holy shrine was recorded as "Mohammad Yakub Saheb Dargah Dawoodi Vohra Kabrastan Pir Ni Jago", which was subsequently changed to "Malan Shah Pir Ni Jago" without any reason being discernible from the record. Even after registration of the trust, the name of the holy shrine continued to be recorded as "Malan Shah Pir Ni Jago". However, subsequently, the name came to be changed to "Hazrat Maulana Mahbub Dargah, Masjid and Kabrastan Trust".

61. Recapitulating the facts, the registration of the trust took place at the instance of Nanibi, who was admittedly a Mujawar of the holy shrine, pursuant to Inquiry No.1511 of 1952. It is evident from the application for registration of the public trust that Nanibi did not produce any documentary evidence disclosing the origin of the Waqf, the nature of the public holy shrine, or the creation of the Waqf. No particulars of any document creating the trust were also furnished along with the application for registration of the public trust.

62. The extract of Village Form No.7A annexed to the application for registration of the trust reflects the name “Maulana Yakub”. Thus, the revenue record produced by the Mamlatdar before the Wakf Tribunal in the Wakf Appeal indicates that, during the Gaekwad State, the name of Maulana Yakub was recorded in relation to the holy shrine. Subsequently, the name “Malanshah Pir Ni Jago” came to be recorded and, after the passage of several years following registration of the trust, the name of the holy shrine was changed to “Maulana Mahboob Ni Dargah”. Ergo without any judicial or revenue or any other recognized from any adjudication, conveniently name of holy shrine was changed.

63. Apt to note that the question which remains unanswered by the learned counsel Mr.M.T.M. Hakim, appearing for the appellants, is as to how and on what basis the name of the holy shrine came to be applied. The factual scenario emerging from the revenue records, which carry a presumption of correctness, assumes significance, particularly

when it is noticed that the trust was registered by Nanibi in her capacity as a "Mujawar" (Caretaker), without producing any waqf deed or any document evidencing the creation of the waqf, naming the waqf, prescribing the mode of appointment of a successor trustee, or otherwise evidencing the origin or creation of the waqf. No other authentic or reliable documentary material has been placed on record to establish the basis for naming the waqf as "Maulana Mehub Dargah Masjid and Kabrastan."

64. Learned counsel Mr.Hakim submitted that, in the proceedings of the entire Waqf Appeal No.38 of 2021, the Waqf Tribunal had categorically observed and held that the revenue records had been interpolated. He argued that the entire record of Waqf Appeal No.38 of 2021 was deliberately not placed before the Waqf Tribunal while deciding Waqf Appeal No.15 of 2025. It is submitted that the revenue record, which is stated to be in a torn condition, shows that the copy obtained on 03.01.2004 from the office of the Mamlatdar, Patan, contains an entry different from the entry appearing in the revenue record subsequently obtained from the Mamlatdar's office. According to the appellants, in the first set of entries obtained in 2004, the name of the holy shrine was recorded as "Maulana Saheb Pir Ni Jago", whereas in the subsequent set of revenue records obtained in 2012, it was changed to "Maulana Yakub Saheb Ni Dargah Dawoodi Bohra Kabrastan". It is, therefore, submitted that the case clearly involves interpolation of the revenue record and that the Collector, Mamlatdar, or officers of the Mamlatdar and

Collector had failed to take appropriate action against the respondents for such alleged interpolation.

65. Learned counsel submitted that, in Waqf Appeal No.38 of 2011, the then Waqf Tribunal had directed an inquiry to be conducted by the District Collector, Patan. However, according to him, no such inquiry was conducted, which, according to the appellants, demonstrates an attempt on the part of the respondents to forcibly convert the Sunni-Hanafi-Barelvi holy shrine. Learned counsel also relied upon the "Padani Patrak" i.e. Village Form No.3, maintained during the Gaekwad State, and alleged that the same had been interpolated. Copies thereof were placed by learned counsel Mr. Hakim along with the written submissions.

66. Even assuming the said document to be genuine and reliable, it does not reflect the name "Maulana Mahbub Dargah Masjid and Kabrastan" at any point of time. The copy of Village Form No.3, "Padani Patrak", obtained on 03.01.2004 as claimed by appellants, does not reflect the name "Maulana Mehboob Dargah Masjid and Kabrastan" or "Pir Ni Jago" in respect of the holy shrine situated on Survey No.935, which is stated to be Government wasteland. The other revenue entries referred to hereinabove record the name of "Maulana Yaqub Saheb Dargah Dawoodi Bohra Kabrastan Pir Ni Jago" in respect of the holy shrine and the adjoining land bearing Survey No.35. They also record the name "Maulana Saheb Pir Ni Dargah Jago Kabrastan". Thus, significantly, the name "Maulana Mehboob Dargah" is

conspicuously absent from the copies of the revenue records produced even by the appellants. It, thus appears, that issue of interpolation and argument to that extent is wholly misconceived. At the cost of repetition, what perceives that appellants have failed to point out any documentary evidence to which reflects that holly shrine is "Maulana Mahboob Dargah Masjid & Kabrstan".

67. Another important aspect is the ancient inscription affixed to the holy shrine. Its Gujarati translation, forming part of the record of the Waqf Board, Gandhinagar, in File No.2 at Page No.43, also reflects the name of "Maulana Yaqub". The inscription further records that "Maulana Yaqub" was treated as "Mehboob" and "Mashuk" out of sheer respect by the community. A photocopy of the said inscription is placed at Page Nos.158 and 159 of the judgment of the Waqf Tribunal. Upon close scrutiny of the said ancient inscription, the existence of which remains unrebutted, it clearly emerges that the holy shrine was associated with "Maulana Yaqub" and not with "Maulana Mehboob".

68. Though, learned counsel Mr. M.T.M. Hakim, appearing for the appellants, advanced extensive submissions on several other issues, he could not offer any explanation on this aspect and did not make any submission whatsoever regarding the existence of the inscription or the fact that the inscription reflects the name of "Maulana Yaqub".

69. The next contention regarding manipulation of the revenue record also cannot be accepted. The learned Judicial Magistrate, Patan, who conducted the inquiry into the allegation of manipulation of the revenue record and the consequential offence under the Indian Penal Code, dismissed the criminal complaint/inquiry on 15.03.2022. The Sessions Court, Patan, upon re-examination of the issue in Criminal Revision No.24 of 2022, dismissed the revision application on 25.05.2025. Though the appellants vigorously contested the allegation of interpolation, they did not carry the matter further by challenging the order passed by the Sessions Court. Consequently, the allegation of interpolation cannot be accepted merely on the basis of the submissions advanced by the appellants.

70. It is pertinent to note that both parties to the dispute, before Co-ordinate Bench of this Court in Revision Application Nos.179 of 2022 and 185 of 2022, consented to setting aside the orders passed by the Waqf Board as well as the Waqf Tribunal in the first round of litigation and to remand the matters to the Waqf Board for fresh consideration. Thus, the orders passed by the Co-ordinate Bench of this Court in CRA Nos.179 of 2022 and 185 of 2022, on the consent of both parties, rendered the orders passed by the Waqf Board and the Wakf Tribunal in the first round of litigation non-existent, and set the purpose of determining the dispute afresh. Therefore, learned counsel Mr. Hakim cannot take shelter place reliance upon the observations made by the Waqf Tribunal in Waqf Appeal No.38 of 2011, during first

round of litigation.

71. The next question that arises for consideration is the distinction between "Mujawar" and "Mutawalli". At the outset, it would be apposite to refer to the definition of "Mutawalli" contained in Section 3(i) of the Act, which reads as under:

> *"3(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a waqf has been created, or by a competent authority, to be the mutawalli of a waqf and includes any person who is a mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, khandim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being, managing or administering any waqf or waqf property:*
>
> *Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation:Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:*
>
> *Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;*

72. It is clear from the definition that a "Mutawalli" means a person appointed, either verbally or under any deed or instrument by which a Waqf has been created, or by a competent authority, to be the Mutawalli of a Waqf. The expression also includes a person who is a Mutawalli of a Wakf, or who is a Naib-Mutawalli, Khadim, Mujawar, Sajjadanashin, Ameen, or any other person appointed by the Mutawalli to perform the duties of a Mutawalli, and, save as

otherwise provided under the Act, any person, committee or corporation for the time being managing or administering the Wakf or Wakf property. The proviso further provides that no member of a committee or corporation shall be deemed to be a Mutawalli unless such person is an office-bearer of such committee or corporation. Thus, the definition of "Mutawalli" contemplates appointment either verbally, under a deed or instrument by which the Wakf has been created, or by a competent authority.

73. In the present case, recapitulating the facts relating to the registration of the trust, the application for registration filed by Nanibi reflects that she did not tender any document evidencing the creation of the trust, such as a trust deed or Wakf-nama, nor did she furnish any particulars regarding the origin or creation of the trust or any scheme relating thereto. She as "Mujawar" merely set out the mode of succession to the trusteeship, stating that the trustees would be persons from the family as decided by the family, who would manage the trust, whereas, in respect of the Masjid, the affairs would be managed in accordance with the decisions of the congregation of Muslims.

74. Two factual aspects need to be kept in mind at this juncture. Firstly, Nanibi was neither the settlor of the trust nor the Wakif. She was merely a "Mujawar". According to her own case, her husband, Jamaluddin, had earlier been acting as a "Mujawar". The question, therefore, arises as to whether

a “Mujawar” could prescribe a mode of succession to the trusteeship or management of the trust. As observed hereinabove, a “Mujawar” is essentially a caretaker appointed to perform duties such as Dhoop-Diva and Phool-Patiya. It has also been observed from the principles of Muslim law that the office of Mujawarship is ordinarily not hereditary.

74.1 Another aspect which needs to be recorded is that the land bearing Survey No.935 is shown as Government wasteland in all the revenue records produced before the Waqf Board and the Waqf Tribunal. It is not even the case of learned counsel Mr.Hakim that the land bearing Survey No.935, upon which the holy shrine exists, is private land. The revenue record consistently shows it to be Government wasteland situated on the bank of the Saraswati River, upon which the holy shrine has existed from time immemorial.

