

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.12.2017

Judgment Pronounced on : 08.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.A.No.1640 of 2016, W.P.No.7809 of 2010, W.P.No.27431 of 2014,
W.P.No.27595 of 2014, CRP.(PD) No.73 of 2015, CRP.(PD) No.74 of 2015,
CRP.(PD) No.938 of 2010, W.A.No.144 of 2017, W.A.No.145 of 2017,
W.A.No.271 of 2017 & W.A.No.272 of 2017

and

CMP.No.20354 of 2016. CMP.No.2016, 2017 of 2017 in WA.No.1640 of 2016
MP.No.1 of 2010 & CMP.No.571 of 2017 in W.P.No.7809 of 2010

WMP.No.8043 of 2016 in W.P.No.27431 of 2014

MP.No.1 of 2014 & WMP.No.34650 of 2017 in WP.No.27595 of 2014

MP.No.1 of 2015 in CRP.(PD) No.73 of 2015

MP.No.1 of 2015 in CRP.(PD) No.74 of 2015

CMP.No.2434 of 2017 in W.A.No.144 of 2017

CMP.No.2464 of 2017 in W.A.No.145 of 2017

CMP.No.4269 of 2017 in W.A.No.271 of 2017

CMP.No.4270 of 2017 in W.A.No.272 of 2017

W.A.No.1640 of 2016:

The Managing Trustee

Rep. By the Board of Trustees

Nagore Dargah, Nagore - 611 002.

... Petitioner

Vs.

1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib

2.The President
Rep by Advisory Board
Nagore Dargah, Nagore - 611 002.

3.The Wakf Tribunal
Nagapattinam.

4.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 1.

5.The Superintendent of Wakfs
Wakf Superintendent Office
27 Court Road, Diwan Nagar
Thanjavur Town and District.

6. Muhalli Muthavalli H.Haja Najmudeed Sahib
7.S.Sultan Kalifa Sahib @ Kannuvappa Sahib
8.J.Mohideen Abdul Khader
9.C.Mohammed Ilyaas
10.S.Syed Meera Hussain Sahib
11.S.Syed Zainuddin
12.S.Abdul Katheef Thambi Sahib

.... Respondents

[R8 impleaded Vide order dated 25.1.2017 in
CMP.No.571 of 2017]

[R9 impleaded Vide order dated 25.1.2017 in
CMP.No.550 of 2017]

[RR10 to 12 impleaded Vide order dated 01.2.2017 in
CMP.No.1515 of 2017]

W.P.No.7809 of 2010 :

Janab K.Mohammed Khalifa Sahib
Managing Trustee
Nagore Darga Sheriff
Nagore.

... Petitioner

Vs.

1.Tamil Nadu Wakf Board
Rep. By the Chief Executive Officer
No.1, Jaffer Sirang Street
Seethakathi Nagar
Chennai – 600 001.

2.A.T.Ali Hussain Sahib Faisi ... Respondents
 [R2 impleaded as per order dated 21.07.2015 in
 M.P.No.2 of 2010 in W.P.No.7809 of 2010]

W.P.No.27431 of 2014 :

Muhalli Muthavalli H.Haja Najmudeen Sahib ... Petitioner

Vs.

1.The Wakf Tribunal
 Nagapattinam.

2.The Tamil Nadu Wakf Board
 Rep by its Chairman
 Jaffar Syrang Street
 Vallal Seethakathi Nagar
 Chennai – 600 001.

3.The Superintendent of Wakfs
 Wakf Superintendent Office
 27 Court Road, Diwan Nagar
 Tanjore.

4.The Managing Trustee
 Represented by Board of Trustees
 Nagore Dargah
 Nagore – 611 002
 Nagapattinam District.

5.The President
 Rep. By Advisory Board of Nagore Dargah
 Nagore – 611 002
 Nagapattinam District.

6.Haja Noordeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib

7.Haji S.A.Shaik Hasan Sahib

8.Haji N.S.Syed Abdul Fathah Sahib

9.Haji K.M.Kalifa Masthan Sahib

10.M.S.Mohamed Backer Sahib

11.Haji H.N.Syed Haja Mohideen Sahib

12.S.M.B.Sultan Kabeer Sahib

13.S.Syed Mohamed Kazi Hussain Sahib ... Respondents

[R7 to R13 impleaded as per order dated
 19.01.2017 in WMP.No.31064 of 2016 in WP.No.27431/2014]

W.P.No.27595 of 2014 :

S.Sultan Kalifa Sahib @ Kannuvappa Sahib ... Petitioner

Vs

1.The Wakf Tribunal (Sub Court)
The Registrar
Nagapattinam.

2.Haja Noordeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib

3.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 600 001.

4.The Superintendent of Wakfs
27 Court Road, Diwan Nagar
Tanjore.

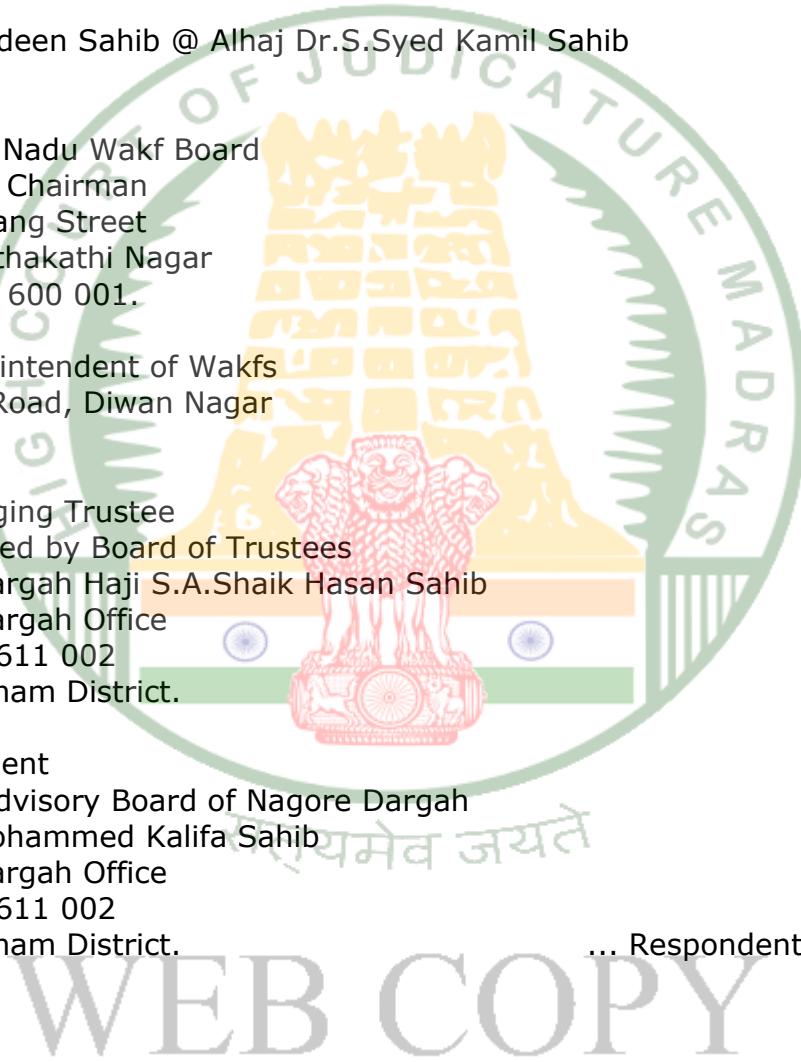
5.The Managing Trustee
Represented by Board of Trustees
Nagore Dargah Haji S.A.Shaik Hasan Sahib
Nagore Dargah Office
Nagore – 611 002
Nagapattinam District.

6.The President
Rep. By Advisory Board of Nagore Dargah
S.Syed Mohammed Kalifa Sahib
Nagore Dargah Office
Nagore – 611 002
Nagapattinam District. ... Respondents

CRP (PD) No.73 of 2015:

Nagore Dargah
Rep. By its Managing Trustee
Nagore. ... Petitioner

Vs.



1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib
No.19, Mohideen Palli Street
Nagore – 611 002.

