

PETITIONER:
BOARD OF MUSLIM WAKFS, RAJASTHAN

Vs.

RESPONDENT:
RADHA KRISHNA & ORS.

DATE OF JUDGMENT 24/10/1978

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
SINGH, JASWANT
PATHAK, R.S.

CITATION:
1979 AIR 289 1979 SCR (2) 148
1979 SCC (2) 468
CITATOR INFO :
R 1981 SC2198 (16)
RF 1992 SC1083 (10,11,12,15)

ACT:
Wakfs Act, 1954-Ss. 4 and 6-Scope of-Commissioner of Wakfs, if had jurisdiction to hold enquiry whether certain property was wakf property- Failure of stranger to file suit within time allowed by s. 6(1)-Special rule of limitation-If applicable to him-Inclusion of property in the list of wakfs- If final and conclusive.

HEADNOTE:

To provide for the better administration and supervision of Wakfs, the Wakfs Act 1954, sought to bring the management of wakfs under the supervision of the State. The Act envisages the appointment of a Commissioner of Wakfs for the purpose of survey of wakf properties existing at the time of the commencement of the Act. The Commissioner is enjoined to submit his report to the State Government after making such enquiries as he may consider necessary. While making enquiries the Commissioner is invested with powers as are vested in a Civil Court under the Code of Civil Procedure. Section 6 of the Act provides that if any question arises as to whether a particular property specified in the list of wakfs published under s. 5(2) was wakf property or not and such other related matters, the Board of Muslim Wakfs or the Mutawalli of the wakf or any person interested therein may institute a suit in a Civil Court for decision of the question.

Respondents 1 and 2 were mortgagee-purchasers of the property in dispute, which was claimed to be wakf property. Respondent. No. 3 in his application to the Commissioner of Wakfs alleged that the property in dispute being wakf property its transfer by the mutawalli to the respondents was invalid and prayed that the property be taken over by the wakf committee. While denying that the property in dispute was wakf property respondents 1 and 2 contended before the Commissioner that he had no jurisdiction to make an enquiry whether a particular property was wakf property or not. The Commissioner rejected these contentions and submitted a report to the State Government. On receipt of

the Commissioner's report the Board of Muslim Wakfs included the property in the list of wakfs in the Stat.

In the respondents' Writ Petition, the High Court held (i) that the jurisdiction of the Board of Wakfs was confined to matters of administration of the wakfs and not to adjudication of questions of title and that the Act did not invest either the Board or the Commissioner with power to decide the question whether a property belonged to a wakf or not and therefore the Commissioner had no jurisdiction under s. 4(3) of the Act to enquire whether or not the property was wakf property and (ii) that the failure of a stranger to the wakf to institute a suit in a court of competent jurisdiction within a period of one year on the question whether a particular property was wakf property or not could not make the inclusion of such property in the list of wakfs final and conclusive.

149

In appeal to this Court it was contended on behalf of the appellants that (i) the words "for the purpose of making a survey of wakf properties" are wide enough to confer power on the Commissioner to investigate and adjudicate upon the question whether a particular property was or was not wakf property and (ii) failure of the respondents to file a suit within the time allowed by s. 6(1) made the inclusion of the property in the list of wakfs final and conclusive. The word "therein" occurring in "any person interested therein" in s. 6 (1) qualifies the words "wakf property" and not "person interested in the wakfs" as wrongly assumed by the High Court.

Dismissing the appeal to this Court

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HELD: While the High Court was right in determining the scope of s. 6(1), it was clearly in error in curtailing the ambit and scope of enquiry by the Commissioner under s. 4(3) . [160 E]

1. (a) The Commissioner of wakfs acted within his jurisdiction in holding the disputed property to be wakf property. [168 C]

(b) The whole purpose of the survey of the wakfs by the Commissioner under s. 4(1) is to inform the Board of Wakfs as to existence of the wakfs in the State in order that all such wakfs should be brought under the supervision and control of the Board. [160 D]

(c) The words "for the purpose of making a survey" are the key to the construction of the section. If the Commissioner has the power to make a survey it is but implicit that in the exercise of such power he should enquire whether or not a wakf exists. The making of such an enquiry is a necessary concomitant of the power to survey. The High Court was, therefore, wrong in holding to the contrary. [162 A-B]

(d) It would be illogical to hold that while making a survey of wakf properties existing in the State the Commissioner of wakfs should have no power to enquire whether a particular property was wakf property or not. After making the survey the Commissioner is required to submit a report to the State Government in regard to the several matters referred to in clauses (a) to (f) thereof. There may be a dispute as between the Board, the mutawalli or a person interested in the wakf, as regards the existence of wakf i.e. whether a particular property is wakf property, whether it is a Shia wakf or a Sunni wakf, the extent of the property attached to the wakf, the nature and object of the wakf and so on. While making such an enquiry, the Commissioner is invested with the powers vested in a Civil

Court under the Code of Civil Procedure, 1908. In view of the comprehensive provisions contained in the Act the enquiry which the Commissioner makes is not purely of an administrative nature but partakes of a quasi-judicial character in respect of persons falling within the scope of s. 6(1). [161 F; C-E]

(e) The power of the Commissioner to survey wakf properties or to enquire and investigate into the several matters set out in sub-section (3) cannot be curtailed by taking recourse to s. 4(S). Sub-section (S) only lays down that, if during an enquiry any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and if there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of