75. Letter dated 01.03.1960, addressed by Badibi to the Deputy Charity Commissioner, Ahmedabad, and forming part of the record at Page No.257 of Volume-II of the Paper Book, states that her mother, Nanibi, was a “Mujawar” and that she died on 11.02.1960. Badibi claimed to be the heir of Nanibi and requested the Charity Commissioner to effect a change in the name by allowing the Change Report and to substitute her name for that of Nanibi as “Mujawar”. Noticeably Again, on this aspect, learned counsel Mr. M.T.M. Hakim has remained noteworthy silent. The Change Report at Page No.276, as well as the order passed thereon, also

records Badibi as a "Mujawar". At this juncture, the Court does not deem it necessary to decide whether a female can be a "Mujawar", as that issue does not arise for consideration in the present proceedings. When the name of Badibi continued to be recorded as "Mujawar", in the proceedings before the High Court of Gujarat in the year 2011 in Special Civil Application No.12350 of 2011, the list of dates and events described Petitioner No.1, Badibi, as the caretaker or "Mujawar". The order passed in Special Civil Application No.12350 of 2011 also records that Petitioner No.1 claimed to be the sole trustee of the Trust named "Hazrat Maulana Mehboob Nidan Dargah Masjid and Kabrastan", whereas Petitioner No.2 claimed to be the caretaker/Mujawar of the Dargah.

76. In a nutshell, the record reflects that, after the death of Nanibi, her daughter Badibi assumed the role of "Mujawar", which had previously been performed by Nanibi. Thereafter, the process of transitioning from "Mujawar" to "Mutawalli" appears to have commenced. The members of the Faruqui family, by self-proclamation, claimed themselves to be Mutawallis/trustees and started acting in that capacity.

77. Section 63 of the Wakf Act, provides for the appointment of a "Mutawalli", where a vacancy occurs in the office of the Mutawalli of a Wakf and there is no person to be appointed under the terms of the deed of Waqf, or where the right of any person to act as "Mutawalli" is disputed, the Waqf

Board is empowered to appoint any person to act as "Mutawalli" for such period and on such conditions as it may deem fit.

78. I may recapitulate that, in the present case, the events appear to have unfolded in a manner that was convenient to the persons concerned. The registration of the trust was undertaken by Nanibi, who was "Mujawar". There was no deed evidencing the origin or creation of the trust or Waqf, no document prescribing any mode of succession, and no Waqf deed or written instrument containing instructions regarding succession. In the application for registration of the trust, the Mujawar merely recorded that, in respect of the trusteeship, the mode of succession would be as decided by the family. In respect of the Masjid, it was stated that a person would be appointed by the Muslims, whereas, in respect of the remaining affairs, the appointment would be made by the family. The question, therefore, remains unanswered as to whether a Mujawar could, in the first place, prescribe a mode of succession. Admittedly, a caretaker cannot claim a right to prescribe the mode of succession, particularly in the absence of any deed or written instrument creating the Wakf and prescribing such succession.

79. Be that as it may, when the question of appointment of trustees or a Mutawalli arises, the stated mode of succession provided that, in respect of the Masjid, a person would be appointed by the Muslims or the

congregation of Muslims, whereas, for the remaining affairs, the appointment would be determined by the family. In this context, if Change Report No.207 of 2014, commencing from Page No.351 of Volume-II of the Paper Book, is considered, it emerges that the Faruqui family passed a resolution on 13.04.2014 claiming that Badibi had resigned as a trustee, although there is no material to demonstrate that Badibi had ever been appointed as a trustee by any competent or authorised authority.

80. Further, the said resolution proceeded to appoint five members of the Faruqui family as trustees of "Maulana Mehboob Nidan Dargah Masjid and Kabrastan". It is unfortunate that the Waqf Board, without even following the mode of succession recorded in the trust registration, namely, that a person for the Masjid was to be appointed by the Muslims, allowed the Change Report on the basis of a resolution passed within the Faruqui family and, on the ground that the Change Report had not been contested, permitted the names of the Faruqui family members to be entered as trustees. Thus, it appears that, Waqf Board in derogation of mode of succession stated in Trust/Waqf and without following settled provision of Waqf Act regarding appointment of "Mutawalli" upon self proclaimed procedure conviniently adopted by Faruqi family endorsed change report.

81. It is also necessary to recall that, when the aforesaid Change Report was placed before the Waqf Board in 2014, two members of the Dawoodi Bohra community had already filed Change Report No.3620 of 2011, which was pending for adjudication. The Waqf Board proceeded to consider the Change Report of the Faruqui family without taking into account the pendency of the Change Report filed by the members of the Dawoodi Bohra community. Thus, the Change Report No.207 of 2014 and the order passed thereon cannot be treated as a valid or lawful appointment of the Faruqui family members as "Mutawalli" or trustees. At the cost of repetition, it may be observed that, in the absence of any Waqf deed or written instrument prescribing the manner of appointment of a "Mutawalli", the Wakf Board was required to follow the statutory mechanism prescribed under Section 63 of the Wakf Act, for appointment of a "Mutawalli". In the absence of compliance with the said statutory provision, any procedure adopted by the Waqf Board contrary thereto could not, in law, result in the valid appointment of any person as "Mutawalli" or trustee. The claim of the Faruqui family to have been appointed as "Mutawalli", trustees or managers, therefore, cannot be accepted as having any legal foundation.

82. What is required to be examined is the manner in which the successive claims of the Faruqui family came to be advanced and accepted. The entire sequence begins with the registration of the trust in the year 1952-53. Nanibi, who used to perform acts such as offering "Phool-Fatiya" and "Dhoop-

Diva” at the holy shrine, claimed herself to be a “Mujawar”. As a Mujawar, she proceeded to have the holy shrine registered as a trust without producing any Wakf-nama or written deed evidencing the origin or creation of the trust or Waqf. The trust was registered in respect of the holy shrine situated on Government land and in the name of “Maulana Mehboob Dargah Masjid and Kabrastan”, despite the absence of any documentary material establishing the source or basis for such description. Nanibi continued to remain a “Mujawar”. After her death, her daughter Badibi also asserted her claim as a Mujawar. She described herself as a Mujawar before the Charity Commissioner and thereafter made similar assertions before the Mamlatdar. Badibi, in her statement before the Mamlatdar, Patan, dated 17.04.1962, at Page No.282 of Volume-II of the Paper Book, stated that, after the death of her mother, she had taken over the work of “Mujawar”. She further stated that her brother Dosamiya was mentally incapacitated and, therefore, requested the Mamlatdar to enter her name as Mujawar. She expressly stated that she would not claim ownership over the land. She maintained that she would continue as “Mujawar” and perform the duties which she had been performing, including offering Dhoop-Diva and other customary services at the holy shrine. Badibi, therefore, continued to act as Mujawar, while at times also asserting a claim to trusteeship, without any authentic or competent order appointing her as a trustee and even contrast to her previous statement. Thereafter, the sons of Badibi also came into the picture, notwithstanding the subsisting dispute regarding the identity and character of the holy shrine. In the meantime, two members of the Dawoodi Bohra community had filed Change Report No.3620 of 2011, which was pending for adjudication before the Waqf Board. Despite the pendency of the said Change Report, the Faruqui family passed an internal resolution among its members and, contrary to the mode of succession recorded in the trust registration, submitted Change Report No.207 of 2014. The Change Report proceeded on the basis that there was no context, which ultimately led the Waqf Board to enter the names of the Farooqui family members as “Mutawalli”.

83. The entire sequence, therefore, reflects a course of events which ultimately operated to the benefit of the Faruqui family. This is particularly significant when considered in the context of the principles of Muslim law, which do not ordinarily favour hereditary succession to the office of Mujawar or Mutawalli, and the settled position that a Mutawalli does not hold the Waqf property as its owner but merely administers and manages the Waqf and its properties for the purposes for which the Waqf was created. The conduct attributed to the Farooqui family, therefore, goes beyond the permissible role of a Mutawalli or manager and appears to have proceeded on the footing of treating, or attempting to treat, the holy shrine as a personal or family property.

84**.** It is trite law that fraud vitiates all acts, whether ecclesiastical or temporal. In ***S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs.,*** the Hon’ble

Supreme Court, in the opening paragraph of the judgment, held as under:

> "*Fraud-avoids all judicial acts, ecclesiastical or temporal*" *observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*

85**.** Following the dictum laid down by the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (supra)*****,** the Supreme Court, in ***A.V. Papayya Sastry v. Government of Andhra Pradesh*****, reported in (2007)(0)AIJEL-SC 38787** in paragraphs 21, 22, 23 and 27 to 34, held as under:

> *"21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;*
>
> *"Fraud avoids all judicial acts, ecclesiastical or temporal*".
>
> *22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.*
>
> *23.In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:*
>
> *"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.*"

27. In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation". (emphasis supplied)

29. The Court proceeded to state: "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party".

30. The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

31. In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888, this Court stated;

"The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".
(emphasis supplied)

32. In United India Insurance Co. Ltd. v. Rajendra Singh & Ors., (2000) 3 SCC 581 : JT 2000 (3) SC 151, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.

33. Allowing the appeal and setting aside the orders, this Court stated;

"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that

stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice".

(emphasis supplied)

34. Mr. Venugopal, no doubt, contended that when the order passed by the earlier Division Bench was not interfered with by this Court and SLPs were dismissed, it was not open to the High Court thereafter to entertain recall-applications and grant the relief of recalling of earlier orders. According to *him, such an exercise of power was unlawful and abuse of process of law.*

86. Fraud becomes an engine of injustice in the hands of a dishonest litigant. It is a settled principle of law that fraud vitiates all acts. Aptly the Courts in India, in exercise of their inherent powers, are competent to recall any order obtained by practising fraud upon the Court.

