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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
S. RAVINDRA BHAT; J., DIPANKAR DATTA; J.
CRIMINAL APPEAL NO(S). 309 OF 2023; APRIL 28, 2023
P. V. NIDHISH & ORS. *versus* **KERALA STATE WAKF BOARD & ANR.**

Wakf Act, 1995; Section 52A - Criminal proceedings under Section 52A cannot be maintained against persons who were in possession of the Wakf property when the said provision was introduced in 2013 and continue to remain in possession after the expiry of lease, contesting civil proceedings for eviction - the expiry of leases, or other arrangements, by efflux of time or their valid terminations, in the past, does not mean that such lessees become "encroachers". *(Para 22)*

For Appellant(s) Mr. R. Basant, Sr. Adv. Mr. Raghenth Basant, Adv. Mr. Senthil Jagadeesan, AOR Ms. Roopali Lakhotia, Adv. Mr. Ajay Krishna, Adv.

For Respondent(s) Mr. Sayid Marzook Bafaki, AOR Mr. Haris Beeran, Adv. Mr. Mushtaq Salim, Adv. Mr. Azhar Asses, Adv. Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv.

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The present appeal[1] was heard finally, with the consent of counsel for parties. The appellants are aggrieved by the judgment of the Kerala High Court[2] rejecting their petition under Section 482, Criminal Procedure Code, 1973 (hereafter "Cr. PC"). They had, through those proceedings, sought a direction to quash a criminal complaint instituted against them.

I

2. The appellants urge that one P.M. Mammu Haji leased two shop rooms (numbered as municipal numbers VII/214 and VII/215- hereafter "the premises"), long ago (in 1916), before the coming into force of the Wakf Act. "Norman Printing Bureau" (hereafter "the Bureau") was a concern of Achuthan Nair; it was functioning in the premises. A partnership firm was later created, with one P.V. Sami as a partner. The firm continued all these years and continues now. The Bureau publishes 'Norman Almanac' containing astronomical data used in astrology.

3. The respondents allege that P.M. Mammu Haji created a *wakf* in 1951. After his death, a suit was filed by his legal heirs (O.S. No. 130/1965 before the Sub Court, Calicut) to remove the trustee. There was an existing dispute even between the legal heirs of Mammu Haji whether there was a Wakf or a trust. In that suit, the court found that Mammu Haji created a private Trust; it removed the existing trustee. In between, the rent for the premises was increased, and a Rent Enhancement Deed was executed between the parties, on 15.09.1973. The appellants noticed uncertainty on account of lack of clarity about ownership of the premises and filed an interpleader suit on 30.03.1998 before the Munsiff court, Kozhikode. That suit was transferred to the file of the District Judge (OS 147/2001) where the court decreed the suit and directed the appellants to pay rent to the third defendant.

[1] Crl. A. No. 309 / 2023.

[2] Dated 03.03.2016 in Crl. MC No. 5072/2015.

4. The CEO of the Board initiated several proceedings against the appellants for eviction. The first attempt, in 2004, resulted in an order[3] of the Wakf Board to the effect that the appellants were not in unauthorized occupation and could be evicted after issuing notice under provisions of the Transfer of Property Act. Another proceeding (OS 13/2006) was filed before the Wakf Tribunal against the appellant firm's manager, for its eviction. This was decreed; but in revision proceedings[4], the Kerala High Court ruled that the Wakf Tribunal lacked jurisdiction and the appellants could be evicted only through a civil proceeding before a competent civil court.

5. A civil suit (O.S. No. 22/2012) claimed relief against an order of injunction restraining reconstruction and structural alterations by the appellant; the injunction was issued by the CEO of the trust/wakf. The appellants preferred the suit and contended that the two, i.e., *wakf* and *trust* could not co-exist because a *wakf* creates a dedication in favour of God while a trust vests the property in the hands of the trustees. The appellants preferred an application alleging that the suit was not maintainable, as a preliminary issue. The tribunal found in favour of the respondent/plaintiff, upon which the appellant approached the Kerala High Court[5]. A Division Bench of the court held[6] the suit maintainable before the tribunal. However, on the question of the plaintiff's competence to seek injunction (before the tribunal) regarding specific tenanted properties, the court observed, *"on behalf of the Wakf, against the defendant is a matter which will have to be independently considered and decided"* as it was a "vexed" question of fact and law which could not be decided in a proceeding under Order 39, Rules 1 and 2 of the Code of Civil Procedure.