150 such deed. It, therefore, makes the wakf deed conclusive as to the nature of the wakf. Sub-section (5) cannot be projected into sub-section (1) determining the question whether a certain property is a wakf property or not. Nor does it enter into an enquiry as to several of the matters adverted to in some of the clauses of sub-section (3). [162 D-E]

(f) Moreover s. 6 and s. 6(1) clearly envisage that the enquiry by the Commissioner was not confined to the question as to whether a particular wakf was a Shia Wakf or Sunni Wakf. It might also embrace a dispute as to whether a wakf existed or not. [162 H]

2. (a) Where a stranger is a non Muslim and is in possession of certain property, his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list of wakfs. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to s. 6(1) is not applicable to him. In other words, the list published by the Board of Wakfs under s. 5(2) can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises. h 167 A-B]

(b) The word "therein" occurring in s. 6(1) after the words "any person interested therein" must necessarily refer to the "Wakf" which immediately precedes it. It cannot refer to the wakf property. Section 6 (1) enumerates the persons who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under this provision only the Board, the mutawalli of the Wakf; and "any person interested therein", thereby necessarily meaning any person interested in the wakfs, are listed. Its provisions empower only those who are interested in the wakfs to institute suits. [164 E-F]

Sirajul Hag Khan & Ors. v. The Sunni Central Board of Wakf, U.P. Ors., [1959] SCR 1287, referred to.

(c) The word "therein" in s. 6(1) must mean "any person interested in a wakf" as defined in s. 3(h). The object of the section is to narrow down the dispute between the Board of Wakfs, the Mutawalli and the person interested in the wakf as defined in s. 3(h). [165 H]

(d) The right of the respondents 1 and 2 in respect of the disputed property, if at all they have any, will remain unaffected by the impugned Notification. They are at liberty to bring a Suit for the establishment of their right and title, if any, to the property. [168-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 166 of 1969.

From the Judgment and order dated 4- 5-1966 of the Rajasthan High Court in D.B. Civil Misc. Writ No. 74 of 1965.

M. N. Phadke, M. Qamaruddin, Mrs. M. Qamaruddin and V. M. Phadke for the Appellant.

S. S. Ray, S. M. Jain, D. D. Patodia and S. K. Jain for Respondents 1 and 2.

151

Appeal set down Ex parte against RR. 3 and 4.

The Judgment of the Court was delivered by

SEN, J. This appeal by certificate is directed against the judgment of the Rajasthan High Court dated May 4, 1966 holding that inclusion of the disputed property in the list of wakfs published by the Board of Muslim Wakfs, Rajasthan under sub-s. (2) of s. 5 of title Wakf Act, 1954 is not binding on the respondents No. 1 and 2, the mortgagee purchasers and restraining the Board from taking any steps under s. 36B of the Act for evicting them from the same.

The subject matter in dispute is a two-storeyed building, known as Dharamshala or Musafirkhana, situated on Mirza Ismail Road at Jaipur. The building was constructed by the late Haji Mohammad Ali Khan, a Sessions Judge of the erstwhile Princely State of Jaipur, who owned a considerable estate, on a plot of land measuring 5 bighas and 3 biswas obtained from the Mehakma Mensa Aliya Council with the approval of the Ruler of Jaipur under a Patta dated February 23, 1886 for construction of a Haveli and Dharamshala. It appears that Haji Mohammad Ali Khan before his death in the year 1912, had executed two wills, one on February 17, 1910 and the other on July 1, 1911, by which after making several bequests he acknowledged that he had dedicated the said property in wakf, for its use as a Dharamshala and appointed his son Ehsan Ali Khan as its Mutawalli. After the death of Haji Mohammad Ali Khan, there was a suit for partition of the property brought by his son Faiyaz Ali Khan against his brother Ehsan Ali Khan, being original Suit No. 128 of 1930 and the building was left out of partition being wakf property.

It, however, appears that the mutawalli Ehsan Ali Khan mortgaged the property with possession, with Seth Bijaylal, father of respondent No. 2, and Bhuramal, father of respondent No. 1, for Rs. 7,999/- and executed a mortgage deed dated July 30, 1944 in their favour for the purpose of purchasing a strip of land in front of the building from the Municipal Council Jaipur and thereafter constructed verandahs on the ground floor and the first floor. For making this construction, he raised a further loan of Rs. 9,999/- by effecting a second mortgage by executing the mortgage deed dated July 7, 1945 in favour of the said mortgagees. The respondents Nos. 1 and 2 purchased the ground floor of the building from Ehsan Ali Khan for Rs. 19,999/- by means of a registered sale deed dated November 23, 1954. The consideration was applied towards satisfaction of the two previous mortgages. Thereafter, they purchased the first floor of the said building from him for Rs. 13,999/- by means of a registered sale deed dated July 31, 1956.