87. The present case is one where fraud has been seen visibly perpetrated. What initially commenced as a journey or an arrangement in the capacity of a Mujawar by the husband of Nanibi continued, to the exclusion of others, until the Faruqi family ultimately became the “Mutawalli”, thereby bypassing the statutory provisions and the prescribed mode of succession. The fraud is further evident from the registration of the holy shrine under the name “Maulana Mehbub Dargah Masjid and Kabrastan”, without there being any source, evidence, or documentary material to establish that the holy shrine was, in fact, known as or established under the said name. Such a course of action was no less than convenient expedient adoption to advance a particular claim and to benefit family. Such conduct amounts to fraud perpetrated upon the holy shrine and, consequently, vitiates all acts undertaken in favour of the appellants.

88. Now, let us refer to the statutory provisions contained in Section 50 of the Wakf Act, which prescribe the statutory duties of a "Mutawalli". Section 50 of the Wakf Act, defines the duties of a Mutawalli as under:

> ***"50. Duties of mutawalli.****— It shall be the duty of every mutawalli—*
>
> *(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;*
>
> *(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;*
>
> *(c) to allow inspection of waqf properties, accounts or records or deeds and documents relating thereto;*
>
> *(d) to discharge all public dues; and*
>
> *(e) to do any other act which he is lawfully required to do by or under this Act.*

90. Thus, in view of the above, the "Mutawalli" is required to carry out the work under discretion of Waqf Board. He cannot gain ownership property over holly shirne. The Faruqi family, contradictorily acted in a manner and tried to control over the holy shrine as family property. At this juncture, it is apposite to let me recall that the Waqf is admittedly almighty God's property but here Faruqui Family attempted to convert the same as personal property.

91. Section 64 of the Waqf Act recognises the power of the Waqf Board to remove a Mutawalli in the circumstances and on the grounds specified therein. Therefore, the conduct attributed to the Faruqui family, particularly their attempt to take over the management and control of the holy shrine, cannot be sustained in law and is wholly unfounded.

92. The next issue that arises for consideration is whether there has been any violation of the principles of natural justice. Learned counsel for the appellants, Mr. M.T.M. Hakim, vehemently argued on this issue that, in the second round of litigation, the Waqf Board did not afford a specific and effective opportunity of hearing to the appellants before passing the resolution. In the written submissions, learned counsel has referred to various dates of proceedings and submitted that, except on the initial date when the matter was taken up afresh before the Waqf Board, the proceedings were adjourned on account of the absence of the requisite quorum. Thereafter, the Waqf Board was dissolved and, after its reconstitution, the appellants raised a preliminary objection by filing an application. It is submitted that, without adjudicating upon the said preliminary objection, particularly the objection regarding the maintainability of the Change Report proceedings, the Wakf Board proceeded to pass the resolution dated 24.04.2025. According to learned counsel, failure on the part of the Waqf Board to adjudicate upon the preliminary objection and to afford the appellants a fair and effective opportunity of hearing before deciding the Change

Report amounts to a violation of the principles of natural justice. It is, therefore, contended that the resolution passed by the Waqf Board and subsequently confirmed by the Waqf Tribunal is rendered *non est* in law.

93. Before this Court addresses the issue of violation of the principles of natural justice, as well as the issue of whether there was any lack of quorum of the Board at the outset, it would be appropriate to refer to Section 32(2) of the Waqf Act, which deals with the powers and functions of the Board. Section 32(2)(n) of the Waqf Act specifically enumerates one of the powers of the Board, which reads as under:

> *"32(2)(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".*

94. Section 32(2)(n) empowers the Waqf Board to investigate and determine the nature and extent of Waqf property and, whenever necessary, to cause a survey of such Waqf property.

95. Section 40 of the Waqf Act provides for determination as to whether a particular property is Waqf property or not. The provision reads as under:

> ***"40. Decision if a property is waqf property.—***

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

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

(3)Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is waqf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is waqf property, call upon the trust or society, as the case may be, either to register such property under this Act as waqf property or show cause why such property should not be so registered:Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4)The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

96. A plain reading of Section 40 shows that the Board may itself collect information regarding any property which it has reason to believe to be Waqf property. Where any question arises as to whether a particular property is Waqf property or not, or whether it is Sunni Waqf property or Shia Waqf property, the Board may decide such question.

97. In view of Section 40(2), the decision of the Board shall, unless revoked or modified by a Tribunal, shall be final.

98. Section 40(3) provides that where the Waqf Board has reason to believe that any property of a trust or society registered under the Indian Trusts Act, the Societies Registration Act, or any other law is Waqf property, the Board is empowered to hold an inquiry, notwithstanding anything contained in such law. If, after such inquiry, the Board is satisfied that such property is Waqf property, it may call upon the trust or society, as the case may be, either to register the property as Waqf property or to show cause why the property should not be so registered. The proviso to Section 40(3) specifically provides for issuance of notice of the proposed action under the said subsection to the affected party. Section 40(4) further provides that, after considering the cause shown pursuant to the notice issued under subsection (3), the Board may pass such order as it thinks fit.

99. The Hon’ble Supreme Court in ***State of Andhra Pradesh (now State of Telangana) v. Andhra Pradesh State Wakf Board & Ors.***, reported in ***(2022) 20 SCC 383***, examined the question as to whether the power to investigate and determine the nature of a property is an administrative function or a *quasi-judicial* function. The Hon’ble Supreme Court considered the fact that an inquiry is required to be conducted before any property can be declared to be Waqf property. In paragraphs 164, 165 and 166, the Hon’ble Supreme Court observed as under:

> *“164. Therefore, the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but*

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

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

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

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

100. Thus, the Board is a *quasi-judicial* authority. While inquiring into the nature of a property as Waqf property, the Board acts as a *quasi-judicial* authority and not merely as an administrative authority or in the discharge of an administrative function. The statute further provides for an inquiry and requires that notice of the proposed action under

the relevant Sub-section be given to the authority by which the trust or society has been registered. At the same time, the proceedings contemplated under Section 40 of the Act cannot be equated with a full-fledged trial. The term “inquiry” is not defined in the Waqf Act. However, the ordinary meaning of the term “inquiry” is relevant. It is derived from the verb “inquire”, meaning to seek information by questioning, investigating or examining. Thus, the expression “inquiry” is of wide import. In its ordinary sense, it connotes an act of seeking information, investigation or examination for the purpose of ascertaining facts. An inquiry is, therefore, distinct from a trial. A trial is a judicial proceeding in which the parties to a dispute are permitted to present their respective cases and the dispute is adjudicated upon on the basis of an adversarial process. An inquiry, on the other hand, is primarily directed towards ascertaining facts and collecting information. Therefore, an inquiry and a trial are clearly distinguishable in their scope, nature and purpose.

101. An argument was canvassed by learned counsel on behalf of the appellants that they were not afforded an oral hearing and that the denial of such an opportunity of oral hearing amounts to a breach of the principles of natural justice. Secondly, it is contended that the application dated 12.02.2025 seeking adjudication of the preliminary issues relating to the jurisdiction and maintainability of the proceedings had not been decided.

102. To meet the aforesaid submissions of the appellants, it is necessary to examine the scope of Sections 32 and 40(3) read with Section 40 of the Wakf Act, which provide for the procedure of inquiry and do not contemplate a full-fledged trial or a detailed hearing. Nevertheless, it appears that the appellants filed written submissions in the Waqf proceedings on 08.10.2025. In paragraph 7 of the said written submissions, under the heading “Merits of the Case”, the appellants also advanced submissions on the merits of the case. The said written submissions were filed before the Waqf Tribunal in the Waqf proceedings. So far as the proceedings before the Waqf Board are concerned, on a conjoint reading of Sections 32, 40 and 41 of the Waqf Act, the statute does not contemplate an adjudicatory process akin to a trial. It contemplates an inquiry. Consequently, the question of framing or adjudicating preliminary issues does not arise in the manner contended by the appellants. The record further indicates that, after the constitution of the Waqf Board, the proceedings were adjourned on several occasions, at times on account of want of quorum and, on other occasions, at the request of the learned advocates appearing for the parties. The proceedings thereafter continued from time to time. Ultimately, on 24.04.2025, the Waqf Board passed a resolution in its meeting. The minutes of the meeting record that the requisite quorum was present and that eight members of the Waqf Board attended the meeting. One of the members raised an objection; however, the matter was considered and decided by the majority, and Waqf Board passed resolution.

103. It is important to note that the proceedings before the Waqf Board was constituted in the second round of litigation. In the first round of litigation, the matter had travelled up to this Court, and the findings recorded by the Waqf Board and the Waqf Tribunal were quashed and seta aside ultimately matter was remanded for consideration afresh. At no point during the first round of litigation, which culminated before this Court, did the appellants raise any contention regarding the jurisdiction or maintainability of the proceedings. It was only in the second round of litigation, after having participated in the proceedings, that, on 12.02.2025, the learned advocate appearing for the appellants filed an application raising preliminary objections. Apt to note that the application raising preliminary objection was neither signed by the parties nor supported by an affidavit. The circumstances in which the application came to be filed clearly indicate that it was intended to delay the proceedings before the Waqf Board and to avert mandate of this Court to complete second round of litigation in time bound manner.

Secondly, there was no justification for the appellants to file such an application in the second round of litigation when no such application had been filed during the first round of litigation, which had ultimately culminated before this Court. Therefore, the mere separate non-adjudication of such an application, which itself was not maintainable, cannot be treated as causing any prejudice to the appellants or as furnishing a ground to challenge the proceedings. So far as the issue of a fair opportunity of hearing is concerned, as noticed hereinabove, the appellants had filed written submissions before the Waqf Tribunal, which also contained submissions on the merits of the case.