6. During the pendency of the suit, the Wakf Act, 1995, was amended, with effect from 01.11.2013. Two new provisions were added. One was the definition of "encroacher" [Section 3 (ee)]:

"'encroacher' means any person or institution, public or private, occupying wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board."

The "Board" was defined as follows: [Section 3 (c)]:

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

Some of the new provisions, *inter alia,* inserted by the amendment- including Section 52A and Section 54, read as follows:

"52A. (1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

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[3] dated 16.05.2005

[4] CRP No. 106/2008, decided on 14.10.2008.

[5] in CRP (Wakf) No. 375/2012.

[6] By order dated 05.08.2013, also reported as *Norman Printing Bureau v PS Mamman Haji Wakf Trust* 2013 (4) KLT 606.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

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54. Removal of encroachment from waqf property.--(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is [1] [waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on any such waqf property, he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the waqf.

(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under subsection (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property."

7. The amendment, to the Wakf Act, in 2013, came into effect by virtue of Section 1 (2) [*"It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint"*] on 01.11.2013. As mentioned earlier, as on that date, the civil proceedings initiated for eviction of the appellants were pending. While so, a criminal complaint[7] was filed before the Court of the Judicial Magistrate, First Class ("JMFC") Kozhikode, alleging that the appellants were encroachers and seeking their prosecution under Section 52A. The appellants alleged that they continued to pay the rent, in accordance with the decree of the District Judge, in their interpleader suit, i.e., CS 147/2001. The appellants preferred a petition under Section 482 of the Cr. PC before the Kerala High Court alleging that they could not be treated as "encroachers" and were lawful occupants, whose eviction was sought, in civil proceedings, and seeking quashing of those proceedings. By the impugned order, the High Court rejected the petition.

8. In the impugned order, the High Court, after extracting the definition of "encroacher" and noticing Section 52A, held:

"4. When the tenancy has been terminated by the Board in this particular case, the petitioners have become 'encroacher' within the meaning of Section 3(ee) of the Act. In such case, the offence under Section 52A(1) can be attracted, if its ingredients are proved. As per Section 52A (3) of the Act, no court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf. Therefore, this is not a matter wherein an investigation by the police is called for. Cognizance can be taken only on a complaint by the Board or any officer duly authorised by the State Government in that behalf. Here, a complaint has been filed by the Kerala State Wakf Board represented by its authorised officer. Presently, there is absolutely nothing to have a premature termination of the prosecution proceedings against the petitioners."

[7] ST No. 369/2015 dated 08.05.2013

II

9. Mr. R. Basant, learned senior counsel argued that it is a fundamental principle of criminal jurisprudence that penal provisions cannot be applied with retrospective effect. The newly inserted provision, i.e., Section 52A makes *"taking possession of waqf properties"* a punishable offence. However, in this case, possession was taken in 1916, i.e., concededly much before the enactment of the Wakf Act and the amendment. Accordingly, the newly inserted provision would not apply to the facts of this case.

10. It was argued that Parliament never intended that those who held properties under prior leases and arrangements, upon their expiry, were to be treated as "encroachers". Learned counsel contended that aside from the fact that the amendment cannot be construed as operating retrospectively, the respondents cannot validly contend that those who were in possession and occupation of the premises, as tenants for a century became encroachers, upon enactment of the 2013 Act. Counsel pointed out that the provision which enables the Wakf Board to deal with encroachers, is Section 54; it provides for eviction. No proceedings were taken out against the appellants, who were straightaway sought to be dealt with as encroachers and prosecuted. Learned counsel relied upon Article 20 (1) of the Constitution of India and submitted that the appellants' conduct cannot be treated as an offence, even if Section 52A were to be applicable. To uphold the respondent's move would directly violate the appellants' rights under Article 20 (1).