152

The wakf Act, 1954 was extended to the State of Rajasthan on February 1, 1955. The Board of Muslim wakfs, Rajasthan was constituted by the State Government on August

6, 1962 in accordance with s. 9 and thereafter the Government appointed a Commissioner of Wakfs under sub-s.(1) of s.4 for the purpose of making survey of wakf properties existing in the State, at the date of the commencement of the Act. On August 30, 1962, one Shauket Ali Khan, the respondent No. 3 applied to the Commissioner of Wakfs alleging that the aforesaid property was wakf property and therefore, its transfer by Ehsan Ali Khan, who was its mutawalli, in favour of the respondents Nos. 1 and 2 was invalid and consequently prayed that the property be declared to be Wakf property and possession of the same be handed over to the wakf Committee. The Commissioner of Wakfs accordingly issued notice to the respondents. Nos. 1 and 2 the mortgagee purchasers. In response to the notice, the respondents Nos. 1 and 2 appeared before the Commissioner of Wakfs on September 19, 1962 and raised a preliminary objection as to the jurisdiction denying that the disputed property was wakf property and contended that the Commissioner of Wakfs had no jurisdiction to make an enquiry as to whether a particular property is wakf property or not. The Commissioner of Wakfs by his order Dated September 19, 1962 over-ruled the objection. Thereupon, the respondents Nos. 1 and 2 filled a writ petition before the Rajasthan High Court, but the High Court by its order dated October 11, 1962 dismissals the petition liming observing that the Commissioner had obviously no jurisdiction j to decide any question relating to the title of the respondents Nos. 1 and 2 or to eject them from the property without taking recourse to a civil suit. The Commissioner of Wakfs, however, felt that he was not bound by these observations of the High Court since he was not served with a notice and accordingly decided to proceed with the enquiry. In . consequence thereof, the respondents Nos. 1 and 2 had to participate in the proceedings. On October 19, 1962 they filed their reply before the Commissioner of Wakfs and joined issue on the question as to whether the disputed property was wakf property or not. In their reply they pleaded, inter alia that the property was not a wakf and that the wills had indeed been cancelled in a suit. The Commissioner of Wakfs by his report dated December is, 1964 on the basis of the evidence led before him, held the disputed property to be wakf property recommended that it be recorded as such, and accordingly, forwarded a report to that effect to the State Government as required under sub-s.(3) of s.4.

On receipt of the report of the Commissioner of Wakfs forwarded to it by the State Government under sub-s. (1) of s. S, the Board of Muslim

153

Wakfs published a notification for inclusion of the property in dispute A in the list of Wakfs existing in the State in the Rajasthan Rajpatra dated December 2, 1965. Thereafter, the respondents Nos.] and 2, filed a writ petition in the High Court challenging the legality and validity of the proceedings taken by the Commissioner of Wakfs. It was contended that on the basis of such report, the Board of Muslim Wakfs was not entitled to include their property in the list of wakfs published under sub-s.(2) of s.5.

In allowing the petition, the High Court held that the entire scheme or the Wakf Act, 1954, indicates that the Board of Wakfs jurisdiction is confined to matters of administration of the wakfs and not to adjudication of questions of title. In view, it was evident that the Act did not invest the Board of Wakfs or the Commissioner of Wakfs with the power to decide the question whether a property belonged to a wakf or not; and more so, where a person

claiming title is a stranger to the wakf. It accordingly held that a Commissioner of Wakfs appointed under sub-s.(1) of s.(4) of the Act has no jurisdiction under sub-s.(3) of s. 4 to enquire whether or not a certain property is wakf property when such a dispute is raised by such a person. It further held that the object of s. 6 is to narrow down the dispute between the Board of Wakfs, the mutawalli and the person interested in the wakf, as defined in s. 3. Consequently, the High Court held that the failure of a stranger to the wakf to institute a suit in a court of competent jurisdiction for a decision of such question, namely, whether a particular property is a wakf property or not, cannot make the inclusion of such property in the list of wakfs published by the Board under sub-s. (2) of s. 5 of the Act final and conclusive under sub-s. (4) of s. 6 of the Act. It also held that the Board is not invested with jurisdiction to enquire into and decide the questions of title to, or possession of, the properties belonging to third parties under s. 27 of the Act.

It is argued for the appellant, firstly, that the words 'for the purpose of making a survey of wakf properties' are wide enough and confer ample power on the Commissioner 'to investigate and adjudicate' upon the question whether a certain property is wakf property or not during the course of his survey of wakf properties in the State of Rajasthan; and secondly, the failure of the respondents Nos. 1 and 2 to file a suit within the time allowed by sub-s. (1) of s. 6 of the Act makes the inclusion of the disputed property in the list of wakfs published by the Board of Wakfs under sub-s.(2) of s.5, final and conclusive. In support of the contentions, it is urged that the word 'therein' in the expression 'any person interested therein' appearing in sub-s.(1) of s.6, qualify title words 'wakf property' and, therefore, the expression 'any person interested therein' cannot, in the context in which it appears, mean 'person interested in a wakf' as defined in s. 3(h) of the Act, as wrongly assumed by the High Court. It is therefore, urged that the right of suit given under s. 6(1) of the Act can be availed of by a person affected by the publication of the list of wakfs under sub-s.(2) of s.5, i.e. it includes even a stranger.