104. The Hon'ble Supreme Court, in ***State Bank of India v. Amit Iron Private Limited and Others*, 2026 LiveLaw(SC)337,** has considered the issue of the principles of natural justice and the circumstances in which a breach thereof can be alleged. In paragraphs 76 to 78, the Hon'ble Supreme Court observed as under:

> *"76. The ultimate objective of the principles of natural justice is to ensure fairness in action and prevent miscarriage of justice. It has always been held to be a flexible concept. As to what rule of natural justice should apply was to depend, to a great extent, on the facts and circumstances of the case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. In A.K. Kraipak and others v. Union of India and others9, this Court held as follows:-*
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> > *"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it (1969) 2 SCC 262 was the opinion of the courts that*

unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case." (Emphasis supplied)

77. In Natwar Singh v. Directorate of Enforcement and Another10, quoting with approval the judgment of the House of Lords in Lloyd v. McMahon11 and reiterating the (2010) 13 SCC 255 (1987) 1 All ER 1118 (HL) fundamental principle that canons of natural justice have to be adapted to the circumstances, this Court held as under:-

"26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above

those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.

27. In Lloyd v. McMahon, Lord Bridge observed:

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

28. As Lord Reid said in Wiseman v. Borneman:

"... For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose."

29. It is thus clear that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry." (Emphasis supplied)

78. The flexibility in the concept of natural justice is inevitable as it encompasses different layers and as to which one would be applicable would, as held in A.K. Kraipak (supra), depend on the nature of the enquiry and the framework of the law under which it is held. For example, an opportunity to be served with a show cause notice and eliciting a reply with an obligation to pass a reasoned order is one facet of natural justice. Another facet is the grant of an interview to the noticee whereby he is personally heard by virtue of an oral hearing. A yet higher facet is where in the said process of a personal hearing he is given the facility *of cross-examination of witnesses. To top it all, could be such cases where the opportunity to be represented by a lawyer or a legally trained mind is guaranteed.*

105. Under the heading "Principles of Natural Justice Objectives and Conflicts", the Hon'ble Supreme Court considered the relevant principles in paragraphs 76 to 78. Thereafter, under the heading "Right to Personal Hearing *vis-a-vis* Discretion of the Authority", the Hon'ble Supreme Court considered the issue in paragraphs 79 and 80, which read as under:-

> *"79. In the absence of any rule being prescribed in the statute or rule or in regulations or in any policy, what would meet the requirements effectively would depend on the circumstances and the nature of the enquiry. One cannot start with the assumption that as of right, a noticee is entitled to personal hearing. In Madhya Pradesh Industries Ltd. v. Union of India And Others12, K. Subba Rao J., as the learned Chief Justice then was, felicitously explained the situation thus:-*
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> > *"10. As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed Rule 55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against (1966) 1 SCR 466 any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural*

justice…. .” (Emphasis supplied)

80. Elucidating on the difference between a right to a personal hearing in the noticee and the discretion of the authority to grant one in a given case and further explaining how it was not an incident of natural justice that personal hearing must be given (except in proceedings in courts of law) a Constitution Bench of this Court in Union of India v. Jyoti Prakash Mitter13, speaking through Chief Justice J.C. Shah observed as under:-

> *“26. Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an (1971) 1 SCC 396 incident of the Rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid. The President is performing a judicial function when he determines a dispute as to the age of a Judge, but he is not constituted by the Constitution or a court. Whether in a given case the President should give a personal hearing is for him to decide. The question is left to the discretion of the President to decide whether an oral hearing should be given to the Judge concerned. The record amply supports the view that the President did not deem it necessary to give an oral hearing. There were no complicated questions to be decided by the President……” (Emphasis supplied)*

106. Coming back to the case on hand, Sections 32, 40 and 41 of the Waqf Act, do not contemplate, in an inquiry of the nature undertaken by the Waqf Board, a mandatory oral or personal hearing in the manner of a full-fledged adjudicatory trial. The appellants, having participated in the

proceedings and having pursued the litigation through the second round, cannot now contend that they were denied a sufficient or fair opportunity of hearing in the inquiry proceedings.

107. There is also a contention that the Chief Executive Officer (CEO) has assigned reason to Resolution passed by Waqf Board without hearing parties. Apt to note that, the CEO, being an *ex officio* Secretary under Section 23(3) of the Waqf Act, is required to attend the proceedings of the meetings of the Waqf Board. Rule 47 of the Gujarat State Waqf Board Rules, 1923, more particularly, Rule 47(vi), provides *"carry into effect the the resolution of the Board"*.

108. Rule 47 of the Gujarat State Waqf Board Rules, 1923, is consistent with the Scheme of Section 23 of the Waqf Act. Rule 47, more particularly, Rule 47(vi), specifically directs the Chief Executive Officer (CEO) to carry into effect the resolutions of the Board.

109. Section 54 of the Gujarat State Waqf Rules/Regulations, 2000, provides for the manner in which the functions are to be discharged in the absence of the Secretary. The said provision reads as under:

> ***"54. Authentication of order of the Board:-***
>
> *(1) The Secretary shall authenticate the orders and decisions of the Board.*

(2) The common seal of the Board shall remain in the custody of the Chief Executive Officer.

(3) All correspondence emanating from the Board shall be in the name of the Chief Executive Officer and all correspondence with the Board shall be addressed tot he Chief Executive Officer".

110. Thus, the Chief Executive Officer has the powers and functions of the Secretary and is required to authenticate the orders and resolutions of the Board.

111. In view of Section 23(3) of the Waqf Act, the Chief Executive Officer is an ex officio Secretary of the Board. Section 25 of the Waqf Act, provides for the duties and powers of the Chief Executive Officer. Section 26 of the Waqf Act deals with the powers of the Chief Executive Officer in respect of the orders or resolutions of the Board.

112. Considering the aforesaid provisions and the Scheme of the Act, it is evident that the resolution passed by the Board on 24.04.2025 was validly passed in a duly constituted and quarated meeting. The CEO, being the ex officio Secretary of the Board, who was present in Board meeting following his statutory duties, was required to authenticate and give effect to the resolution of the Board. Accordingly, by the order dated 30.04.2025 Resolution was duly authenticated as competent authority. There is, therefore, no anomaly or irregularity in the resolution passed by the Board or in the consequential order.

113. At thus juncture let refer paragraph 25 to 30 of the impugned judgment passed by Waqf Tribunal. There observations clinch entire issue, which are reproduced as under:

> *"25. Looking at the revenue records, the trustees have transferred the properties with three other Survey Nos. 915, 916 and 936 to their own names, even though they belong to the Government.*
>
> *(25.1) Revenue Entry No. 244, Pir Maulana Sanstha, Anawada, munjawar Jamaluddin Kutbuddin, only for worship-service to Survey Nos. 911, 915 and 936, who died on 27-06-1948. Revenue Entry No. 979, dtd.11-06-1962, reflects that Survey No. 911,915,936 were stood on the name of Pir Maulana Saheb and Jamaluddin Kutbuddin was munjawar who died on 27-06-1948, his daughter Badibi applied and requested to enter her name as munjawar and entry was made as applied. But on close scrutiny we find that after entry, a notice issued under Section-135(D) of the Bombay Land Revenue Code, 1879, on 08-08-1962 for certification of the Revenue Entry No. 979. Then Revenue Authority made an endorsement that it cannot be certified merely on the basis of the application on 24-04-1963 because it is not done from taluka place. Thereafter, Revenue Authority had dismissed Revenue Entry No.979 on 18-06-1963 by assigning reason that entry be made after the name entered from taluka place. So, we can infer that the Revenue Entry No. 244 had become ineffective as it was not certified in revenue proceeding.*
>
> *(25.2) However, Revenue Entry No.1246, dtd. 26-08-1967, mutated name of Faruqui Badibi D/o. Jamaluddin Kutbuddin as an heir of Nanibi Wd/o. Jamaluddin Kutbuddin who died on 11-02-1960, for the Survey No.911,915,935 and 936. The Revenue Entry No. 1246 was made in Survey No. 911, 915, 935, and 936, Which was wrong and the Deputy Collector Shri, Patan had ordered to reject the R.T.S. Case No. 265/2018 dated 03-05-2019. No appeal had been filed against it till date.*
>
> *(25.3) It also important that Entry No.244 to enter the name of munjawar (worship-service) Jamaluddin Kutbuddin to Survey Nos. 911, 915 and 936 was baseless. There is no evidence on record to show how Jamaluddin Kutbuddin could be a munjawar in these lands which has no masjid, mazar or dargah therein and who appointed him as munjawar. The*

care taker is referred as munjawar. So, munjawar is a type of caretaker. A person appointed by auqaf as either caretaker or munjawar, does acts of lighting the lamp at dargah, flowering it, gilaf and looks after property of dargah. He can never be an owner of the property. There is no proof produced who appointed Jamaluddin Kutbuddin as munjawar for the land Survey No. 911,915, 935 and 936.

(25.4) Moreover, the trust registered in the year 1953, shows only land Survey No.935. But as per the evidence produced by the respondents munjawar was appointed by Bohra community before the registration of trust. Therefore, it has been rightly observed by the Wagf Board that with a view to usurpingas the land Survey No.911,915, 935 and 936, tried to mutated as owner of the lands though they were not owner of these lands

(25.5) Moreover, Entry No. 1150, dtd.03-09-1967 (After registration of trust on 22-01-1953) also show the name of Amichand Jetha as tenant & Jalaluddin Kutbuddin as munjawar of Pir Maulana Saheb Sansthan was in Survey No. 936. The entry also shows the date of 09-10-1961 according to Section-32-G of The Bombay Tenancy and Agricultural Lands Act, 1948. But when Revenue Authority had dismissed Revenue Entry No.979 on 18-06-1963 and there is no proof of Jalaluddin being a munjawar then Entry No.1150, dtd.03-09-1967 is valueless and seems to be made with ulterior motive. The name of Balkrishna Ramchand was also entered on 15-11-1969 by Revenue Entry No. 1283. It is also on record that Revenue Entry Nos.683, 686 & 695 entered on the name of Amtha Mala for the revenue Survey No.911, 915 & 936 respectively on 25-03-1957 which was certified on 09-07-1957 as protected tenant.