11. Mr. Harris Beeran, learned counsel for the respondent, relied upon the statement of objects and reasons of the amendment to the Wakf Act of 2013. He placed emphasis on the *rationale* behind inclusion of Section 52A, that is to declare illegal holding and occupation of lands as criminal offence. As far as the appellants' argument regarding the retrospective application of the provision is concerned, counsel relied on *Securities & Exchange Board of India v. Ajay Agarwal*[8] (hereafter "*Ajay Agarwal*") and *Mohan Lal v. State of Rajasthan*[9] to urge that since the appellants are still in possession of the property, the amendment applies to them.

12. It was urged by the respondents that the premises were leased to the appellants without obtaining prior sanction of the Board on 15.09.1973 for a period of 11 months by the then Managing Trustee Mr. K. V. Kunhammed Koya who was later removed by the Board as per the order in the proceedings Number 2/1976 dated 09.09.1978 due to misfeasance and malfeasance. The accused have been conducting a business concern, "Norman Printing Bureau", in the waqf building for the last more than 40 years without any right to continue in it. As per Section 56 of the Waqf Act, 1995, the Mutawalli/ Managing Trustee of waqf has no authority to lease out the building without obtaining prior sanction of the Board.

13. Learned counsel submitted that in view of Section 472 Cr. PC, the continued possession of the appellants constituted a continuing offence. Regardless of previous occupation, once the penal provision became part of law, under the 2013 amendment, the appellants' conduct stood exposed to the risk of criminal prosecution. In such circumstances, the reliance on Article 20 (1) is misplaced.

III

[8] (2010) 3 SCR 70.

[9] (2015) 6 SCC 222.

14. The Wakf Act, 1954 was a precursor to the enactment of the Wakf Act, 1995. This court explained the scheme of the 1995 Act in *Ramesh Gobindram (Dead) through L.Rs. v Sugra Humayun Mirza Wakf*[10] *as*

"Wakfs and matters relating thereto were for a long time governed by the Wakf Act, 1954. The need for a fresh legislation on the subject was, however, felt because of the deficiencies noticed in the working of the said earlier enactment especially those governing the Wakf Boards, their power of superintendence and control over the management of individual wakfs. Repeated amendments to the 1954 Act, having failed to provide effective answers to the questions that kept arising for consideration, the Parliament had to bring a comprehensive legislation in the form of Wakf Act 1995 for better administration of wakfs and matters connected therewith or incidental thereto.

Chapter I of the 1995 Act deals with Preliminaries like definitions, title, extent and commencement and application of this Act. Chapter II provides for preliminary survey of wakfs, publication of list of wakfs, disputes regarding wakfs and also the powers of the Tribunal to determine such disputes. Chapter III deals with Central Wakf Council while Chapter IV deals with establishment of Boards and their functions. Chapter V, VI and VII regulate the registration of Wakfs and maintenance of accounts thereof and the finances of the Wakf Board. Chapter VIII, with which the controversy at hand is more intimately connected deals with judicial proceedings and, inter alia, provides for constitution of tribunals and adjudication of disputes by them as well as exclusion of jurisdiction of Civil Courts. Chapter IX is a miscellaneous chapter that confers power on the Central Government to regulate the secular activities of wakfs and empowers the State Government to issue directions apart from other provisions like establishment and reorganization and establishment of boards."

15. The appellants contend that their continued occupation and repeated yet unsuccessful attempts by the respondents to oust them from possession do not render their continuance in the premises any less lawful and that the amendment of 2013 cannot be construed as operating retrospectively; else, it would transgress their right under Article 20 (1) of the Constitution. The respondents contend that this is not an instance of retrospective law but that the conduct (of continuing to occupy the premises after being asked to vacate) amounts to a *continuing offence*. They also rely on the statement of objects and reasons to the 2013 amendment and the *ratio* in *Ajay Agarwal (supra)* to urge that the amendment is not violative of Article 20 (1). The Statement of Objects and Reasons to the amendment (of 2013) is extracted below:

"The Wakf Act, 1995, [which repealed and replaced the Wakf (Amendment) Act, 1984] came into force on the 1st day of January, 1996. The Act provides for the better administration of auqaf and for matters connected therewith or incidental thereto. However, over the years of the working of the Act, there has been a widespread feeling that the Act has not proved effective enough in improving the administration of auqaf.