2.The Tamil Nadu Wakf Board
Represented by its Chairman
Chennai.

3.The Superintendent of Wakf
Tanjore.

4.The President
Rep. By Advisory Board of Nagore Dargah
Nagore.

... Respondents

CRP (PD) No.74 of 2015:

Nagore Dargah
Rep. By its Managing Trustee
Nagore.

... Petitioner

1.Muhalli Muthavalli H.Haja Najmudeen Sahib
7, Manavara North Street
Nagore
Nagore Taluk – 611 002.

2.The Tamil Nadu Wakf Board
Represented by its Chief Administrative Officer
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar
Chennai – 600 001.

3.Haji S.Haja Noordeen @ Syed Kamil Sahib

4.Haja Syed Beevi

5.Haji S.Sulthan Kalifa Sahib

6.S.Meera Hussan Sahib

7.Haji Muhalli S.M.Hassan Kalifa Sahib

8.J.Najmudeen Sahib

9.Muhalli V.Syed Mohamed Sahib

... Respondents

CRP (PD) No.938 of 2010:

Tamil Nadu Wakf Board

By its The Chief Executive Officer/Secretary
Chennai.

... Petitioner

Vs.

Nagore Durgah
Nagore – Repd by its Trustees

- 1.Muhalli Muthavalli K.Mohammed Kalifa Sahib
(Dargah Kalifa) & Dargah Managing Trustee
- 2.N.S.Syed Abul Fathah Sahib
- 3.M.S.Mohamed Backer Sahib
- 4.S.A.Shaik Hasan Sahib
- 5.H.N.Syed Haja Mohideen Sahib
- 6.S.M.B.Sultan Kabeer Sahib @ Minor Sahib
- 7.Haji S.Sultan Bava Sahib
- 8.Haji Muhali H.Haja Vanbjoor Fackir Sahib Kadin
(Sinnathambi Sahib)
- 9.The Manager, Nagore Durgah, Nagore.
- 10.The President
Durgah Advisory Board
Nagore.
- 11.A.T.Ali Hussain Sahib Faizi ... Respondents
[R11 impleaded as Party in Respondent Vide
Court order dated 21.7.2015 made in MP.No.1
of 2010 in CRP.No.938/2010]

W.A.No.144 of 2017 :The Managing Trustee
Rep by Board of Trustees
Nagore Durgah
Nagore – 611 002
Nagapattinam District.

... Petitioner

Vs.

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- 1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib
- 2.Muhalli Muthavalli H.Haja Najmudeen Sahib
- 3.The Wakf Tribunal
Nagapattinam.
- 4.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 600 001.
- 5.The Superintendent of Wakfs
Wakf Superintendent Office
27 Court Road
Diwan Nagar
Thanjavur Town and District.
- 6.The President
Rep. By Advisory Board of Nagore Dargah
Nagore – 611 002
Nagapattinam District.
- 7.Haji S.A.Shaik Hasan Sahib
- 8.Haji N.S.Syed Abdul Fathah Sahib
- 9.Haji K.M.Kalifa Masthan Sahib
- 10.M.S.Mohamed Backer Sahib
- 11.Haji H.N.Syed Haja Mohideen Sahib
- 12.S.M.B.Sultan Kabeer Sahib
- 13.S.Syed Mohamed Kazi Hussain Sahib

W.A.No.145 of 2017 :

H.K.Syed Yusoof Sahib

... Petitioner

Vs

- 1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib
- 2.The Managing Trustee
Representing the Board of Trustees
Nagore Dargah

Nagore – 611 002.

3.The President
Represented by Advisory Board
Nagore Dargah
Nagore – 611 002.

4.The Wakf Tribunal,
Nagapattinam.

5.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 600 001.

6.The Superintendent of Wakfs
Wakf Superintendent Office
27 Court Road, Diwan Nagar
Thanjavur Town and District.

7.Muhalli Muthavalli H.Haja Najmudeed Sahib

8.S.Sultan Kalifa Sahib @ Kannuvappa Sahib ... Respondents

W.A.No.271 of 2017 :

Muhalli Muthavalli H.Haja Najmudeen Sahib ... Petitioner

Vs

1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib

2.The Wakf Tribunal
Nagapattinam.

3.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 600 001.

WEB COPY

4.The Superintendent of Wakfs
Wakf Superintendent Office
27 Court Road, Diwan Nagar
Thanjavur Town and District.

5.The Managing Trustee
Rep by Board of Trustees
Nagore Dargah, Nagore – 611 002
Nagapattinam District.

6.The President
Rep by Advisory Board of Nagore Dargah
Nagore, Nagapattinam District.

7.Haji S.A.Shaik Hasan Sahib

8.Haji N.S.Syed Abdul Fathah Sahib

9.Haji K.M.Kalifa Masthan Sahib

10.M.S.Mohamed Backed Sahib

11.Haji H.N.Syed Haja Mohideen Sahib

12.S.M.B.Sultan Kabir Sahib

13.S.Syed Mohammed Kazi Hussain Sahib ... Respondents

W.A.No.272 of 2017 :

Muhalli Muthavalli H.Haja Najmudeen Sahib ... Petitioner

Vs

1.Haja Noordeen Sahib @
Alhaj Dr.S.Syed Kamil Sahib

2.The Wakf Tribunal
Nagapattinam.

3.The Tamil Nadu Wakf Board
Rep by its Chairman
Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai – 600 001.

4.The Superintendent of Wakfs
Wakf Superintendent Office
27 Court Road, Diwan Nagar
Thanjavur Town and District.

5.The Managing Trustee
Rep by Board of Trustees
Nagore Dargah, Nagore – 611 002
Nagapattinam District.

6.The President
Rep by Advisory Board of Nagore Dargah
Nagore, Nagapattinam District.

.... Respondents

Prayer in WA.No.1640 of 2016: Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 22.11.2016 passed in W.P.No.33181 of 2016.

Prayer in WP.No.7809 of 2010: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Prohibition, prohibiting the respondent from taking or conducting any proceedings in pursuance of the notice bearing reference "Na.Ka.No.15838/89/A10/Nagal" dated 19.03.2010.

Prayer in WP.No.27431 of 2014 : Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Prohibition prohibiting the first respondent from proceeding with WOP.No.3 of 2014 on the file of Wakf Tribunal, Nagapattinam.

Prayer in WP.No.27595 of 2014 : Writ Petition file/d under Article 226 of Constitution of India praying to issue a Writ of Prohibition to prohibit the proceedings relating to W.O.P.No.3 of 2014 on the file of the Wakf Tribunal (Sub Court), Nagapattinam filed by the second respondent dated 07.10.2014.

Prayer in CRP.(PD). No.73 of 2015 : Civil Revision Petition filed under Proviso Section 83(9) of Wakf Act, 1949 praying to set aside the order dated 17.11.2014 rejecting IA (unfiled) IACFR 4908/2014, made in WOP.No.3 of 2014 on the file of Wakf Tribunal (Principal Subordinate Court) at

Nagapattinam and consequently direct the Tribunal to take on the file (unfiled) IACFR.No.4908/14 and number and dispose the same.

Prayer in CRP.(PD) No.74 of 2015 : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 21.11.2014 rejecting IA (unfiled) IACFR.No.4872/2014, made in OS.No.31/14 on the file of Sub Court, Nagapattinam and consequently direct the Court to take on file the said (unfiled) IACFR.No.4872/14 and number and dispose the same in accordance with law.

Prayer in CRP. (PD) No.938 of 2010 : Civil Revision Petition filed under Article 227 of Constitution of India, r/w Section 83(9) of the Wakf Act, 1955 praying to set aside the order and decretal order in I.A.No.109/2008 in O.S.No.30/1946 on the file of the Scheme Judge (District Judge), Nagapattinam dated 07.08.2009.

Prayer in W.A.No.144 of 2017 : Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 06.02.2017 made in WP.No.27431 of 2014 on the file of this Court.

Prayer in W.A.No.145 of 2017 : Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 22.11.2016 made in WP.No.33181 of 2016 on the file of this Court.