(25.6) When lands Revenue Survey No.911, 915 & 936 are shown as protected tenant in the year 1957. The application dtd.05-07-2011 is produced by the appellants, at Annexure-E, page-55 of the appeal-memo, filed by the Mohammed Hasan Punavala and Murtaza Sirazbhai Bohra- Samivala, Dawoody Bohra. It shows in para-3.3 that since Solanki Yug the religious property was occupied and owned by one KANBI couple of village Anavada which was popularly known as Anhilvad & at the relevant point of time in approx. Ed.1067, one Shri Hazarat Abdulla visited the area and performed many miracles & number of people adopted Muslim religion following him. Thereafter religious property came to be donated by above referred KANBI couple. But we find no refence of KANBI couple and nothing is found in the revenue record in the present context. Mark.32/3 shows the reference of Survey No.936 as Devsthan land Pir Malana Sansthan and munjawar Jamaluddin Kutbuddin of Patan but also shows different person as farmer and they were

cultivating the land. Without the presence of substantial revenue record and no dargah, mazar or masjid therein, how it become a property of the waqf when it was Devsthan land. There is also no proof that it was given as Devsthan Inam land but any how the entry made in old revenue record. In addition Devsthan Inam was abolished after the Gujarat Devasthan Inams Abolition Act, 1969. There is no proof produced or on revenue record after the year 1969 to show that such land was regranted. When there is proof of land given to sansthan, the compensation did not required to be paid in accordance with Gujarat Devasthan Inams Abolition Act, 1969. Imoprtantly, the Gujarat Government Revenue Department website arora.gov.in shows the Land Survey No.915 as administered by the Mamlatdar Patan & Land Survey No.911 & 936 as Government-waste land even today in 7/12 patrak.

(25.7) Therefore, we decide that the land in question before us Survey No.911,915, 935 & 936 are government land.

(26) Conversion of Sunni Hanafi- Barelvi creed into Shia creed ::

(26.1) Shia or Sunni ::: Ld. Advocate Mr. Hakim for the appellants have argued that Maulana Mehbub Dargah has been continuously running since 14 th century AD as a waqf following Sunni Hanafi- Barelvi creed. As a part of conspiracy, the respondent No.3 applied to the Waqf Board on 16-07-2011 to change the name of the Maulana Mehbub Dargah, Masjid and Kabrastan to Maulana Yakub Saheb Dargah and Dawoodi Bohra Samaj Kabrastan and alogwith this it ws requested that Sunni Hanafi Barelvi waqf be converted into a Shia waqf. To change the creed of waqf is unconstitutional and illegal as perr the application. However, the order was passed by the Waqf Board to convert Sunni Hanafi- Barelvi into a Shia waqf. The appellants have relied on the following judgemnt of Sardar Svedna Taher Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853.

(26.2) While it is submitted by the respondent No.1 that from entire events and record, it seems that the dispute between parties is of encroacher and & Shia community and it is not dispute between Sunni and Shia as claimed by he appellants and no other Sunni come forward before the Waqf Board in any form to support the appellants. Moreover, it is a clever move of grabbing with an intension not to hand over the properties to Shia and had actually registered the trust as Sunni. The appellants are trying to divert the issue inti Sunni versus Shia to protect their illegal action & possession of the property.

(26.3) The Ld Advocate Mr. Nizam Pasa (Proxy advocate of Jamshed Kavina Exh.27) argued that according to Section-40 & Section-41 of the Waqf Act, 1995, the Waqf Board has 2 absolute power to inquire about whether the wagf is a Sunni waqf or Shia waof and amend the register at any time. Ahmedabad Razakhan Barelvi's followers are Barelvi sect in which quawalli is ban but the saint appellants are following is Chistia in which quawalli is not ban and it shows that the appellants are wrong.

(26.4) Considering the rival contentions and submission, relving upon the facts and conclusions, without repeatation, in short, we are of the view that the property belongs to Maulana Yakub Yakub Saheb Dargah and Dawoodi Bohra Kabrastan Pir Ni Jago from 1916-17 to 1948-49 but it was registered as Maulana Mehbub Dargah, Masjid and Kabrastan. Where there is a question whether the waqf is a Sunni waqf or Shia waqf, then Waqf Board has power to inquire and amend the waqf register at any time as per the provision of Section-40 & Section-41 of the Waqf Act, 1995. The Waqf Board has not specifically passed the order to change the creed but the question is raised by the appellants because the change of name shows the conversion from Sunni waqf to Shia waqf. Obviously when the name of the waqf has been changed, it leads to change the name of creed. The judgment relied on by the appellants in case of ***Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853,*** *is under Section-2 & 3 of Bombay Prevention of Excommunication Act, 1949 regarding validity excommunication of member of any community in context of Section-3 of Bombay Prevention of Excommunication Act, 1949 where it was evident from the religious faith and tenets of the Dawoodi Bohra community that the exercise of the power of excommunication by its religious head on religious grounds formed part of the management of its affairs in matters of religion and impugned Act in making even such excommunication invalid infringed the right of the community under Art. 26(b) of the Constitutation. We are of the view that the judgment relied on is between Shia & Shia and for the excommunication by the religious head of Dawoodi Bohra community. So, it has no relevance with the question raised by the appellants regarding conversion of Sunni waqf to Shia waqf after the name changed and the judgment is not helpful to the appellants in the facts and circumstances as they are totally different.*

(26.5) The appellants have relied on the following judgemnt of ***A.P. State Wakf Board, Hyderabad Vs. All-India Shia Conference (Branch), A.P. And Others reported in (2000) Supreme Court Cases 528***

A.P. State Wakf Board, Hyderabad Vs. All-India Shia Conference (Branch), A.P. And Others (2000) Supreme Court Cases 528

Muslim Law Wakfs Generally Shia or Sunni wakf - Determination of "Ashurkhanas, Imambaras, Asthanas, Panjas and Alams" where Muharrum ceremonies are performed, held, are generally, but not invariably, Shia wakfs - In exceptional cases, such institutions can be even Sunni wakfs Therefore, the court cannot declare that every institution known by the said names is a Shia wakf-Whether a particular one of such institutions is a Shia wakf or Sunni wakf, held, has to be decided c on evidence in relation to that particular wakf - Hence, A.P. High Court's decision affirming the City Civil Court, Secunderabad's declaration that such institutions in Krishna and Guntur Districts were Shia institutions, set aside But, the suit having been filed 37 long years ago, and being in respect of the institutions located in the said districts, Supreme Court refraining from dismissing the suit or remanding the same to the trial court at Secunderabad and instead remanding the same to the High Court for redeciding the question after calling for evidence not from Secunderabad Civil Court but from the District Judges of Krishna and Guntur with liberty to them to allocate that work to one of their Additional District Judges or a Sub-Judge - Civil Procedure Code, 1908, Or. 41 Rr. 27(1)(b), 28 and 25 In the peculiar circumstances of the case, Supreme Court directing the High Court to call for evidence from courts other than that whose decision was impugned before High Court - Words and phrases "A requirement of the court" and "other substantial cause" - Wakf Act, 1954, Ss. 25, 26 and 56

The judgment relied on shows possibility of Sunni Waqfs in exceptional cases. But here it has been proved by substantial documentary evidences of government revenue record that it is a Shia Waqf, then it is not helpful to the appellants.

(26.6) Hence, the conversion of Waqf Board from Sunni Hanafi- Barelvi into a Shia waqf is automatic after changing of the name and is fully justified and we do not agree with the submissions on behalf of the appellants.

(27) Joining of Shri Mudar Diwanji and Sole Trustee His Holiness (53) Syedna Saheb & Mudar Diwanji as a party before the Waqf Board ::

(27.1) The Waqf Board has accepted the prayer of joining the parties. The order dated 17-06-2022 of the Hon'ble High Court in C.R.A. 179/2022 and C.R.A. 185/2022 has been quashed by the order dated 09-11-2021 of the Gujarat State Waqf Board. Therefore, the details regarding the addition of Shri Mudar Diwanji and Sole Trustee His Holiness (53) Syedna Saheb as parties to the present remand case are as follows.

*(27.2) Shri Mudar Diwanji, of Lunawada stated that the current waqf property has been claimed by Murtuza Sirajbhai Bohra and Mohammad Hasan Poonawalla. Out of whom Mohammad Hasan Poonawalla died. It has further been stated that the main beneficiary of the disputed religious property in this case is His Holiness (53) Syedna Saheb, so his name is not mentioned as a party in this case. Therefore, the direct beneficiary of these properties, is the sole trustee His Holiness (53) Syedna Saheb, as the religious leader, has been requested to be added as a party. The respondent No.2 relied on the judgment in case of **Pruthvirajsinh N. Jadeja(D) By Lrs. V. Jayeshkumar C. Shah reported in 2019(9) SCC 533** but it is for adding as a party in suit challenging the sale of immovable property by power of attorney. The sale challenged on the ground that no power to sale was given. So, it stands on different footing and not helpful to the respondent No.2.*

(27.3) Further, if the submission of Shri Muddar Diwanji to join His Holiness (53) Syedna Saheb and his office as parties is taken into consideration, then the basic dispute in the said matter is that the property of the Dawoodi Bohra community is there and the sole trustee of all Dawoodi Bohra organizations is His Holiness (53) Svedna Saheb, so it seems inevitable to join the sole trustee His Holiness (53) Svedna Saheb and his office in the said matter. Moreover, Svedna Saheb is the sole trustee in all the waqfs, therefore, when Mudar Diwanji is added as a party, considering all the records submitted by Mudar Diwanji, then according to the principles of natural justice as well as necessary parties to the litigation in whose absence no effective order can be passed under order-1, Rule-10 of the Code of Civil Procedure, 1908. If they are not added as a party, it will cause harm to their right. Therefore, the claim of adding him as a party in the submission of Shri Mudar Diwanji, the beneficiary of the Dawoodi Bohra community, is also worthy of consideration.

Therefore, the decision of the Waqf Board is fully justified and does not require interference.

(28) The another dispute is determined by the Waqf Board, whether the woman can be a munjawar or not.