2. The Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on the 17th November, 2006 considered the aforementioned issue and suggested certain amendments to the Act relating to women's representation, review of the composition of the Central Wakf Council and the State Wakf Boards, a stringent and more effective approach to countering encroachments of Waqf properties and other matters. The Committee stressed the need for setting up of a National Waqf Development Corporation and State Waqf Development Corporations so as to facilitate proper utilization of valuable waqf properties for the objectives intended. The Committee recommended that the Act should be amended so that the State Waqf Boards become effective and are empowered to properly deal with the removal of encroachments of waqf properties. It also recommended to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint Parliamentary Committee on Waqf in its Third Report presented to the Rajya Sabha on the 4th March, 2008 made re commendations for a wide range of amendments relating to time bound survey of waqf properties, prevention and removal of encroachments, making the Central Waqf Council a more effective and meaningful body, provisions for development of waqf properties, etc. In its Ninth Report presented to the Rajya Sabha on the 23rd October, 2008, the Joint Parliamentary

[10] 2010 (10) SCR 945.

Committee reconsidered certain issues. The recommendations of the Joint Parliamentary Committee on Waqf were considered by the Central Waqf Council. The various issues and the need for amendments to the Act have also been considered in consultation with other stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairmen and the Chief Executive Officers of State Waqf Boards."

16. In *Ajay Agarwal (supra),* the aggrieved party was not held guilty of committing any offence. He was also not subjected to any penalty. He was restrained by an order for a period of five years from associating with any corporate body in accessing the securities market; he had also been prohibited from buying, selling or dealing in securities for five years. The court relied on the definition of "offence" under the General Clauses Act, 1897 (i.e., any act or an omission made punishable by any law for the time being in force). In view of this definition, a limited suspension from dealing in securities for five years did not amount to an "offence". The court also relied on the definition of offence, under Section 2 (n) Cr. PC:

"2. (n) 'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-Trespass Act, 1871 (1 of 1871);"

17. In the present case, there is no controversy that Section 52A is a penal provision; a person proceeded against faces the prospect, in the event the charges are proved, of a prison sentence of up to two years; the offence is cognisable and non-bailable, notwithstanding anything to the contrary in Cr. PC [Section 52A (2)].

18. The injunction against punishing anyone for conduct which was not an offence when it was committed, by an enactment, which *creates* one, *subsequently, with retrospective effect*, is enacted in our Constitution as a Fundamental Right [Article 20 (1)[11]]. A Constitution Bench of this court, in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*[12] had explained the purport of Article 20 (1):

"This article in its broad import has been enacted to prohibit convictions and sentences under ex post facto laws. The principle underlying such prohibition has been elaborately discussed and pointed out in the very learned judgment of Justice Willes in the well-known case of Phillips v. Eyre [(1870) 6 QBD 1, 23, 25] and also by the Supreme Court of U.S.A. in Calder v. Bull [3 Dallas 386 : 1 L Ed 648, 649]. In the English case it is explained that ex post facto laws are laws which voided and punished what had been lawful when done. There can be no doubt as to the paramount importance of the principle that such ex post facto laws, which retrospectively create offences and punish them are bad as being highly inequitable and unjust."

19. Speaking about the same provision, this court held in *T. Barai* v. *Henry Ah Hoe*[13] that:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate

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[11] Article 20 (1) reads as follows:

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

[12] 1953 SCR 1188 @ 1198.

[13] [1983] 1 SCR 905.

the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

'A retrospective statute is different from an ex post facto statute. "Every ex post facto law…" said Chase, J., in the American case of Calder v. Bull [Calder v. Bull, 1 L Ed 648 : 3 US 386 (1798)] "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction…. There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime." (L Ed p. 650)'"

20. In *Kanaiyalal Chandulal Monim v. Indumati T. Potdar and Another,*[14] this court had to decide whether a landlord had denied amenities which were enjoyed by his tenant, calling for his prosecution under Section 24(1)(4) of the Bombay Rents Hotel and Lodging House Rates Control Act 57 of 1947. The provision read as follows:

"24. (1) No landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him."