Prayer in W.A.No.271 of 2017 : Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 06.02.2017 made in MP.No.1 of 2014 in W.P.No.27431 of 2014.

Prayer in W.A.No.272 of 2017 : Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 06.02.2017 made in MP.No.3

of 2015 in W.P.No.27431 of 2014.

Counsel in W.A.No.1640 of 2016, W.A.No.144 of 2017, WP.No.7809 of 2010,
CRP (PD) Nos.73 & 74 of 2015 :

- For Appellants /Petitioners : Mr.Srinath Sridevan
(in the above cases)
- For Respondents : M/s.S.Haja Mohideen Gisthi &
(in W.A.No.1640 of 2016) V.Manopriya [R1]
Mr.S.A.Sheik Mohamed [R2]
Mr.V.Lakshminarayanan [R4]
Mr.S.Sounthar [R6]
Mr.R.Parthasarathy [R7]
Mr.A.Mohamed Ismail [R8]
Mr.S.Thirumavalavan [R9]
Ms.P.T.Asha for
M/s.Sarvabhauman Associates
[R10 to R12]
- For Respondents : M/s.S.Haja Mohideen Gisthi &
(in W.A.No.144 of 2017) V.Manopriya [R1]
Mr.S.Sounthar [R2]
Mr.S.A.Sheik Mohamed [R6]
- For Respondents : Mr.V.Lakshminarayanan [R1]
(in W.P.No.7809 of 2010)
- For Respondents : M/s.S.Haja Mohideen Gisthi &
(CRP (PD) No.73 of 2015) V.Manopriya [R1]
Mr.V.Lakshminarayanan [R2]
Mr.S.A.Sheik Mohamed [R4]
- For Respondents : Mr.S.Sounthar [R1]
(CRP (PD) No.74 of 2015) Mr.V.Lakshminarayanan [R2]
M/s.S.Haja Mohideen Gisthi &
V.Manopriya [R3]

Counsel in W.P.No.27431 of 2014, W.A. Nos.271 & 272 of 2017 :

- For Petitioner / Appellant : Mr.S.Sounthar
(in the above cases)
- For Respondents : R1 – Wakf Tribunal
(in W.P.No.27431 of 2014) Mr.V.Lakshminarayanan [R2 & R3]
Mr.Srinath Sridevan [R4]
Mr.S.A.Sheik Mohamed [R5]
M/s.Haja Mohideen Gisthi &
V.Manopriya [R6]
Mr.Anand Venkatesh [R7 to R13]
- For Respondents : M/s.Haja Mohideen Gisthi &
(in W.A.No.271 of 2017) V.Manopriya [R1]
Mr.V.Lakshminarayanan [R2 & R3]
Mr.S.A.Sheik Mohamed [R6]
- For Respondents : M/s.Haja Mohideen Gisthi &
(in W.A.No.272 of 2017) V.Manopriya [R1]
Mr.V.Lakshminarayanan [R2 & R3]
Mr.S.A.Sheik Mohamed [R6]

Counsel in W.P.No.27595 of 2014 :

- For Petitioner : Mr.R.Parthasarathy
- For Respondents : R1 – Wakf Tribunal
M/s.Haja Mohideen Gisthi &
V.Manopriya [R2]
Mr.V.Lakshminarayanan [R3]
Mr.Srinath Sridevan [R5]
Mr.S.A.Sheik Mohamed [R6]

Counsel in CRP (PD) No.938 of 2010:

- For Petitioner : Mr.V.Lakshminarayanan
- For Respondents : Mr.Srinath Sridevan [R4]
Mr.S.A.Sheik Mohamed [R10]

Counsel in WA.No.145 of 2017 :

For Appellant	: Mr.R.Gandhi, Senior Counsel Assisted by Mr.R.G.Narendhiran
For Respondents	: M/s.Haja Mohideen Gisthi & V.Manopriya [R1] Mr.S.A.Sheik Mohamed [R3]

COMMON ORDER[Order of the Court was made by N.SESHASAYEE,]

1. Peace is omnipresent, yet it remains the most sought after. Merciful it is, to he who respects it; and sternly uncharitable to one who risks valuing it less. Its rules are straight and even, as it distinguishes not between the royalty and the laity. Paradoxically, the quest for peace invariably breeds conflicts among its seekers which a litigation typifies in a civil society. The *Nagoor Durgah*, a wakf, that manages the *durgah* of a 15th century Islamic saint Hazrath Syed Shahul Hammed Quadir Ali (being revered as *Nagoor Andavar*) and other *Thakias* and shrines finds itself in a centrifuge of litigations, and seemingly tests its bond with peace. Let peace be upon the Wakf.

2. The litigations here may be classified into two major folds. Before entering its arena, a preludial note on the *durgah*, may be of benefit:

- Saint Hazrath Syed Shahul Hammed Quadir Ali, believed to be one of the descendants of Mohammed the Prophet, was an Islamic saint of the 15th century. He hailed from what we now know as Uttar Pradesh. He trained himself deeply in Islamic teachings and traditions, and

possessed divine powers of healing. He had travelled extensively with his disciples and landed in Thanjavur as his final destination. There, his power of healing had a therapeutic effect on a Naik Ruler of the times named *Achyuta Deva Raya* and it helped him recover from his illness. The king in turn had donated vast stretch of lands to the saint in gratitude. The saint passed away sometime during the third quarter of the 16th century and in reverence to the holy and healing Saint, a *durgha*, was consecrated to him. This later came to be known as *Nagoor Durgha* which has since emerged as a pan-religious destination for pilgrimage.

- The Saint was known to have remained a celibate. He had brought up a certain Sayeed Mohammed Yousuf Sahib of Lahore as his son. Yousuf Sahib (sometime spelt Eusof) had his descendants who later came to be known as *Kaasu-Pangudaars*. In simple English, they are sharers in 'kaasu' or money.

3. Then came to be filed a few suits involving the affairs of the Nagoor Durgha. The earliest scheme is stated to have been framed in 1888 and was subsequently modified. In between there was a suit filed by the Kasupangudars in O.S.45 of 1918 and another suit in O.S.1/1923 for framing a scheme. But in the context of the present case, the scheme framed in O.S.30 of 1946, a suit filed for framing a scheme under Sec.92 CPC before the

then District Court at East Tanjore (Nagapattinam) is relevant. The scheme framed in O.S.30 of 1946 was challenged in A.S.289 of 1948 and A.S.576 of 1948 before this Court. This Court Vide its judgement dated 16-03-1955 modified the scheme framed by the District Court. This modified scheme is being worked till date.

4. The Scheme framed in O.S.30 of 1946 provided a three tier administrative set-up for managing the affairs of the Trust. They are: (a) A Board of eight hereditary trustees in whom, as per Clause 3 of the Scheme, "*all properties movables and immovables, which belongs to or have been or may hereafter be given, dedicated or endowed shall vest*"; (b) An Advisory Committee of eleven members which included five members appointed by the Court; and (c) The Manager. The scheme refers to the Board of Trustees as "*Nattamaigars*'

5. One of the eight trustees would be the Managing Trustee and he will be elected from among the Board of Trustees. The Managing Trustee will hold the office for a period of three years. The trustees / Nattamaikars hold office for life, and in the eventuality of a vacancy arising to the office of the trustees, Clause 3 of the scheme itself provides that the said office will *devolve on the next male heir in accordance with the custom prevailing in respect of such office in the dargah*. The scheme however, is silent on what the prevailing custom was/is, or on the mechanism to identify the rightful heir to the office, in case of a conflict.

6. A certain Haja Vanchur Pakir Sahib alias Chinnathambi Sahib was the eighth trustee, and on 04-12-2013 he died. This threw open the office he held for succession in terms of the scheme. Vanchur Pakir Sahib however, had not any sons himself, and therefore, his male heir among his collaterals offered their candidature for succession. There appears to be as many as nine candidates who compete to fill up the vacancy which Vanchur Pakir Sahib's demise has created. A substantial part of the litigations however, revolve around three of them: (i) Haja Najmuddin Sahib; (ii) Haja Noordeen Sahib alias Alhaj Dr.S. Syed Kamil Sahib and (iii) Sultan Kalifa. Each of them designed their independent strategies to accomplish their objectives to succeed to the office of the eighth trustee. The litigation relating to this issue forms the First Group of cases.