(28.1) The Waqf Board has hold that in fact according to Sunni Muslim custom a woman can never be munjawar. However, Nanibi had disrespect the Sunni Muslim custom and registered a trust showing her as munjawar. The person who donated the property can appoint a mutawalli and then it is regulated by the law. Nither munjawar nor mutawalli has personal right of inheritance in the waqf property because it is permanently dedicated to Allah permanently, by a Muslim for pious, religious, or charitable purposes and become inalienable. And it does not create any personal right. However, without holding inquiry Dy. Charity Commissioner registered the trust and the name of Nanibi falsely entered as munjawar, is initially wrong.

(28.2) After considering the question, we are of the view that religious duties attached to the dargah can not be held by the woman unless there is a custom which requires proof of it. But in this appeal or before the Waqf Board, we find nothing which shows the proof of custom. Our view is strengthened by the judgment of Hon'ble Madras High Court and very short judgment is produced as under in which para-4 is quite relevant.

MADRAS HIGH COURT

Imam Bee And Ors. vs Molla Khasim Sahib And Ors.

On 6 September, 1916

Equivalent citations: 37IND. CAS.889, AIR 1917 MADRAS 213

JUDGMENT

1. The District Munsif held that women were entitled to share in the profits of the mam lands attached to the office of mujawar of the suit mosque, as the evidence adduced in the case did not prove that women were prohibited from getting the duties of the office performed by deputies. The District Judge considered that the duties to be performed by the muawar were of such a religious and spiritual character that the office could not be held by a woman, and, therefore, that women and persons deriving their title from them could not have any rights to the lands. Both Courts rightly placed the onus on those who sought to exclude women, of proving that they were disqualified [vide Tangirala Chiranjivi v. Rata Manikya Rao 25 Ind. Cas. 283: 27 M. L.J. 1791 and both *found that a custom whereby women were excluded in this institution had not been proved.*

2. On the facts, therefore, the finding is in the appellants' favour. On the question of law whether women should be excluded from the succession, a number of decisions have been cited on either side. Without enumerating them, it maybe briefly stated that there is a considerable volume of judicial decisions to the effect that the duties of saijadanasheen, or as it is sometimes called g dd enasheen, the superior of an endowment and religious preceptor, cannot be discharged by a woman or by a deputy, as the trust involves certain special spiritual duties. On the other hand, it has frequently been held that a woman can be a mutawalli, or trustee, who has charge of the secular affairs of an endowment and sometimes has religious duties as well, and that there is no legal prohibition against a woman holding a mutawatti-ship where there is nothing to the contrary in the rules made by the founder or in the usage governing the particular institution.

3. As stated in the note at the foot of page 343 of Macnaghten's Principles and Precedents, 'the office of trustee may be held by a woman, and the duties may be discharged by proxy, whereas the office of superior requires personal qualification: Vide App. Tit. End. 28, 31".

4. Now when we come to the office of mujawar we find two Madras decisions, Hussain Beebee v. Hussain Sherif 4 M. H. C. R. 23. and Mujavar Ibrambibi v. Mujavar Hussain Sheriff 3 M. 95: 5 Ind. Jur. 190: 1 Ind. Dec. (N.S.) 623. In both of these decisions it was held in respect of the same endowment that a woman was not competent to perform the duties of mujawar. In accordance with these decisions, it is stated by Mr. Ganapathi Aiyar in his book on Hindu and Muhammadar. Religious Endowments that the office of mujawar is a subordinate office which entails on the holders the performance of religious duties and cannot, therefore, be held by a female.

5. If these two cases can be said to lay down the proposition enunciated by Mr. Ganapathi Aiyar, it seems to us that they go too far, as being opposed to the dictum of the Privy Council in Shahoo Banoo v. Aga Mahomed Jaffer Bindaneem 34 C. 118. 17 M. L.J. 52: 4 A. L.J. 30: 9 Bom. L.R. 85: 5 C. L.J. 134: 11 C.W.N. 297: 2 M.L.T. 49: 4 L. B. R. 66: 34 1 A. 46 (P.C). which lays down that an office can be held by a woman unless there are duties of a religious nature which she cannot perform in person or by deputy: but we do not think that they do lay down any such broad proposition.

6. When the case of Mujavar Ibrambibi v. Mujavar Hussain Sheriff 3 M. 95: 5 Ind. Jur. 190: 1 Ind. Dec. (N.S.) 623. is closely examined, it is seen that that was a first appeal and the learned Judges found on the evidence that it bad not been proved that the plaintiff, who was a woman, had ever participated in. the profits or performed the duties either in person or by proxy and that there was no evidence that the office of mujawar in this particular institution had ever been held by a woman. Reliance was also placed by the Judges on the previous decision to the same effect in Hussain Beebee v. Hussain Sherif 4 M. H. C. R

23. The earlier decision proceeded upon a comparison of the office of mujawar with that of gaddinasheen and upon the admission of Mr. Mayne, who appeared for the appellants, that he was unable to find any authority in Muhammadan Law for saying that a woman was competent to hold any religious office in connection with a mosque.

7. But in the case before us we have evidence, which both the lower Courts have accepted, that there is a usage in this institution of getting the duties of mujawar done by proxy, and in one instance a woman has enjoyed a share in the profits and has had the duties performed by a man who lived in her house. Even the 1st plaintiff now deputes somebody to read for him, as he cannot himself read.

8. From the description of the duties of the office, which include lighting and cleaning the mosque, spreading mats and feeding travellers, they appear to be more on a level with the secular duties of mutawalli than with the religious duties of sajjadanasheen. It is true that the witnesses speak of certain members of their family also preaching and calling to prayers, but this they; may have done because they were imams or muazzins and not by reason of their holding the office of mujawar. In fact, plaintiff's witness No. 3 says that his father acted as imam on behalf of Ismail Sahib and. read the khutba and the faliha during his period of delegation.

9. Where the duties of the office are not very distinctly defined, the safest course to follow is to be guided by the custom of the institution. This being in the present case in favour of deputies being appointed, we see no obstacle to women sharing in the endowments of this office and getting their duties performed by proxy.

10. Accordingly, allowing the appeal, we set aside the decree of the District Judge and restore that of the District Munsif with costs of the appellants in this and the lower Appellate Court.

(28.3) The other reason is that the trust was registered by the Nanibi as widow of Jamalluddin Kutbuddin. The entry No.244 of Jamalluddin Kutbuddin is baseless. Because his name entered as per entry No.244. It is contention in the appeal-memo that the munjawari of Dargah has been going on for generations and the name of the plaintiff Maulana Mehbub Dargah, Masjid and Kabrastan Waqf has been continuously running in the revenue records since 1915 AD. But there is no other proof of Maulana Mehbub Dargah, Masjid and Kabrastan except facts as per prior discussion. When there is no such proof then no subsequent mutation regarding munjawar can be accepted. There is absolute documentary evidences of appointment of munjawar and payment of salary to the munjawars by the respondents. So, the view of Waqf Board is correct and does not require interference.

(29) Now, points for determination have been separately discussed here-in-after :::

Point No.1: Whether the resolution dtd.24-04-2025 passed in quorum of meeting?
Point No.2: Whether opportunity of hearing was given to the appellants?

(29.1) Both these points are inter connected and for the sake of convenience they both are being discussed togather. So, far the question of quorum is concerned, it is argued by the Ld. Advocate Mr. M.T. Hakim for the appellants that the Gujarat State Waqf Regulation, 2000, provides for quarum prodcedure. It further submission is that the Hon'ble High Court remand the case to the Waqf Board after setting aside the order of the Wafq Board dtd.09-11-2021 & Waqf Tribunal dtd.24-02-2024 (Waqf Appeal No.38 of 2021), the hearing was kept before the Chairman of the waqf Board and the appellants raised an objection of quorum non-judice. Thereafter, Waqf Board dissolved and new Waqf Board was constituted. Once again the appellants raised an objection of quorum non-judice and on 12-02-2025, an application filed to decide the objection as preliminary issue but on 25-02-2025 no hearing took place as Ld. Advocate for the original applicant applied for adjournment. However, keeping the hearing mid-way, direct resolution was passed on 24-04-2025. In reply, after the arguments of the respondents, Mr. M.T. Hakim for the appellants submitted that the hearing was only before the Chairman and it is clear breach of Regulation -5 of Gujarat State Waqf Regulations, 2000. The order of CEO is signed by him only as in-charge CEO on 30-04-2025. When resolution passed by the Waqf Board, then who passed the

order on 30-04-2025. The appeal heard by the Chairman, reolution passed by the committee and order passed by the CEO without hearing the application for

preliminary issue. Nothing is mentioned to keep the appeal for order. The appellants described sequence of events in their written submissions Exh.30 which is as under ::

24/02/2022	*The Hon'ble Waqf Tribunal allowed Waqf Appeal No. 38 of 2021 and quashed and set aside the order dated 09/11/2021 passed by the Respondent No. 1 Waqf Board. Directions were also issued for inquiry and complaint for interpolation in old Revenue Records.*
04/04/2022	*Civil Revision Application No. 179 of 2022 and Civil Revision Application No. 185 of 2022 is preferred and the Hon'ble High Court directed maintenance of status quo.*
17/06/2022	*By consent of all the parties, the Hon'ble High Court has been pleased to quash and set aside the order dated 24/02/2022 passed by the Hon'ble Waqf Tribunal in Waqf Appeal No. 38 of 2021 and the order dated 09/11/2021 passed by the Respondent No. 1 Waqf Board and remanded the matter to be decided by the Respondent No.1-Waqf Board afresh after hearing the parties.*
24/06/2022	*Application was made for adjournment by the Appellant on account of non-quorum of Waqf Board.*
12/07/2022	*Advocate Shri Rajesh Modi made application for bringing original record from Collector, Patan. Advocate for the Appellant requested to put on record the entire record of Waqf Appeal No. 38 of 2021 before the Hon'ble Waqf Tribunal. Moreover, record from Collector, Patan was sought by writing a letter, but malafidely and with ulterior motives, record of Waqf Appeal No. 38 of 2021 were removed from the records of Waqf Board and it was informed to the appellant that they can produce whatever they want to produce.*
22/07/2022	*The advocate for the Appellant produced on record the entire record of Waqf Appeal No. 38 of 2021 to which advocate Shri Viral Agarwal objected to.*