Section 25 (4) enacted a punishment of up to three months imprisonment, or both. The landlord resisted the prosecution on the ground that the amenity, i.e., the water supply had been disconnected to the premises due to the default of the predecessor in title before he became the owner. This was negatived, and he was concurrently convicted. By an amendment in 1953, an explanation was added, which said that the withholding supplies could be through acts or omissions. This court interpreted Section 24 as imposing an obligation (of providing the amenity) *in presenti*, after coming into force of the enactment:

"Is it enough that this essential supply should have been "enjoyed" by the tenant at any past time, however remote, or that it should have been "enjoyed" at any time after the coming into effect of the Act? We are assuming for the purposes of this decision that the first respondent was the tenant at all material times. In our opinion, the Section makes it essential that the particular essential supply should have been available for the use of the tenant at some time when the Act was in force. If, on the other hand, the Section were construed in the sense that the supply should have been "enjoyed" at some time in the remote past, that is, before the Act was enforced, the act of the landlord, when it was committed, may not have been penal; but the same act would become penal on the coming into effect of the Act. In that sense, it would amount to ex-post facto legislation, and we cannot accede to the argument that such was the intention of the legislature — an intention which would come within the prohibition of Article 20(1) of the Constitution."

21. In the present case, it is undeniable that the appellant came into possession even before the *wakf* was created; before even the Wakf Act, 1954 was enacted (although the precise date is unclear and could be a matter of dispute). It is, however, sufficient to notice that in an interpleader suit, the appellants were permitted to pay rents to the third defendant in the suit. They were holding the premises when the amendment came into force; indeed, a proceeding purporting to evict them was unsuccessfully initiated before the amendment. Another one was commenced and was pending after it came into force. In these circumstances, could it be said- having regard to the previous discussion- that the dispute over the termination of their tenancy, resulted in their becoming "encroachers" after the amendment became effective?

[14] [1958] 1 SCR 1394.

22. In the considered view of this court, the expiry of leases, or other arrangements, by efflux of time or their valid terminations, in the past, cannot be construed (as broadly as suggested by the respondents) to mean that such lessees become "encroachers". Nor would past tenants whose possession is disputed, and eviction proceedings pending against them before a court, fit that description under Section 3 (ee). The consequences of such an interpretation would be too startling; even before an adjudication of the validity of termination (of leases, for instance), tenants holding over would be exposed to prosecution. There is no allusion to "continuing offence" or any expression suggesting that such a term (mentioned in Section 472 Cr. PC) would be attracted to actions which commenced in the past, i.e., before the amendment of 2013 came into force. To hold otherwise, this court would be resorting to an interpretation that directly deprives the appellants of their rights under Article 20 (1) - a consequence that cannot be countenanced. The plain text of that provision forbids such an interpretation, and the authorities on that aspect clearly indicate that giving effect to a penal statute so as to cover past acts is a proscribed action in law. Therefore, the expression "*Whoever alienates or purchases or takes possession of*", which is the opening phrase of Section 52A, cannot be read or construed to include possession taken in the past, which resulted in continued possession, when the provision was enacted. That is to say that Section 52A cannot cover cases where leases of wakf properties had expired in the past and where the tenant or lessee was, at the time the amendment of 2013 came into force, in physical possession and facing civil proceedings for eviction.

23. It is a matter of record that by an order dated 27.10.2020, the Kerala High Court quashed the order of the CEO of the respondent[15] allowing a revision petition and setting aside the eviction of the tenant. The High Court set aside the finding that the tenant was an encroacher. The entire matter was remitted for fresh consideration, by the Wakf Tribunal, with the following directions:

"If the entity created by Mammu Haji is found to be a Wakf, the person in Management shall have the powers to terminate the tenancy and shall be entitled to take proceedings under the Wakf Act for eviction of a tenant, who after such termination of tenancy, is deemed to be an encroacher. We make it clear that we have not observed on the merits of the contentions of either parties. The issues have to be considered in O.S. No. 22/2012."

24. In view of the foregoing discussion, the impugned judgment cannot be sustained; it is hereby set aside. The appeal is allowed but without order on costs.

[15] In CRP (Wakf) No. 150/2016.