7. Moving away from the internal differences in identifying the male heir who fulfils the qualification to succeed the office of eighth trustee, on the legislative front, the Parliament brought in The Wakf Act, 1995, repealing The Wakf Act, 1954. The Tamil Nadu Wakf Board, a creation of the Wakf Act, would now intervene in O.S.30 of 1946 and moved the District Court with I.A.109 of 2008 for "*transfer of right of management and control of all affairs of the Nagoor Dargah, its properties, and its day to day administration including power to appoint Muttavalalli*" to it. This was dismissed on 07-08-2009 and the Wakf Board has preferred CRP 938 of 2010 against it. The Wakf Board would now

issue a notice dated 19.03.2010 to the Board of Trustees for participating in an enquiry intended for converting the Scheme framed by the District Court to one framed by the Wakf Board. The Managing Trustee of the *durgha* has challenged it in a writ petition and this forms the next group of cases.

8. It now flows that one set of dispute pertains to succession to the office of the eighth trustee, and the other relates to the dispute between the Trust and the Wakf Board. If closely analysed, the cases under both these groups are founded on independent causes of action, and ideally they may be disposed of by separate orders. However, sometime during the pendency of all these cases, another Division Bench of this Court consolidated few of the cases in both the branches and passed interim orders, chief among which is an order dated 10-02-2017. Vide this Order, this Court has directed the appointment of an Adhoc Board of Administrators. This Order later came to be confirmed by the Hon'ble Supreme Court. Accordingly, Mr.K.Allaudin, a former Officer of the Indian Administrative Services and Mr. S.F.Akbar, a former District Judge, have been constituted as the Adhoc Board of Administrators. This consolidation would also serve a purpose towards the end of the Order.

9. Its now time to step into the litigious zone: There are in total eleven cases, and as referred to earlier they are categorised into two groups:

Group I: All except CRP 938 of 2010 and W.P.7809 of 2010 fall under this Group. They relate to the attempts that the three

potential candidates have taken for succeeding to the office of the eighth trustee and few cases that have sprung from causes ancillary to it.

Group II: The dispute here is between the Wakf Board and the Trust. This batch has two cases: One is **CRP 938 of 2010** in which the Wakf Board challenges the order of the District Court, Nagapattinam in I.A.No.109 of 2008 in O.S.No.30 of 1946, dismissing its claim to have the entire management of the Trust transferred to it. The other is **W.P.7809 of 2010** which the Managing Trustee has filed challenging the notice of the Wakf Board dated 19-03-2010 referred to in the previous paragraph.

10. It may be outlined that,

- The critical issue involved in the First Group of cases is to ascertain the remedial forum competent to decide the lawful successor to the office of the 8th trustee – Is it the Civil Court other than the Scheme Court (District Court), or the Scheme Court, or the Wakf Tribunal?
- The point involved in the two cases in the second Group is, as between the District Court, Nagapattinam and the Wakf Board, which is competent to oversee the working of the scheme decree?

A. PART I**The first Group of cases:**

11. To restate the basic fact, until his death on 04-12-2013, Haja Vanchur Pakir Sahib alias Chinnathambi Sahib was the eighth trustee, and he did not leave behind him a son to succeed to the office he held. There are three prime characters, who have already been introduced in paragraph 6 above, and each of them individually claim heir-ship to Vanchur Pakir Sahib as the latter's collateral heir either on the male line or on the female line. Clause 3 declares that the devolution of trusteeship will be on the *next male heir in accordance with the custom prevailing in respect of such office in the dargah.*

12.1 In Group I, there are totally nine cases, of which two are writ petitions, five writ appeals and two civil revision petitions. The narrative revolves around three contenders for the trusteeship of the 8th trustee, and the fourth one is the Managing Trustee of the Nagoor Dargah. The stage I of the strategy that the parties have adopted is:

- ⌘ Haja Noordeen alias Alhaj Dr.S.Syed Kamil Sahib (who would be referred to as Kamil Sahib in this order), was the first to move the Managing Trustee with his request dated 06.12.2013 to be appointed as the eighth trustee. Haja Najmudeen Sahib, is the second contestant for the office, and he moved the Managing Trustee with his letter dated 21-12-2013. The Managing Trustee

informed them Vide his letter dated 11-02-2014 to approach the Court and to have their status declared.

- ✕ Kamil Sahib had subsequently approached this Court in W.P.7272/2014 and later withdrew the same and moved the Wakf Tribunal (Subordinate Judge's Court), Nagapattinam in WOP 3 of 2014 inter alia against the Tamil Nadu Wakf Board and Managing Trustee, Nagoor Durga for a mandatory injunction to direct the respondents not to interfere with the rights of the petitioner, recognised as 8th Trustee in Nagore Dargah, to perform all the religious ceremonies and its institutions as hitherto performed by the deceased Trustee Haji Haja Vanjore Packir Sahib. Here he filed an application in IA 248 of 2014 for a mandatory injunction that he be appointed as a trustee. On 08-10-2014, this was ordered exparte. For his part Najmudeen Sahib instituted O.S.31 of 2014 before the Sub Court for the same purpose. What is significant here is that while in O.S.31 of 2014 Najmudeen Sahib had arrayed Kamil Sahib as a party defendant, the latter did not implead the former in WOP 3 of 2014.

- ✕ The third contender who approached the Court is a certain Sultan Kalifa Sahib. He moved the Scheme Court, namely the District Court, Nagapattinam in I.A.101 of 2014 in O.S.30 of 1946.

12.2 From here parties develop the stage II of their strategies. The WOP 3 of 2014 pending before the Wakf Tribunal, Nagapattinam came under challenge in two petitions:

(a) Haja Najumudeen Sahib (who moved the Civil Court in O.S.31 of 2014) filed W.P.27431/2014.

(b) Sultan Kalifa Sahib (who moved the Scheme Court (District Court) in I.A.101/2014) came up with W.P. 27595/2014.

It may be stated that this strategy coupled with the role which the Managing Trustee chose to play has, in essence, multiplied the litigations before this Court.

13.1 In W.P.27431 of 2014, petitioner Haja Najmudeen filed M.P.1/2014 for stay of all proceedings in WOP 3 of 2014 which Kamil Sahib has filed. In the same writ petition, Kamil Sahib, who was arrayed as 6th respondent in the writ petition has filed M.P.3 of 2015 to appoint him as an interim trustee to the Board of Trustees of the Nagore Durgah.

13.2 By a common Order dated 06.02.2017, MP.No.1 of 2014 & M.P.3 of 2015 in WP.No.27431 of 2014 were disposed of along with few other Miscellaneous Petitions. M.P.3 of 2015 was allowed and this enabled Kamil Sahib to continue as a trustee in terms of the interim order passed by the Wakf Tribunal in WOP 3 of 2014. By implication, M.P.1 of 2014 was dismissed.

Now this interim order came under challenge in three appeals, whose details are:

W.P.No.	M.P.No.	Prayer	Appeal Particulars	
			W.A.No.	Appellant
27431/2014	MP.No.1/2014	Stay of proceedings in WOP.No.3 of 2014	271 of 2017	H.Haja Najmudeen Sahib (Petitioner in WP.27431/2014)
			144 of 2017	Managing Trustee (4 th respondent in WP.27431/2014)
	MP.No.3/2015	To appoint Haja Noordeen Sahib @ Alhaj Dr.S.Syed Kamil Sahib as interim Trustee	272 of 2017	H.Haja Najmudeen Sahib (Petitioner in WP.27431/2014)

14. For his part, the Managing Trustee has filed two separate applications, one in IACFR 4872 of 2014 in O.S.31 of 2014 and another in IACFR 4908/14 in WOP 3 of 2014 for stay of proceedings under Sec.10 CPC in view of the pendency of I.A.101 of 2014 in O.S.30 of 1946 that Sultan Kalifa has filed. They were not taken on file and were returned by the Court as against which he has filed CRP 73 of 2015 and CRP 74 of 2015 .