154

In reply, it is submitted on behalf of the respondents Nos. 1 and 2, that the scope of s. 6 is to narrow down the dispute between the Board of Wakfs, the mutawalli and any person interested in the wakf, as defined in s. 3(h). It is urged that the High Court was, therefore, right in holding that s. 6 refers only to such a dispute and cannot affect the right and title of a stranger to the wakf, particularly of a person belonging to another religious denomination. The submission is that the word 'therein' in sub-s. (1) of s. 6, in the context and setting in which it appears, does not fit in with the words 'wakf property' in the collocation of words, but qualifies the words 'the wakf' immediately presiding it. It is said that the word 'therein' has been used to avoid repetition of the words 'the wakf', and not to extend the ambit of the section to persons who fall outside the scope of the expression 'person interested in a wakf' as defined in s.3(h). It is, therefore, urged that the respondents Nos. 1 and 2 are wholly outside the purview of s.6(1) and, therefore, they must necessarily fall outside the scope of the enquiry under, s.4(1), as the provisions contained in s.4, 5 and 6 form part of an integrated scheme. It is pointed out that on the terms of s.4 the Commissioner of Wakfs has no power 'to enquire whether or not a certain

property is wakf property when such dispute is raised by a stranger to the wakf. In support of the contention, the language of s. 4 is contrasted with that of s.27 and it is said that, while the Board of Wakfs has the power to hold an enquiry as to whether a particular property is wakf property or not under s.27, the Commissioner of Wakfs has no power to hold such an enquiry.

In order to appreciate the implications of the rival contentions, it is necessary not only to examine the scheme of the Act but also the purpose and object of the legislation.

The Wakf Act, 1954, "the Act", as the preamble shows, was enacted 'to provide for the better administration and supervision of wakfs'. The avowed object and purpose of the Act was to bring the management of Wakfs, though it vests immediately in a mutawalli, subject to the supervision of the State. It was enacted to replace the Mussalman Wakf Act, 1923, which merely provided for the submission of audited accounts by mutawallis, and was found to be wanting in

155 several respects and really not of much practical value. It was found that proceedings could be successfully defeated simply on the plea taken by the mutawalli that there was no wakf. To remove the lacunae, the Mussalman Wakf (Bombay Amendment) Act, 1935 amended the Act. The Bengal Wakf Act, 1934 was enacted to create a machinery for the supervision of wakfs in Bengal. The United Provinces followed suit and the United Provinces Muslim Wakf Act, 1936 was passed creating a Central Wakf Board. Similarly, Bihar also passed a legislation almost on the same lines. The working of these Acts brought out the necessity for one uniform and consolidated legislation by the Center. It was with this view that the Wakf Act 1954 was enacted.

The scheme of the Act may be briefly indicated. Section 2 makes the Act applicable to all wakfs in India except to Durgah Khawaja Saheb, Ajmer. Section 3 defines certain terms, and the term 'wakf' and the expression 'person interested in a wakf' have been defined as follows:

"3.(h) 'person interested in a wakf' means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes,-

- (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, Khangah, maqbara, graveyard or any other Religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;
- (ii) the wakif and any descendant of the wakif and the mutawalli.

(1) 'wakf' means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes

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

and 'wakif' means any person making such dedication.'

The Act consists of several chapters and can conveniently be divided into three parts. The first part relates to the survey of wakfs. Chapter II is headed 'Survey of Wakfs'. Sub-section (1) of s. 4 empowers the State Government to appoint for the State by a notification a Commission of Wakfs for the purpose of making survey of wakf properties existing at the time of the commencement of the Act. Sub-section (3) enjoins the Commissioner to submit his report to the State Government after making such enquiry as he may consider necessary and the report is to contain the following particulars namely:

- (a) the number of wakfs in the State, or as the case may be, any part thereof, showing the Shia Wakfs and Sunni Wakfs separately;
- (b) the nature and objects of each wakf;
- (c) the gross income of the property comprised in each wakf;
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and
- (f) such other particulars relating to each wakf as may be prescribed."

Sub-section (4) enjoins that the Commissioner, while making such enquiry, shall have certain powers as are vested in a civil court under the Code of Civil Procedure, 1908, namely, summoning and examining any witness, requiring the discovery and production of any document, re questioning any public record from any court or office, issuing commissions for the examination of any witness or accounts, making any local inspection or local inspection etc. Sub-section (5) of s.4 runs thus:

"(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed."

Section 5 provides for publication of a list of wakfs and is as follows:

"5.(1) on receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.

157

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the official (Gazette, a list of wakfs existing in the State, or as the case may be, the part of the State to which the report relates, and containing such particulars as may be prescribed."

Section 6, which relates to adjudication of dispute regarding wakfs, B so far as material, reads:

"6.(1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of the section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expire of one year from the date of the public cation of the list of wakfs under'

sub-section (2) of section 5.

(4) The list of wakfs published under sub-section (2) of section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive."

Chapter IIA is about the constitution of the Central Wakf Council, with which we are not concerned. Chapter III provides for establishment of a Board of Wakfs and defines the nature of its duties, powers and functions. This chapter also provides for certain incidental matters. Sub-section (1) of section 15 provides that the general superintendence of all wakfs in a State shall vest in the Board so established for the State, and it shall be the duty of the Board to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purpose for which such wakfs were created or intended. Sub-section (2) enumerates the various functions of the Board.

The next stage is that of registration of wakfs. That subject is dealt with in Chapter IV. Section 25 lays down that every wakf, whether created before or after the commencement of the Act, shall be registered at the office of the Board. Section 26 requires the Board to maintain a register of wakfs. Under s. 27, the Board is invested

158
with the power to decide whether a certain property is wakf property and reads as follows:

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

(2) The decision of the Board on any question under sub-section (1) shall, unless revoked or modified by a civil court of competent jurisdiction, be final."