14/09/2022	*The advocate for the Appellant again objected to the hearing being conducted only before the Chairman and CEO of the Respondent No. 1- Waqf board.*
14/09/2022	*Waqf Board was dissolved.*
17/11/2023	*By Notifications dated 07/11/2023 and 18/11/2023 issued by the Legal Department, Gandhinagar, Waqf Board was constituted.*
29/05/2024	*No hearing was conducted.*
05/06/2024	*Adjournment application on account of Non-Quorum of Respondent No. 1 - Waqf Board.*
27/11/2024	*No hearing took place.*
04/12/2024	*The Advocate for the Appellant sought time. Most pertinently, only time when there was Quorum of Respondent No. 1 Waqf Board*
08/01/2025	*No hearing took place.*
12/02/2025	*Appellants preferred application for adjudication of preliminary issues including jurisdiction and maintainability of the application filed by the Respondents and registered as Change Report. The Respondents filed adjournment application to file reply to the said Application and the matter was adjourned to 25/02/2025.*
25/02/2025	*The matter was again adjourned on the Application of the Respondents herein to file reply.*
24/04/2025	*Rather than deciding preliminary issues, Resolution is passed by the Members of the Respondent No. 1- Waqf Board.*
30/04/2025	*Order is passed by the CEO of the Waqf Board.*

(29.2) It the argument of Ld. Advocate Mr. M.T. Hakim for the appellants that Hon'ble High Court remanded the back for the Respondent No.1 Waqf Board by order dtd. 17-06-2022 to conduct the proceeding of change Report afresh. The appellant has produced copy of the Record of the Proceedings by the Waqf Board at Annexure-T and on page No.332 of the appeal memo clearly shows the presence of majority members on 04-12-2024 and no other point of time the quorum members of the Wagf Board were present and it is gross

contravention of the provision of Wagf Regulations, as the quorum for the respondent No.1 Waqf Board to conduct any business is 5(Five) members.

(29.3) While Ld. Advocate for the Respondent No.1 (Waqf Board) Mr. Manishbhai Shah argued that quorum procedure is per Regulation-5 of Gujarat State Waqf Regulations, 2000 which states that no business shall be transacted at any meeting unless there is a corum of five (5) members including Chairman. If at a meeting of Board there is no quorum, the meeting shall be adjourned to such other time and date as may be fixed by the Secretary but no quorum shall be necessary for adjourning meeting. It is specifically mentioned in the impugned order that there were eight members present on day of hearing i.e. on 24-04-2025. In addition, Ld. Advocate Mr. Manishbhai Shah has argued that Annexure-T does not show the date of passing resolution. i.e. 24-04-2025.

(29.4) ***It is admitted by the appellants that the Waqf Board passed a resolution on 24-04-2025 and then CEO of the Respondent No.1 Waqf Board passed the order on 30-04-2025 which is under challenge in the present appeal before the Waqf Tribunal.*** *It is submission from the Ld. Advocate Mr. Manishbhai Shah for the respondent No.1 that always the resolution is passed by the Waqf Board after hearing the parties and then CEO passed the order and after authentication it being sent to the concerned parties. According to the impugned order page-39 specifically underlined in the order that* ***"At present, the total members of the Gujarat State Waqf Board is 8. All 8 members were present in the meeting of the Gujarat State Waqf Board dated.24-04-2025, hence there is a full quorum." Further. the resolution was unanimously passed and no objections were raised by any member of the Board presen****t. It seems from the order that the resolution, before passing order, has been passed after close scrutiny and discussion in the Waqf Board in full quorum and also by following Regulation-5 of Gujarat State Waqf Regulations, 2000. While Ld. Advocate Mr. Manishbhai Shah has argued that Annexure-T does show the date of passing resolution. i.e. 24-04-2025.*

(29.5) On close scrutiny for the argument of the appellants, Annexure-T is produced and submission is that the presence of majority members on 04-12-2024 and no other point of time the quorum members of the Waqf Board were present and it is gross contravention of the provision of Waqf Regulations, as the quorum for the respondent No.1 Waqf Board to conduct any business is 5(Five) members. But the impugned resolution was passed on 24-04-2025, the record and proceeding of Waqf

Board dtd.24-04-2025 has not been produced to show that there was no quorum of the Waqf Board. It is true that proceeding Annexure-T shows the date ***29-05-2024, 05-06-2024, 04-12-2024, 12-02-2025 and 25-02-2025*** *(at Mark-3/20 on page No.330,331,332,333 and 334 of the appeal memo) in which presence of members of the Waqf Board were in majority only on 04-12-2024. No proceeding dtd.24-04-2025 has been produced to show that there was no quorum at the time of passing resolution by the Waqf Board to substantiate the argument of the appellants. So, the arguments devoid of merit and can not helpful to the appellants. Therefore, resolution dtd.24-04-2025 passed in full quorum and in lawful quorum.* ***Hence, point No.1 is decided in affirmative.***

*(**30**) Moreover the dispute is raised that on 24-04-2025, rather than deciding preliminary issues, resolution is passed by the Members of the Respondent No. 1- Waqf Board and on 30-04-2025, order is passed by the CEO of the Waqf Board which is impugned order here in the appeal. It is submitted that the preliminary issues of jurisdiction and maintainability ought to have been decided first before passing the resolution by the Waqf Board. Aggrieved by that the appellants approached the Hon'ble High Court.* ***The Hon'ble High Court on 22-04-2025, passed oral ordered to decide preliminary objection application dtd.16-04-2025 preferred by the petitioners (appellants herein) in R/ SPECIAL CVIL APPLICATION No.4823 of 2025.*** *The Waqf Board without deciding preliminary objection, passed the resolution but question regarding jurisdiction and maintainability have been dealt with in order and it is being challenged in the appeal causes no prejudice to the appellants. According to Regulation-5 of Gujarat State Waqf Regulations, 2000, the Secretary prepares the agenda of business to be transacted in the Board's meeting and all matters coming before the Board shall be decided by a majority of votes of members present and voted. In these facts and law, the business before Board can not be termed as suit and preliminary issues of jurisdiction and maintainability should not be required to be determined, first, by fetching the business of the Board, in terms of the suit. So, we are of the view that there is no illegality occurred in the proceeding before the Waqf Board by passing a resolution on 24-04-2025 and followed by order of CEO dtd.30-04-2025. without hearing the application of the appellants regarding preliminary issues of jurisdiction and maintainability as raised in the present appeal.*

(30.1) The appellants relies upon the following judgment of Hon'ble Apex Court for adjucation of preliminary issue.

Saranpal Kaur Anand Vs. Praduman Singh Chandhok

<u>And Others</u>

(2022) Supreme Court Cases 401

A. Civil Procedure Code, 1908 Or. 7 R. 11(d) and Or. 14

R. 2-Limitation as a ground for rejecting a plaint - When may be adjudicated on, as a preliminary issue

-(I) Issues based on facts/law/mixed questions of fact and law (see Shortnote B);

- (II) Allegations of fraud (see Shortnote C);

(III) Scope, ambit and parameters for deciding an application under Or. 7 R. 11(d), for raising a preliminary issue under Or. 14 R. 2(2), and for passing the judgment on admission of fact in the pleading or under Or. 12 R. 6 (see Shortnote D);

(IV) Exercise of inherent jurisdiction under S. 151 CPC (see Shortnote E)

B. Civil Procedure Code, 1908 - Or. 7 R. 11(d) and Or. 14 R. 2 - Issues based on facts/law/mixed questions of fact and law vis-à-vis bar of limitation - Adjudication of, as preliminary issue Permissibility of Disagreeing at the Bench, matter referred to a larger Bench

C. Civil Procedure Code. 1908 - Or. 7 R. 11(d) and Or.14 R. 2- Allegations of fraud - Adjudication and Effect of - Material facts required to be pleaded for availing benefit of S. 17(1)(b) of the Limitation Act - Disagreeing at the Bench, matter referred to a larger Bench

D. Civil Procedure Code, 1908 - Or. 7 R. 11(d), Or. 14 R. 2 and Or. 12 R. 6 Scope, ambit and parameters for deciding an application under Or. 7 R. 11(d), for raising a preliminary issue under Or. 14 R. 2(2), and for passing the judgment on admission of fact in the pleading or otherwise under Or. 12 R. 6 Permissibility of referred to a larger Disagreeing at the Bench, matter Bench

E. Civil Procedure Code, 1908-S. 151-General principle for exercise of power under When a power is to be exercised by a civil court under an express provision, the inherent power under S. 151 cannot be taken recourse to Inherent powers of the court are in addition to the powers specifically conferred on the court by CPC, and cannot be exercised in a manner which will be

contrary or different from the procedure expressly provided in CPC

- Limitation as a ground for rejecting a plaint - When may be adjudicated on, as a preliminary issue - Powers under S. 151 CPC-Whether may be invoked in this regard Disagreeing at the Bench, matter referred to a larger Bench - Limitation Act, 1963, S. 17

F. Limitation Act, 1963 S. 17 General principles for invocation/taking benefit of - Summarised

G. Civil Procedure Code, 1908 - Or. 12 R. 6 General principles for applicability of - Summarised

H. Civil Procedure Code, 1908 - Or. 7 R. 6 & Or. 6 R. 4 and Or. 6 R. 2-Specific rules in Or. 7 R. 6 & Or. 6 R. 4 when may prevail over general rule Or. 6 R. 2 (per Sanjiv Khanna, J.)