15.1 During the pendency of these proceedings before this Court, the Managing Trustee has issued his proceedings dated 16-09-2016 for holding an election to the office of the Managing Trustee which was scheduled to take place on 22.09.2016. Kamil Sahib, who, as has been stated a couple of times earlier, the architect of WOP 3 of 2014 option, challenged the proceedings dated 16.09.2016 in W.P.33181 of 2016. A learned Single Judge of this Court

allowed this petition Vide his order dated 22-11-2016, essentially on the ground that given the factum of pendency of earlier proceedings involving larger issues, it might not be appropriate for the Managing Trustee to have issued the said proceedings. This is challenged in two appeals. The details are:

W.P.No.	Prayer	Order date	Appeal Particulars	
			W.A.No.	Appellant
33181/2016	To quash the letter dated 16.09.2016 in R.O.C. No. 269/2016 issued by the Managing Trustee and to conduct election after the period of the office of the Managing Trustee i.e., on 01.12.2016 or to include the petitioner to enable him to participate in the meeting of the Board of Trustees for electing the Managing Trustee	22.11.2016	145 of 2017	By as third party (H.K.Syed Yusoof Sahib)
			1640 of 2016	Managing Trustee

15.2 On a close reading of the Order in W.P.33181 of 2016 the learned Single Judge, nowhere has pronounced against the right of the Managing Trustee to call for a meeting for election of the Managing Trustee, but has only questioned the timing of issuing the impugned notice calling for a meeting on 16-09-2016. By allowing the petition, the learned Single Judge also has not chosen to consider the alternate prayer of Kamil Sahib in W.P. 33181 of 2016, and left the issue open. Secondly, what was in challenge in W.P.33181 of 2016 were the proceedings of the Managing Trustee dated 16.09.2016,

calling for a meeting on 22.09.2016. Irrespective of what the cause is, inasmuch as this meeting has not taken place, and since it cannot take place in terms thereof, there is no controversy available for this Court to resolve. Hence, these two appeals have to be dismissed.

16. Turning to W.P.27431 of 2014 and W.P.27595 of 2014, they are filed for issuing a Writ of Prohibition against the Wakf Tribunal not to proceed with WOP.3 of 2014, on the ground that it does not have the jurisdiction to decide the issue involving the ascertainment of the male heir for the devolution of the office of trusteeship. There is an ancillary issue which seeks a decision on a point of divergence between the writ petitioners: While Haja Najmudeen (petitioner in W.P. 27431 of 2014) contends that only a Civil Court will have jurisdiction, Sultan Kalifa (petitioner in W.P.27595 of 2014) claims that only the Scheme Court will have the power to decide the issue. Kamil Sahib who contests these petitions relies on Sec.83 of the Wakf Act and claims that Wakf Tribunal alone has jurisdiction.

17. It has to be now made clear that irrespective of who is competent to decide this issue, whoever who might ultimately decide cannot avoid a decision on the following: (i) Is not the 'next male heir' be decided based on Islamic law (ii) Should an agnate be preferred over a cognate? None of these issues, and there could be more, can be decided by this Court in these proceedings as they require evidence on the points involved. This would imply

that the present endeavour of this Court is limited to guiding the parties to the right forum for seeking the remedy.

18. The Civil Court by default is vested with the jurisdiction to decide all disputes of civil nature and hence it has the jurisdiction to decide on the status of the heir-in-succession to the office of trusteeship. Sec.9 CPC reads:

9. Courts to try all civil suits unless barred:- *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

Explanation ⁵[I]: *A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*

⁶[Explanation II: *For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]*

19.1 If the Wakf Tribunal has to exclude the jurisdiction of the Civil Court, the legislature must have vested it with such powers excluding the jurisdiction of the civil court either expressly or by necessary implication. Mr. Parthasarathy, Counsel for Sultan Kalifa Sahib, the Petitioner in W.P.27595 of 2014 and backed by Mr.S.Sounthar, the counsel for Haja Najmudeen Sahib (petitioner

in W.P.27431 of 2014) argued that the legislative wisdom of the Parliament did not extend to the extent of granting the powers for determining the successor to the office of Trusteeship (Muttavalli) to the Wakf Tribunal. The powers of the Wakf Tribunal within the legislative scheme of Wakf Act find expression in sections 32(3), 35, 48(2), 52(4), 54(3), 61, Sec.64 r/w 32(2)(g), Sec.67(4), Proviso to Sec.69(3), Sec.73(3). Not one of these provisions grant power to the Wakf Tribunal either expressly or impliedly to decide on the succession to the office of trusteeship, and hence it cannot be contended that jurisdiction of the Civil Court under Sec.9 CPC has been excluded even remotely. Secondly, the scheme of the Wakf Act has not entirely excluded the jurisdiction of the Civil Court, as for instance in case of eviction of a tenant of the Wakf property prior to the Wakf (Amendment) Act, 2013, the jurisdiction to decide the dispute vested in the Civil Court. Ref: **Ramesh Gobindram (dead) through Lrs., Vs Sugra Humayun Mirza Wakf** [(2010) 8 SCC 726]. Reliance was also placed on **Dhulabhai Etc., Vs. State of Madhya Pradesh & Another** [(1968) 3 SCR 662: AIR 1969 SC 78 : 22 STC 416]; **Smt.Ganga Bai Vs. Vijay Kumar & Others** [(1974) 2 SCC 393]; **Syed Abdul Fatah Sahib, N.S. Vs. S.Saha Syed Sahib & Others** [2003-3 L.W.433] and **Fuaad Musvee Vs.M.Shauib Musvee** [(2008) 4 CTC 59].

19.2 In response, Mr. Haja Mohideen Gisthi, the learned counsel for Kamil Sahib, (the petitioner in WOP 3 of 2014 before the Wakf Tribunal, and sixth

respondent in W.P.27431 of 2014 and second respondent in W.P.27595 of 2014) would argue that, when once a Special Tribunal has been created, it alone has jurisdiction over the issue at hand. Section 83 of the Wakf Act provides that *"The State Government shall,... constitute as many Tribunals as it may think fit, for determination of any dispute, question or other matter relating to a waqf, or waqf property....., under this Act"* and it does not require a party to suffer an order of the Wakf Board for him to approach the Wakf Tribunal. Strong reliance was inter alia placed on the authorities in ***Board of Wakf, West Bengal & Another Vs Anis Fatma Begum & Another*** [(2010)14 SCC 588] and ***V.S.B.Sikkandar Vs K.M.Khader Gani & another*** [2006(5) CTC 346].

20.1. The law on the exclusion of Civil Court's jurisdiction is too well settled to require a re-visit or a reiteration. In the context of Wakf Act, 1995, it is provided in Section 85, and it reads:

85. Bar of jurisdiction of ²[Civil Court, revenue Court and any other authority]. – *No suit or legal proceedings shall lie in any ²[Civil Court, revenue Court and any other authority] in respect of any dispute, question or other matter relating to any ¹[waqf], ¹[waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.*

The clause on exclusion of civil court's jurisdiction under Sec.85 of the Act limits it only to those disputes, questions or other matters relating to any wakf, waqf property or other matters for deciding which power is vested in the

Wakf Tribunal. The case in **Ramesh Gobindram (dead) through Lrs., Vs Sugra Humayun Mirza Wakf** [(2010) 8 SCC 726] is a classic instance where the Supreme Court has held that a cause of action involving a dispute between the Wakf and its lessee is outside the purview of a Wakf Tribunal's jurisdiction, and consequently a Civil Court has jurisdiction over the cause. [Note: Vide Wakf (Amendment) Act, 2013, Sec.83 was suitably amended to grant the Wakf Tribunal with the authority to entertain a dispute between the wakf and its tenants including a dispute pertaining to eviction of tenants]. On the point involved in this case, if the Wakf Act is approached for ascertaining if it has the authority to decide on the civil status of an individual in terms of the prevailing custom for succeeding to the office of the eighth trustee, it informs that it has not vested it with any specific power. The nearest provision is in Sec.32(2)(g) of the Act, but that deals with the powers of the Wakf Board and not of the Wakf Tribunal. This will find a reference later in this Order.