Section 28 empowers the Board to direct a mutawalli to apply for the registration of a wakf or to supply any information regarding a wakf, and the Board may itself cause the wakf to be registered or May at any time amend the register of wakfs.

The third stage then arises. After completing the survey and finalising the registration of wakfs, the Board which is an administrative body, is empowered to supervise and administer wakf property. Chapter V deals with mutawallis and wakf accounts. This chapter provides in detail as to how mutawalli shall submit budget and the accounts and in what manner the Board will be exercising its control over the wakf properties. Section 36A relates to transfer of immovable property of wakfs. According to this section, no transfer of the wakf property is valid without the previous sanction of the Board. Section 36B empowers 'the Board to recover certain wakf properties transferred without the previous sanction of the Board by sending a requisition to the Collector. Chapter VI relates to the finance of the Board. Chapter VII to judicial proceedings and Chapter VIII to miscellaneous matters. It would thus appear that the Act is a complete code dealing with the better administration and supervision of wakfs.

The High Court, in its considered opinion, in the light of the historical background and precedents, observed: "

The present Act No. 29 of 1954 is, no doubt an improvement on the Mussalman Wakf Act, 1923, but in our

view, this also does not empower the Board of Wakfs to decide the question whether a particular property is wakf property or not, if such a dispute is raised by a person who is a stranger to wakf."

There is a considerable body of authority interpreting s. 10 of the Mussalman Wakf Act 1923, in favour of the view that where

159

the existence of a wakf was itself in dispute, the District Judge had no jurisdiction to inquire into its existence, and the matter could be settled only by instituting a regular suit. The question came up for consideration before several High Courts in India as will appear from *Nasrulla Khan v. Wajid Ali*, (1) *Wahid Hasan v. Abdul Rahman*, (2) *Syed Ali Mohammed v. Collector ff Bhagalpur*, (3) *Mohammad Baqar v. Mohammed Qasim*, (4) *Nanha Shah v. Abdul Hasan*, (5) and *Abdul Hussain v. Mohammad Ebrahim Riza*. (x) The general trend of opinion was that the District Judge in dealing with an application under s. 10 of that Act had, in the absence of a clear provision in that behalf, no jurisdiction to try an issue as to whether certain property was wakf property. It was pointed out that if the legislature had the intention to confer such power, there would have been a provision like s. 5 of Charitable and Religious Trusts Act, 1920. In *Abdul Hussain v. Mohammad Riza* (supra) it was observed:

"Considering the terms of the enactment and the scope and purpose of the Act is clear that the legislature intended of income of wakf properties for the purpose of providing some control on the management of properties which are admittedly wakf. It could not have intended to include in its scope the enquiry into the vital questions whether the disputed property is wakf property and the person in possession of it is a mutwalli, which are questions of fundamental character such as could be the subject-matter of a suit alone."

Though sub-s. (3) of s. 4 of the Act is rather unhappily worded, of the Wakf Act, 1954.

The Wakf Act, 1954 does, in our opinion, furnish a complete machinery for the better administration and supervision of wakfs. Though sub-s. (3) of s. 4 of the Act is rather unhappily worded, it is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act, and decisions rendered with reference to construction of one Act cannot apply with reference to the provisions of another Act, unless the two Acts are in *pari materia*. Further, when there is no ambiguity in the

- (1) I.L.R. 52 All. 167.
- (2) I.L.R. 57 All. 754.
- (3) A.I.R. 1927 Pat. 189.
- (4) I.L.R. 7 Luck. 601 (F.B.)
- (5) A.I.R. 1938 Pat. 137.
- (6) I.L.R. (1939) Nag. 564.

160

statute, it may not be permissible to refer to, for purposes of its construction, any previous legislation or decisions rendered therein.

The questions that fall for determination upon the appeal are two; first, whether a Commissioner of Wakfs appointed under sub-s. (1) of s. 4 of the Wakf Act, 1954, has the jurisdiction under sub s. (3) of s. 4 to enquire whether a certain property is wakf property or not when such a dispute raised by a stranger to the wakf and second, if so, whether the failure of such a person to institute a suit in a civil court of competent jurisdiction for decision of

such question within a period of one year, as provided for under sub-s. (1) of s. 6, makes the inclusion of such property in the list of wakfs published by the Board under sub-s.(2) of s. 5 of the Act final and conclusive under sub-s. (4) of s. 6

It is needless to stress that the whole purpose of the survey of wakfs by the Commissioner of Wakfs under sub-s. (1) of s. 4 is to inform the Board of Wakfs, as to the existence of the existing wakfs in a State, in order that all such wakfs should be brought under the supervision and control of the Board of Wakfs.

While the High Court was, in our view, right in determining the scope of sub-s. (1) of s. 6 of the Act, it was clearly in error in cur tailing the ambit and scope of an enquiry by the Commissioner of Wakfs under sub-s. (3) of s. 4 and that by the Board of Wakfs under s. 27 of the Act.

In dealing with the scope of enquiry by the Commissioner of Wakfs: under sub-s. (3) of s. 4, the High Court adverts to the, heading of Chapter II and the marginal note of sub-s. (1) of s. 4. It observes:

"The heading of section 4 with which this chapter started was 'Preliminary survey of wakfs'. The use of the word 'Preliminary' in the heading is one of significance.

The weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section. Lord Macnaghten in *Balraj Kunwar v. Jagatpal Singh*(1) considered it well settled that marginal notes cannot be referred to for the purposes of construction. This Court after referring to the above case with approval, said in *Commissioner of Income-Tax v. Ahmedbhai Umedbhai Umarbhai & Co.*(2):

"Marginal notes in an Indian statute, as in an Act of Parliament, cannot be referred to for the purpose of construe the statute."

(1) ILR 26 All. 393 (P.C.)

(2) [1950]; S.C.R. 335.

161

As explained by Lord Macnaghten in the Privy Council, marginal notes A are not part of an Act of Parliament.

The very heading of Chapter II and the caption to s. 4 no doubt suggest that the Commissioner makes only a preliminary survey regarding existing wakfs and the list of wakfs prepared by him is published by the Board and neither the Commissioner nor the Board is required to make any enquiry regarding, the character of the property. That is to say, the making of survey is only an administrative act and not a quasi-judicial act. But, on a closer examination, it is, clear that while making a survey of the existing wakfs in a State under sub-s. (1) of s. 4, the Commissioner is required by sub-s. (3) to submit a report to the State Government in regard to the several matters referred to in cls. (a) to (f) thereof. There may be a dispute as between the Board, the mutawalli or a person interested in the wakf, as regards (a) the existence of a wakf, i.e. whether a particular property is wakf property, (b) whether it is a Shia wakf or a Sunni wakf, (c) extent of the property attached to the wakf, (d) the nature and object of the wakf, etc. While making such an enquiry, the Commissioner is invested by sub-s. (4) with the powers vested in a civil court under the Code of Civil Procedure, 1908 in respect of the summoning and examining of any witness, requiring the discovery and production of any document, requisitioning any public record from any court or office, issuing commissions for the examination of any witness or accounts, making any

local inspection or local investigation etc. In view of these comprehensive provisions, it is not disputed before us that the enquiry that the Commissioner makes for the purpose of submission of his report under sub-s. (3)? while making a survey of existing wakfs in the Estate under sub-s. (1), is not purely of an administration nature but partakes of a quasi-judicial in character, in respect of the persons falling within the scope of sub-s. (1) of s. 6.

It would be illogical to hold that while making a survey of wakf properties existing in the State a Commissioner of Wakfs appointed by the State Government under sub-s. (1) of s. 4, should have no power to enquire whether a particular property is wakf property or not. If we may refer to sub-s. (1) of s. 4, so far as material, it reads:

"The State Government may, by notification in the official Gazette, appoint for the State a Commissioner of Wakfs... for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act."

It will be clear that the words "for the purpose of making a survey of wakf properties" is a key to the construction of the section The

162

ordinary meaning of the word "survey", as given in the Random House Dictionary of English Language, is 'to take a general or comprehensive view of or appraise, as a situation'. If the Commissioner of Wakfs has the power to make a survey, it is but implicit that in the exercise of such power he should enquire whether a wakf exists. The making of such an enquiry is a necessary concomitant of the power to survey. The High Court was clearly in error in observing:

"Except sub-section (5) there is nothing in section 4 or in the rules made by the State to show that the Commissioner is empowered to adjudicate on a question, if one arises, whether a particular property is a wakf property or not."

We are of the opinion that the power of the Commissioner to survey wakf properties under sub-s. (1) or to enquire and investigate into the several matters set out in cls. (e) to (f) of sub-s. (3) cannot be curtailed by taking recourse to Sub-5. (5). The High Court was wholly wrong in understanding the true implication of sub-s. (5) of s. 4. It only lays down that if, during any such enquiry, any dispute arises as to whether a particular wakf is a Shia wakf or a Sunni wakf, and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed. It, therefore, makes the wakf deed conclusive as to the nature of the wakf, i.e. whether it is a Shia or a Sunni wakf. In our view, sub s.(5) of s. 4 cannot be projected into sub-s. (1) for determining the question whether a certain property is a wakf property or not. Nor does it enter into an enquiry as to several of the matters adverted into some of the clause of sub s. (3).

The matter can also be viewed from another angle. If sections 4, 5 and 6 are parts of an integrated scheme, as asserted, then it follows as a necessary corollary that the enquiry envisaged by sub-sections (1) and (3) of s. 4 must cover the field defined by sub-s. (1) of s. 6. The opening words of the section are:

"If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub section (2) of section 5 is wakf property or not or whether a wakf specified in such

list is a Shia wakf or Sunni wakf "

They clearly envisage that the enquiry by the Commissioner is not confined to the question as to whether a particular wakf is Shia wakf or Sunni wakf. It may also embrace within itself a dispute as to whether a wakf exists. This is a construction which sub-s. (1) of s.4 must, in its context and setting, bear. Any other construction would, indeed, make the Act unworkable.

163

While it is true that under the guise of judicial interpretation the court cannot supply casus omissus, it is equally true that the courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In *Crawford v. Spooner*(1) the Judicial Committee said:

"We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there."

To do so would be to usurp the function of the legislation. At the same time, it is well settled that in construing the provisions of a statute the court should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by the statute.