The judgment relied upon is for rejection of plaint on the ground of limitation and when it can be adjudicated as a preliminary issue. It applies to the suit when there is a question of rejection of plaint. Here the application was filed for the initiation of the proceeding before the Waqf Board and i passed the order which is being challenged before this Tribunal in appeal. Of Course! suit are being instituted directly in the Waq Tribunal where the provision of Order-14, Rule-2 for deciding preliminary issue may be raised but not during the proceeding a the application. Because the Waqf Board can only exercise powe of Civil Procedure Code, 1908 under Section-70 & 71 of the Wac Act, 1995 on an application made to it, in matter c mismanagement of waqf affairs for enforcing the attendance c witnesses and production of documents. For other applicatio made to the Waqf Board, there is no provision in the Wac Act, 1995 to exercise the powers of the Civil Procedure Code, 1908

(30.2) The point regarding the jurisdiction of passing the order has been raised appellants and it is argued on behalf of them that the order is without jurisdiction and placed reliance on the ***oral order dtd. 08-03-2016 of the Hon'ble High in SPECIAL CIVIL APPLICATION No.2555 of 2026 in case of Dadubhai Pirbhai Belim & 3... V. The Waqf Board & 9... in which it ordered in para-5 that " In the present case, admittedly the order in respct of acceptance or otherwise of the Change report, was to be in powers under Section-32(2)(g) read with Section-42 of the Act as aforesaid. These power could not have been in any case delegated to the Chairman. The impugned order is manifestly***

> ***without jurisdiction as it is passed by the Chairman of the Board of the Board, who could not have usurped the powers, which was exercisable by the Board only." And quashed and set aside the impugned order passed by the Chairman of the Board.*** *But in the present appeal the order is not passed by the Chairman of the Board but resolution passed in meeting of Gujarat State Waqf Board meeting on 24-04-2025. So, the order placed reliance by the appellants are not helpful to them.*

114. It would be apposite to recapitulate that the proceedings before the Waqf Board are in the nature of an inquiry and not an adjudicating trial or a full-fledged adjudicatory/adversarial proceeding, in which, upon consideration of rival assertions, the adjudicating authority is required to settle issues and, if necessary, frame preliminary issues in terms of Order XIV Rule 2 of the Code of Civil Procedure.

115. The inquiry contemplated under the Waqf Act is essentially a fact-finding exercise. In the present case, the Waqf Board, upon conducting the inquiry, passed the impugned resolution in a duly constituted meeting. Though one of the members of the Waqf Board raised an objection to the passing of the impugned resolution, the majority of the members agreed to and passed the impugned resolution dated 24.04.2025. The resolution, therefore, cannot be said to be invalid merely because one member dissented from it.

116. I now turn to the contention concerning the applicability of the Places of Worship (Special Provisions) Act,

1991. It is vehemently argued that the holy shrine situated at Survey No. 935 belongs to the Sunni-Hanafi-Barelvi sect of Islam. However, apart from a bare assertion, there is no material on record to establish that the holy shrine belonged to the Sunni-Hanafi-Barelvi sect. The contention is unsupported by any documentary or other credible or reliable evidence. Both the Courts below, as well as this Court, have examined the documents relating to the registration of the holy shrine and the documents preceding its registration as a trust. None of those documents records that the holy shrine belonged to the Sunni-Hanafi-Barelvi sect. Even the Registration Form submitted by Nanibi for registering the holy shrine as a Trust does not disclose the origin or foundation of the Trust, nor does it refer to any document establishing that the shrine was founded as a Sunni-Hanafi-Barelvi place of worship or Waqf. Thus, the assertion that the holy shrine originally belonged to the Sunni-Hanafi-Barelvi sect and was subsequently converted to the Shia sect is wholly unsupported by the record.

117. In substance, the dispute concerns the identification and determination of the nature and character of the holy shrine. Section 3 of the Places of Worship (Special Provisions) Act, 1991, prohibits the conversion of a place of worship, which reads as under:-

> ***"3. Bar of conversion of places of worship:***
>
> *No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or*

of a different religious denomination or any section thereof"

118. The present case, however, stands on an entirely different footing. The proceedings originate from the registration of the holy shrine as a trust by Nanibi, who herself claimed to be "Mujawar" of the holy shrine. She registered the shrine as a trust, which was subsequently described as "Maulana Mehboob Masjid and Kabrastan". Neither the trust records nor any of the documents preceding the registration of the trust identify the holy shrine as belonging to any particular religious denomination, sect or section of the Muslim community. Therefore, the case is not one of conversion of an existing place of worship from one religious denomination or sect to another, but concerns the determination of the original nature and character of the property.

119. In the present case, the Waqf Board conducted an inquiry to ascertain the religious identity and character of the Waqf property. Such an inquiry is not barred by the provisions of the Places of Worship (Special Provisions) Act.

120. So far as the contention that the inquiry was conducted beyond the period of limitation and without jurisdiction is concerned, the same carries no weight. Such an issue was never raised by the appellants during the first round of litigation. It was only in the second round of litigation that the appellants changed their stance and raised the issue of

limitation and jurisdiction and perhaps with oblique motive to deviate the proceedings.

121. A plain reading of Sections 32, 40 and 41 of the Waqf Act confers upon the Waqf Board the power to investigate, inquire into and determine the nature and extent of Waqf property. The provisions also empower the Board to hold an inquiry for the purpose of amending the register, whenever necessary. The statutory power of the Board, read with Section 10 of the Limitation Act, clearly indicates that the Waqf Board is competent to amend the register after conducting due inquiry and investigation into the nature, character and identity of the Waqf property. Nonetheless, the contention raised on behalf of the appellants that the trust, having been registered in 1952 and having continued to be so recorded until the coming into force of the Waqf Act, could not thereafter be altered, is not tenable. The Waqf Board, as well as the Waqf Tribunal and this Court, have examined the record to ascertain the historical identity and character of the holy shrine.

122. The Waqf Board examined the available records, including the authenticated Government records, the documents relating to the nature and character of the institution *vis-à-vis* the registration documents under which the property was registered as a Trust, in order to ascertain the historical identity of the holy shrine.

122. In this regard, if the status claimed by the appellants is examined, its origin can be traced to Nanibi. Prior to Nanibi, her husband and the members of the family had expressly claimed themselves to be Mujawar, the expression “Mujawar” meaning a caretaker or custodian. Muslim law or Mohammedan law does not recognise Mujawarship as a heritable right. Nevertheless, disregarding this settled legal position, Badibi, the daughter of Nanibi, also claimed to be a “Mujawar”. Subsequently, the sons of Badibi also claimed to be “Mujawar” in the proceedings. They thereafter conveniently altered their stand and, by an internal self proclaimed resolution, sought to claim the status of “Mutawalli”. Such a course was not only contrary to the principles of Mohammedan Law but also inconsistent with the mode of succession recognised in the Trust register of the holy shrine. The register contemplated that the Manager or Mutawalli was to be appointed by the common consent of the congregation of Muslims of the local community.

123. The record, therefore, indicates that, on the one hand, there was a caretaker belonging to the Faruqui family, who sought to treat the holy shrine as a family trust, whereas, on the other hand, the Dawoodi Bohra community claims that the holy shrine belongs to the said community. The dispute, therefore, is essentially between the Dawoodi Bohra community and the Faruqui family. It is not, in substance, a dispute between the Shia and Sunni sects. At the cost of

repetition, it may be reiterated that the alleged Sunni-Shia dispute appears to have been introduced with a view to attracting the provisions of the Places of Worship (Special Provisions) Act, and particularly the relevant provisions relied upon by the appellants. However, the appellants have failed to produce any documentary evidence establishing that, as on 15th August 1947, the holy shrine possessed the character claimed by them. In other words, the appellants have failed to place on record any documentary evidence to establish that, as on 15th August 1947, the reckoning date, the shrine was a Sunni-Hanafi-Barelvi place of worship.

124. Lastly, it is contended that the proceedings before the Waqf Tribunal were heard by two members, but, during the pendency of the final hearing, a third member, Mr. D.M. Bhabhor, was appointed to the Waqf Tribunal and he also signed the judgment. It is submitted that the signing of the judgment by Mr. D.M. Bhabhor**,** without having heard the matter, amounts to a breach of the statutory provisions.

125. This Court is unable to accept the aforesaid submission. The Legal Department, Sachivalaya, Gandhinagar, by Notification dated 16th August, 2024, amended Rule 71 by inserting sub-rule (2), thereby removing any doubt as to the constitution of the Tribunal. The amended provision clarifies that the Tribunal shall not be treated as Non-coram merely because, at any given time, the office of a

member remains vacant or any member other than the Chairman remains absent, and the Chairman of the Tribunal shall be competent to act in such circumstances.

126. This Court, in ***Sunni Muslim Idgah Masjid Trust v. Hardik Sitaram Patel***, **2025 (0) Gujarat HC 72174**, particularly in paragraphs 52 and 53, held that a hearing conducted by two members of the Waqf Tribunal is valid and proper in view of Rule 71 of the Gujarat State Waqf Rules.

127. In the present case, the matter was heard by two members of the Waqf Tribunal, who also decided the same. The third member, who was appointed during the pendency of the proceedings and before the final outcome, signed the judgment. Such signing does not indicate any dissent on his part. In any event, in view of Rule 71 of the Gujarat State Waqf Rules, 2024, the signatures of the Chairman and the other member who heard and decided the matter are sufficient to constitute a valid judgment. Rather, the fact that the third Member of the Tribunal, who came to be appointed subsequent to the conclusion of the hearing, has signed the judgment itself makes it abundantly clear that he has concurred with and adopted the view expressed by the Chairman and the other Members of the Tribunal. The said contention, therefore, has no substance.

128. Upon consideration of the entire factual and legal aspects of the matter, the judgments relied upon by learned counsel for the appellants are of no assistance to the appellants, as the facts and circumstances of those cases are clearly distinguishable from the facts of the present case.

THE CONCLUSION:

129. Thus, the sum and substance of the aforesaid discussions is that, for all the reasons recorded hereinabove, the findings arrived at by the learned Waqf Board and the Waqf Tribunal upon appreciation of the evidence are just, proper and in accordance with law. This Court finds no reason to interfere with the impugned judgment and order. Accordingly, the present Appeal stands dismissed. The concurrent findings recorded by the Waqf Board and the Waqf Tribunal, is hereby confirmed. Interim relief, if any, stands vacated. The Record and Proceedings (R&P), if any, be sent back to the concerned Court.

130. Connected Civil Application, if any, does not survive and stands disposed of accordingly.

(J. C. DOSHI,J)

MANOJ