20.2 If some reflections are shed on the authorities that Mr. Haja Mohideen Gisti has relied on, the first one to be considered is the judgement of the Hon'ble Supreme Court in the **Anis Fatma case** [(2010) 14 SCC 588]. The learned counsel seeks to draw sustenance for the sustainability of his argument from paragraph 10. It reads:

"10. ...the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question, or other matters relating to a wakf or wakf property" are, in

our opinion words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal.”
(emphasis supplied)

The counsel's efforts are temptingly impressive that it can instantly blur one's vision to the fallacy hidden in his argument, but on a closer scrutiny, it does get exposed. It can be explained.

20.3. The facts of **Anis Fatma Begum case** are less complicated: The respondents before the Supreme Court had approached the Original Side of the Calcutta High Court with the following questions:

(i) Whether the demarcation of the Wakf property dividing it into two distinctive parts, one for Wakf-alal-aulad and the remaining portion for pious and religious purposes, is correct and has been made in consonance with the provisions of the Wakf Deed ? And,

(ii) Whether the Wakf Act, 1995 is applicable for the portion of the said property divided and earmarked for Wakf-alal-aulad ?

A learned Single Judge of the Calcutta High Court answered the first question in the negative. On appeal, a Division Bench had gone into this issue and has

held [reported **Anis Fatma Begum vs Board Of Wakfs, West Bengal**, [AIR 2004 Calcutta 910)]:

30. In our judgment, the definition of "wakf" in Section 3(r) of the Wakf Act, 1995, supports such a view and also indicates that the legislature with deliberate intent kept private wakfs out of the ambit of the said Act and the administrative control of the authorities appointed or constituted under the Act, except to the extent that provision was made therein for religious and charitable purposes."

On appeal to the Hon'ble Supreme Court [(2010) 14 SCC 588], the Court was chiefly concerned with the inter se controversy over the jurisdiction of the Civil Court and the High Court vis a vis the powers of the Waqf Tribunal under the Waqf Act, 1995. It is clear from paragraph 7 of the judgement of the Supreme Court wherein it held :

" ... In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straight away under Article 226 of the Constitution of India."

Having held that the Calcutta High Court did not have jurisdiction, it held that the parties are at liberty to approach the jurisdictional Waqf Tribunal, if so advised.

20.4 It is now necessary to determine whether the issue at hand before this Court would fall within the contours of the ratio in **Anis Fatma Begum case**. It requires no reminder that a judgement is a proposition for what it lays down and it is a precedent only for what it actually decides, and that it should not be read as an Euclid's theorem. In **State of Rajasthan vs. Ganeshi Lal**, [(2008) 5 SCC 553] the Supreme court has made an emphatic statement on this:

"11. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court

has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

12. *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:*

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

Therefore, the judgement in the **Anis Fatma Begum case** has only laid down the proposition that neither the Civil Court nor the High Court has the jurisdiction to take direct cognizance of a dispute that statutorily falls under the domain of Wakf Tribunal, a specialised remedial forum statutorily created for the purpose. And, the statement of the Supreme Court that the expressions '*any dispute, question, or other matters relating to a wakf or wakf property*' as found in Sec.83 of the Act are words of '*very wide connotation*' must be contextually understood as meaning that the expressions pertaining to those issues that are statutorily assigned to a Wakf Tribunal can be expanded to their elastic limits to sustain its jurisdiction, but it should not be construed as conferring on it the jurisdiction over matters that are consciously kept outside its purview by the Parliament.

21.1 Turning to the issue at hand, in matters concerning the appointment of *Muttavalis* (the statutory equivalent to the Board of Trustees in the instant case), the power is vested in the Wakf Board under Sec.32(2)(g) of the Wakf Act and not in the Wakf Tribunal. If Mr. Gisti's argument is to be

countenanced dehors the views of this Court earlier expressed, it would render the power of the Wakf Board instantly irrelevant, an antithetic consequence not in the legislative contemplation. In **M.P.Wakf Board Vs Subhan shah (D) by Lrs & Others** [(2006)10 SCC 696], the Wakf Tribunal framed the scheme when statutorily the duty and power are assigned to the Wakf Board. Disapproving the same, the Supreme Court has held:

"28. ...In absence of any power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered therefor. Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute."

29. It is trite that when a procedure has been laid down the authority must act strictly in terms thereof. [See *Taylor v. Taylor*, (1875) 1 Ch D 426]..."

21.2 In **V.S.B. Sikkandar vs. K.M. Khader Gani and another**, [2006 (5) CTC 346], the other authority of a Division Bench of this Court on which Mr. Gisti placed great reliance on, this Court does not consider that the same should halt it for long here. First, the suit against which the appeal arose was filed before the Waqf Act, 1995, came into force but the judgement was rendered after the commencement of the Act. The learned judges who constituted the Division Bench had taken a view that since the Waqf Act had come into force, the civil court had lost its jurisdiction. With great respect to the learned judges, this view may no longer be good law after the conclusive

verdict of the Supreme Court in **Sardar Khan and Ors. vs. Syed Najmul Hasan (Seth) and Others**, [(2007)3 MLJ 366 : AIR 2007 SC 1447].

Referring to Sec. 7 (5) of the Waqf Act, 1995, the Supreme Court has held that what is essential to oust the jurisdiction of the civil court is the date of presentation of the plaint and not the date of the judgement. The relevant portion is extracted below :-

14. *In exercise of power under Section 83 of the Act, the Wakf Tribunal was constituted on 23.2.1997.*

15. *By virtue of Sub-section (5) of Section 7, it clearly transpires that the Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under Sub-section (1) of Section 6, before the commencement of this Act, i.e., if any suit has been instituted in any Civil Court prior to coming into force of The Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force. (emphasis supplied)"*

The Supreme Court reiterated it again in **Haryana Wakf Board Vs. Mahesh Kumar**, [AIR 2014 SC 501]. This apart, the Division Bench did not choose to investigate the statutory scheme of the Act to arrive at the conclusion that it has arrived.

22. In conclusion, it has to be held that the Wakf Tribunal does not have the

jurisdiction to decide who among the three candidates are qualified in terms of the Scheme to the office of right of trusteeship. Here the nature of prayer sought in WOP 3 of 2014 is also significant. It is doubtful if it can be obtained before the Wakf Tribunal.

23. This now invites this Court's attention to consider if the Principal District Court, the Scheme Court, has jurisdiction to decide the issue. The District Court has ventured to frame the Scheme in O.S.30 of 1946 filed under Sec.92 CPC. The *dargah*, however, disputes the character of the Wakf as an exclusive public trust in the context of its dispute with the Tamil Nadu Wakf Board, and contends that it is a wakf-alal-aulad, and that it possesses elements of a private trust. The strength of this defence forms the primary issue in the two cases in the Second Group to be discussed later where this contention would be tested. But, for the present the issue can be decided on the premise which Sultan Kalifa considers appropriate. This now bring into focus Sec.92 CPC, which reads:

Sec.92 Public Charities - (1) *In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the directions of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the ⁷⁷[leave of the Court] may institute a suit, whether contentious or not, ... to obtain a decree-*

(a) removing any trustee;

(b) appointing a new trustee;

1.c)to (3)

Sec.92 CPC, provides for (i) cases of breach of trust; and (b) cases where direction of the Court is deemed necessary. 'Breach' in the context of Sec.92 CPC, means breach of terms of any express or constructive public religious or charitable trusts that necessitates the vindication of public interest involved in the administration of such trusts. And, the need for removal of a trustee or appointment of a new trustee shall be contextually understood and the provision shall not be invoked *dehors* any breach of trust or absence of any public interest. This is a prerequisite to justify an action under Sec.92 but not otherwise. Surely it cannot include instances where parties seek to vindicate their personal or private right such as their rival claim to an office. Right to hold an office of a trustee is a private right merely even if the creation of the office is traceable to a trust deed or to a scheme settled by Court. The controversy here is not rooted in the breach of any term of the scheme but in working of the scheme vis-a-vis the right to hold an office. Here the phrase 'direction of the Court' in Sec.92 shall have to be associated with situations arising out of breach of trust warranting a judicial direction for its administration of the trust but not otherwise. And, the appointment of a new trustee shall have to be contextually understood, and the provision shall not be invoked *dehors* any breach of trust or absence of any public interest.