It would certainly have been better if the legislature had inserted a provision like section 6-C incorporated in the Mussalman Wakf Act, 1923 by the Mussalman Wakf (Bombay Amendment) Act, 1935, which was in force in the States of Maharashtra and Gujarat, namely:

"6-C. Power of the Court to enquire: (1) The court may, either on its own motion or upon the application of any person claiming to have an interest in a wakf, hold an enquiry in the prescribed manner at any time to ascertain-

(i) whether a wakf exists."

Failure to insert such a provision in sub. (3) of s. 4, however, is of little consequence. As already indicated, the power of the Commissioner to make a survey of existing wakf properties, carries, with it, by necessary implication, the power to enquire as to the existence of a wakf. Perhaps, the legislature thought it to be a superfluity.

That leaves us with the question as to the scope of sub-s. (1) of s. 6. All that we have to consider in this appeal is, whether if the Commissioner of Wakfs had jurisdiction to adjudicate and decide against the respondents Nos. 1 and 2 that the property in dispute was wakf property, the list of wakfs published by the Board of Wakfs under sub-s. (2) of s. 5 would be final and conclusive against them under s. 6(4) in case they had not filed a suit within a year from the publication of the lists. The question as to whether the respondents Nos. 1 and 2 can be dispossessed, or their possession can be threatened by the Board of Wakfs by proceeding under s. 36B without filing a suit in a civil court of competent jurisdiction does not arise for our consideration

(1) [1846] 6 Moors P.C. 1.

164

In the present case, the respondents Nos. 1 and 2 who are non Muslims, contended that they are outside the scope of sub-s. (1) of s. 6, and consequently, they have no right to file the suit contemplated by that sub-section and, therefore, the list of wakfs published by the Board of Wakfs under sub-s. (2) of s. 5 cannot be final and conclusive

against them under sub-s. (4) of s. 6, it was urged that respondents Nos. 1 and 2 were wholly outside the purview of sub-s. (1) of s. 6 and they must, therefore, necessarily fall outside the scope of the enquiry envisaged by sub-s. (1) of s. 4, as the provisions contained in sections 4, 5 and 6 form part of an integrated scheme. The question that arises for consideration, therefore, is as to who are the parties that could be taken to be concerned in a proceeding under sub-s. (1) of s. 6 of the Act, and whether the list published under sub-s. (2) of s. 5 declaring certain property to be wakf property, would bind a person who is neither a mutawalli nor a person interested in the wakf.

The answer to these questions must turn on the true meaning and construction of the word 'therein' in the expression 'any person interested therein' appearing in sub-s. (1) of s. 6. In order to understand the meaning of the word 'therein' in our view, it is necessary to refer to the preceding words 'the Board or the mutawalli of the wakf'. The word 'therein' must necessarily refer to the 'wakf' which immediately precedes it. It cannot refer to the 'wakf property'. Sub-section (1) of s. 6 enumerates the persons who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under this provision, only the Board, the mutawalli of the wakf, and 'any person interested therein', thereby necessarily meaning any person interested in the wakf, are listed. It should be borne in mind that the Act deals with wakfs, its institutions and its properties. It would, therefore, be logical and reasonable to infer that its provisions empower only those who are interested in the wakfs to institute suits.

In dealing with the question, the High Court observes:

"In our opinion, the words "any person interested therein" appearing in sub-section (1) of section 6 mean no more than a person interested in a wakf as defined in clause (h) of section 3 of the Act

It is urged by learned counsel for the petitioners that the legislature has not used in section 6(1) the words "any person interested in a wakf" and, therefore, this meaning should not be given to the words "any person interested therein". This argument is not tenable because the words "any person inte-

165

rested therein" appear soon after "the mutawalli of the wakf" and therefore the word 'therein' has been used to avoid repetition of the words "in the wakf" and not to extend the scope of the section to persons who fall outside the scope of the words "person interested in the wakf". The purpose of section 6 is to confine the dispute between the wakf Board, the mutawalli and a person interested in the wakf."

That, in our opinion, is the right construction.

We are fortified in that view by the decision of this Court in *Sirajul Hag Khan & ors. v. The Sunni Central Board of Wakf, U.P. & ors* While construing s. 5(2) of the United Provinces Muslims Wakf Act, 1936, this Court interpreted the expression "any person interested in a wakf" as meaning 'any person interested in what is held to be a wakf', that is, in the dedication of a property for a pious, religious or charitable purpose. It will be noticed that sub-s. (1) of s. 6 of the Act is based in sub-s. (2) of s. 5 of the United Provinces Muslims Wakf Act, 1936, which runs thus:

"The mutawalli of a wakf or any person interested in a wakf or a Central Board may bring a suit in a civil court of competent jurisdiction for a declaration

that any transaction held by the Commissioner of Wakfs to be a wakf is not a wakf, or any transaction held or assumed by him not to be a wakf, or that a wakf held by him to pertain to a particular sect does not belong to that sect, or that any wakf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any wakf held by him to be so exempted is subject to this Act."

The provision to that section prescribed the period of one year's limitation, as here, to a suit by a mutawalli or a person interested in the wakf.

The two provisions are practically similar in content except that the language of the main enacting part has been altered in sub-s. (1) of s. 6 of the present Act and put in a proper form. In redrafting the section, the sequence, of the different clauses has been changed, therefore, for the expression "any person interested in a wakf" the legislature had to use the expression "any person interested therein". The word 'therein' appearing in sub-s. (1) of s. 6 must, therefore, mean 'any person interested in a wakf' as defined in s. 3(h). The object of sub-s. (1) of s. 6 is to narrow down the dispute between the Board of Wakfs, the mutawalli and the person interested in the wakf, as defined in s. 3 (h)

(1) [1959] S.C.R. 1287.