Refer: ***Vidyodaya Trust Vs Mohan Prasad R and others*** [2008 SAR (Civil) 362], ***Vinayaka Dev, Idagunji and others Vs Shivaram and others*** [(2005) 6 SCC 641], ***Swami Parmatmanand Saraswati & another Vs Ramji Tripathi & another*** [AIR 1974 SC 2141], ***Appanna Poricha Vs***

Narasinga Poricha and others [1921(XLI) MLJ 608: AIR 1922 Madras 17 (FB)], ***Thirumalai Tirupati Devasthanams Committee Vs Udiavar Krishnayya Shanbhaga and others*** [AIR 1943 Madras 466 (FB)], ***Nadigar Sangham Charitable Trust, represented by its Managing Trustee R. Sarathkumar Vs S. Murugan @ Poochi Murugan and others*** [2013 -1-L.W. 122(DB)], ***L.M. Menezes and others Vs Rt. Rev. Dr. Lawrence Pius and others*** [2004 (1) CTC 321(DB)], ***T.G. Viswanathan Chettiar Vs T.A. Shanmugha Chettiar and others*** [AIR 1992 Madras 148 (DB)], ***Rabiammal Ahamed Maideen Educational Trust, a public Charitable Trust represented by its Secretary and Correspondent S.M. Miskeem and others Vs K.A. Ahamed Maideen represented by his Power Agent N.M.A. Noor Maideen and others*** [2012-4-L.W.141], ***Rani Thaiyal Nayagi Ammal Choultry at Thirukazhukundram, represented by its Trustees S.V.R. Ram Prasad and R. Vijaya Vs S. Venkatesan and 5 others*** [2012 (4) CTC 89].

24. If Sec.92 CPC cannot be invoked then the Scheme Court cannot have a role. Therefore, the contention of Sultan Kalifa Sahib, (the petitioner in W.P.27595 of 2014) too fails.

25. With neither the Wakf Tribunal, nor the Scheme Court found to have jurisdiction, necessarily the Civil Court will have the jurisdiction to decide who among Kamil Sahib, Najmudeen Sahib and Sultan Kalifa Sahib would be the next male descendant as per the prevailing custom to succeed to the office of

the eighth trustee. It may be stated here that even the Wakf Board cannot determine the issue under Sec.32(2)(g) of the Act, as the Wakf here is essentially of an unknown origin, governed essentially by a Scheme, and one of the questions that is likely to arise for a decision is about the existence of a custom (Ref:Clause 3 of the Scheme) in the context of Islamic law, which is beyond the ambit of Wakf Board's power to decide.

26. Consequent to the decision this Court has taken, W.P.27431 of 2014 and W.A.272 of 2017 filed by Najmudeen Sahib and W.P.27595 of 2014 filed by Sultan Kalifa Sahib have to be allowed. So far as W.P.27595 of 2014 is concerned it is allowed only in the context of the prayer sought therein, and it shall not be construed as upholding the contention of the petitioner that the Scheme Court/the District Court has jurisdiction. This decision which this Court has now taken would also mean that both CRP 73 of 2015 and CRP 74 of 2015 have zero significance since the Managing Trustee, a stranger to the controversy on succession to the trusteeship, only seeks to rest jurisdiction on the Scheme Court to decide the issue. Hence, they are liable to be dismissed.

27. This now requires this Court to consider the merits of W.A.271 of 2017 and W.A.144 of 2017, both of which are filed against the order passed in M.P.1 of 2014 in W.P.27341 of 2014. The third appeal in the sequence is W.A.272 of 2017, filed against the order in M.P.3 of 2015 in W.P.27341 of 2014.

28. M.P.1 of 2014 referred to above is filed for stay of all proceedings in WOP 3 of 2014 and MP.3 of 2015 was filed by Kamil Sahib in a writ petition filed by his rival contestant for the post of 8th trustee, for appointing him as an interim trustee. While the cause-title of the Order dated 06.02.2017 includes M.P.1 of 2014, there is hardly any discussion on it. The focus in the order was entirely on M.P.3 of 2015. This was allowed as indicated in paragraph 13.2 above. The operative portion of the order dated 06.02.2017 reads:

"13. Upon hearing the learned counsel appearing for the petitioner in W.P.No.27431 of 2014 and the learned counsel appearing for the petitioner in W.P.No.27595 of 2014 and the learned counsel appearing for the 6th respondent in W.P.No.27431 of 2015 and the learned counsel appearing for the petitioner in CRP.Nos.73 and 74 of 2015, I am inclined to pass the orders as follows :

The question that the jurisdiction for which Court to decide the case whether Civil Court or Wakf Tribunal is pending. The letter has been circulated by the learned counsel appearing for the Board to the Hon'ble Chief Justice, is pending, seeking to post the cases along with cases pending before the Hon'ble Division Bench.

Under these circumstances, keeping in view of the importance of the traditions, customs and hereditary practices followed in the Dargah and also the Scheme framed thereunder by this Court, it is necessitated that all the trustees is to be present for the smooth functioning of the Nagore Dargah.

14. Therefore, in the interest of justice, I am of the view that the order of the Nagapattinam Wakf Tribunal in I.A.No.248 of 2014 in W.O.P.No.3 of 2014 appointing the petitioner in M.P.No.3 of 2015 in W.P.No.27431 of 2014, namely Haja Noordeen Sahib @ Dr.Alhaj Syed Kamil Sahb as an interim 8th trustee is to be extended. Further, the Interim 8th Trustee shall perform all the duties which was being performed by the deceased 8th Trustee for the welfare of the Nagore Dharga."

29. This would indicate that M.P.3 of 2015 was not decided on its merit de hors WOP 3 of 2014 or the interim mandatory injunction passed in favour of Kamil Sahib appointing him as the trustee in I.A.248 of 2014. This Court struggles to convince itself in subscribing to the views taken in the aforesaid Order in M.P.No.3 of 2015. Before listing our reasons for the same, it is necessary to mention that Haja Najmudeen Sahib, in his counter to M.P.3 of 2015 has raised a point in defence that the order of mandatory injunction that Kamil Sahib had obtained in I.A.248 of 2014 was not extended beyond 31-10-2014. Now, over to the reasons of this Court. They are:

- a) First, WOP 3 of 2014 itself is incompetent and hence an order that provides some degree of continuity to an interim order passed in I.A.248 of 2014 in WOP 3 of 2015 cannot be sustained.
- b) Secondly, Kamil Sahib appears to be abusing the judicial process. He having filed WOP 3 of 2014 and also having obtained an interim order of

mandatory injunction in I.A.248 of 2014, ought to have worked out his remedy before the Wakf Tribunal, if at all he has a right to have the issue decided by it. In stead he has approached this Court even as he believed in keeping alive WOP 3 of 2014. Are Courts casinos for a litigant to wager on his chances in more fora than one on an identical cause? And, why hasn't he chosen not to approach the Wakf Tribunal to address the same issue in I.A.248 of 2014?

c) Thirdly, right to office is a personal right and not a statutory right. Kamil Sahib does not allege that any statutory authority has obstructed his right to establish his right to the office. How then a prayer to appoint him as an interim trustee be sustained in a writ jurisdiction?

d) Assuming M.P.3 of 2015 is sustainable, still the order impugned has not appeared to have considered the merit of the rival claims. And if rival claims for the office is to be considered then it will require a need to enter at least a prima facie finding on fact in identifying the one with a better title to the office. With Najmudeen Sahib and Kamil Sahib fighting it hard, this endeavour can never be conveniently done even in a writ proceeding, and much less in a Miscellaneous petition.

30. Necessarily the appellant in W.A.272 of 2017 succeeds. So far as W.A.271 of 2017 and W.A.144 of 2017 are concerned, M.P.1 of 2014 from which these appeals arise appears to have been decided only impliedly. In view of the fact that W.P.27341 of 2014 itself has been allowed, nothing

survives and both W.A.271 of 2017 and W.A.144 of 2017 have to be dismissed.