166

In this context, the scope of s. 6 was examined by the High Court and it observed:

"The purpose of sec. 6 is to confine the dispute between the Wakf Board, the mutawalli and a person interested in the wakf. In other words, if there is a dispute whether a particular property is a wakf property or not, or whether a wakf is a Shia wakf or a Sunni wakf, then the Board or the mutawalli of the wakf or a person interested in the wakf as defined in sec. 3 may institute suit in a civil court of competent jurisdiction for the decision of the question. They can file such a suit within one year of the date of the publication of the list of wakfs and if no such suit is filed, the list would be final and conclusive between them.

The very object of the Wakf Act is to provide for better administration and supervision of wakfs and the Board has been given powers of superintendence over all wakfs which vest in the Board. This provision seems to have been made in order to avoid prolongation of triangular disputes between the Wakf Board, the mutawalli and a person interested in the wakf who would be a person of the same community. It could never have been the intention of the legislature to cast a cloud on the right, title or interest of persons who are not Muslims. That is, if a person who is non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under sub sec. (2) of Sec. 5.

The Legislature could not have meant that he should be driven to file a suit in a Civil Court for declaration of his title simply because the property in his possession is included in the list. Singularly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year

or the list would be final and conclusive against him. In our opinion, sub-section (4) makes the list final and conclusive only between the Wakf Board, the mutawalli and the person interested in the wakf as defined in Section 3 and to no other person."

We are in agreement with this reasoning of the High Court.

It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be

167

put in jeopardy merely because the property is included in the List. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub s. (1) of s. 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-s. (2) of s. 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises.

Incidentally, the High Court also dealt with s. 27 of the Act, and observed.

"S. 27 does not seem to suggest that it empowers the Board to decide the question whether a particular property is wakf property or not, if that challenge comes from a stranger who is neither mutawalli nor a person interested in the wakf, but who belongs to another religious denomination and who claims a valid title and lawful possession over that property. To accept the respondents argument would mean that the Board would be given the powers of the Civil Court to decide such disputes between itself and strangers and thus to make the Board's decision final unless it is changed by a Civil Court of competent jurisdiction. If a dispute is raised by a non Muslim, the Board cannot by simply entering the property in the register of wakfs drive him to take recourse to a Civil Court

In our judgment, the High Court was clearly in error in dealing with s. 27 or s. 36B of the Act. It appears from the writ petition filed the High Court that no relief was as sought in respect of any action under s. 27. The observations of the High Court were, therefore, strictly not called for in regard to s. 27. It should have left the question open. The question may arise if and when, action under s. 27 is taken. We, therefore, refrain from expressing any opinion as to the scope of s. 27 of the Act.

Likewise, the High Court went on to consider the impact of s. 36B, and observed:

"In our opinion, this section cannot apply in the case of a property which is in the hands of a stranger over whom the Board has no control under the Act, simply because the Board happens to enter the property in its register. In a case like the present one, where the petitioners claim their possession over the property as mortgagees from the year 1944 and further their claim their title and possession as vendees over the same property from the year 1954, the Board of Wakfs cannot, by

168

simply entering the property in the list of wakfs or registering it in the register of wakfs, drive them to file a suit to establish their title or retain their possession. It cannot also seek to dispossess them from the property by resorting to section 36B. It is for the Board to file a civil suit for a declaration that the

property in dispute is a wakf property and to obtain its possession."

It was really not necessary for the High Court to decide whether s. 36B of the Act was attracted or not, in the facts and circumstances of the case.

We must accordingly held that the Commissioner of Wakfs acted within jurisdiction in holding the disputed property to be wakf property. It must, therefore, follow that the Board of Muslim Wakfs, Rajasthan was justified in including the property in the list of wakfs published under sub-s. (2) of s. 5 of the Act. We must also hold, on a construction of sub-s. (1) of s. 6 that the list of wakfs so published by the Board was not final and conclusive under sub s (4) of s. 6 against the respondents Nos. 1 and 2 due to their failure to bring a suit within one year as contemplated by sub s. (1) of s. 6.

In view of the foregoing, the right of the respondents Nos. 1 and 2 in respect of the disputed property, if at all they have any, will remain unaffected by the impugned notification. They are at liberty to bring a suit for the establishment of their right and title, if any, to the property.

Accordingly, the order of the High Court allowing the writ petition and declaring that the inclusion of the property in dispute in the list of wakf published by the Board of Muslim Wakfs, Rajasthan under sub-s. (2) of s. 5 of the Wakf Act, 1954 was not binding on the respondents Nos. 1 and 2 is upheld, but its direct restraining the Board of Muslim Wakfs from entering the disputed property in the register of wakfs and from dispossessing the respondents Nos. 1 and 2, except by way of a suit in a civil court of competent jurisdiction is set aside as it proceeds on the assumption that sections 27 and 36B of the Act are not applicable, which question did not arise for its consideration. The parties are left to take recourse to their remedies according to law, with advertence to the observations made above,

Subject to this modification, the appeal fails and is dismissed. There shall be no order as to costs.

P.B.R.

Appeal Dismissed.