PART II

Wakf Board Vs Nagoor Dargah

A. Arguments for the Wakf Board

31. As was referred to in the preudial part of this Order, this controversy started when the Tamil Nadu Wakf Board moved the Scheme Court/the District Court, Nagapattinam with I.A.109 of 2008 in the Scheme suit O.S.30 of 1946 with a prayer for transfer of right of management and control of all the affairs, properties and day to day administration including the power to appoint the *Mutavalli* to the Wakf Board. This was resisted by the Managing Trustee of the Nagoor Dargah chiefly on the ground that the wakf is not an exclusive public Trust and that it is a mix of both a public and a private wakf.

32. Mr. V. Lakshminarayanan, the counsel for the Wakf Board made his opening statement toning down the prayer sought, and submitted that the Wakf Board is only seeking to exercise its statutory duty for ensuring the effective management of the wakf in terms of the Scheme. To state it differently, Wakf Board, according to the counsel, only intends to replace the Scheme Court. Expatiating the justification of his contentions, the learned counsel argued:

- Nagoor Dargah is a public wakf and the Scheme itself was framed in a suit filed under Sec.92 CPC. That the wakf possessed public character is not disputed.

- Sec. 2 of the Wakf Act, 1995 declares the legislative intent to extend the application of the Wakf Act to all wakfs created before and after the commencement of the Act, which implies that the Nagoor Dargah is not exempted from its application.
- Sec.32 mandates that the general superintendence of all "auqafs (wakfs) in a State shall vest in the board established by the State, and that it shall be the duty of the Board to exercise its powers under the Act to ensure that the auqafs 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 auqafs were created or intended." Sec.32 therefore cast a statutory duty on the Board when it granted the power of superintendence, and subject to the Rules made in this regard, this duty/power is absolute and this cannot be obstructed.
- An Explanation is added to Sec.32 which declares that for the purposes of Sec.32, "waqf includes a waqf in relation to which any scheme has been made by Courts of law, whether before or after the commencement of the Act." This therefore, instantly brings the Nagoor Durgha within the zone of Board's power of superintendence, and the existence of a Scheme decree is no answer to the Wakf Board exercising its jurisdiction. Second, Sec.69 grants the Wakf Board the

power to frame scheme. Sec.69(4) in particular gives it the power to modify the scheme framed prior to the commencement of the Act, implying thereby that it includes a Scheme framed by the Court. This provision is the Wakf Act equivalent of Sec.118 of the Tamil Nadu H.R & C.E.Act and hence the ratio in **T. Lakshmikumara Thathachariar Vs The Commissioner, H.R. & C.E.**, [(1998)6 SCC 643] and **Commissioner, H.R. & C.E. Vs P.S.Sethurathinam**[(1999)2 SCC 327] will have instant application to resolve the issue at hand.

- The legislative scheme of the Wakf Act presents itself as a complete Code and it encompasses within its ambit even cases where Schemes have been settled by the Court for the administration of a wakf, the Wakf Board will have jurisdiction. Authorities relied on are: **K.S.Sharfudeen & Others Vs Union of India & Others** [CDJ 2014 MHC 3091 (DB)], **C.S.Peeran Sahib Vs The State Wakf Board** [AIR 1969 Madras 350], **Janab Dr.Hisamuddin Papa Saheb & Others Vs E. Niyamathulla & Others** [(2007) 2 MLJ 1069], **Mohamed Mujeebur Rahman Vs The State of Tamil Nadu & Others** [LNIND 2011 Mad 3782], **I.Mehboob Basha & Another Vs Tamil Nadu Wakf Board & another** [CRP(NPD) 1816 & 2164 of 2012]
- Sec.108-A which was inserted under the Wakf(Amendment) Act, 2013, (Act 27 of 2013) and came into effect on 01-11-2013 during the pendency of these proceedings, declares that "the provisions of this Act

shall have overriding effect notwithstanding anything inconsistent therewith obtained in any other law for the time being in force, or in any instrument having effect by virtue of any law other than this Act."

This therefore should settle the issue.

- That in any eventuality, the Wakf Board cannot supersede the Scheme framed by the Court in O.S.30 of 1946 and that its power of general superintendence extends only to the extent of ensuring that the administration of the Wakf is in conformity with the Scheme, and it cannot be amended or modified, it has to go through the legal process and the procedure provided in the Act. Authorities relied on are: ***The Palni Muslim Dharmapariपालana Sangam through its office bearer and others Vs The Tamil Nadu Wakf Board through its Secretary and others*** [(1975)1 MLJ 201, ***U. Ghulam Mohamed Ghouse & Others Vs Tamil Nadu Wakf Board Represented by its CEO & Others*** [(2008) Supreme (Mad)55], ***A.K.Khalifulla and Others Vs S.A. Gulam Rasool and Another*** [(2007) 6 MLJ 432], ***Janab Dr.Hisamuddin Papa Saheb & Others Vs E. Niyamathulla & Others*** [(2007) 2 MLJ 1069] and ***T.S.Yusuf & Others Vs Tamil Nadu Wakf Board*** [AIR 1982 Madras 115].

33. The Argument against the Wakf Board:

The argument was chiefly led by Mr. Srinath Sridevan, counsel for Managing Trustee, Nagore Dargah and backed by Thiru. Parthasarathi Counsel for Sultan Kalifa Sahib, Thiru.Haja Mohideen Gisti, counsel for Kamil Sahib, Thiru

Sounther for Haja Najmudeem Sahib. The arguments are:

- The Waqf in question is not a public waqf and it is a class of wakf known in Mohammedan law as waqf-alal-aulad or private wakf since substantial portion of the income of the *durgha* is being utilised only for the benefit of the *kasupangudars*. The Scheme has provided in Clause 44 thereof that the Manager shall ascertain the net amount available for the payment to the '*kasupangudars*'. This implies that the amount available in every fasli after meeting the expenses connected with the *durgha* shall have to be distributed to the *kasupangudars*. They as a class fall outside the purview of the Wakf Act, and Wakf Board cannot have jurisdiction over them. Authorities relied on are: ***The Madras State Wakf Board represented by the Secretary Vs V. Mohamed Mahim*** [(1969)84 LW 261(DB)], ***Fuaad Musvee & another Vs M. Shuaib Musvee and others*** [2008-3-LW 644], ***V. Mohammed Mohin Vs Madras State Wakf Board*** [AIR 1968 Mad 243], ***G.M.A.Bhaimia, Muthavalli 'Wakf Estate A.M.Bhaimia & Others Vs The Madras State Wakf Board*** [(1968)1 MLJ 410], ***Ebrahim Ahmed Bhaimia & Others Vs Dawood Ahmed Bhaimia and others*** [2001(1) CTC 736],
- The waqf does not possess the characteristic features of a Trust as understood in English law, nor the Muttavalis can be equated to the Trustees.

- The mere fact a Scheme is framed by the District Court under Sec.92 CPC is not determinative of the character of the Trust. Reliance is placed on **Commissioner of Income Tax, Madras Vs Managing Trustee, Nagore Durgha, Nagore** [AIR 1966 SC 73]
- Earlier the *Nagoor Durgha* had filed W.P.3660 of 1971 against the Tamil Nadu Wakf Board. On 19-12-1973, this lis was compromised between the parties. One of the terms of the compromise granted the *Nagoor Durgha* the right to administer its affairs as per the Scheme framed in O.S.30 of 1946. This implies that the Wakf Board has made a conscious decision to grant this right to the *durgha* and hence it is impermissible for it to retreat from its stated position.
- I.A.109 of 2008 was filed by the Board long prior to the Wakf (Amendment) Act, 2013, and hence the effect of Sec.108-A should not be telescoped into pending litigation. Authority relied on: **Rajender Bansal Vs. Bhuru** [AIR 2016 SC 4919]

34. Responding to it, the Counsel for the Wakf Board pointed out that so far as the compromise in W.P.3660 of 1971 is concerned, it is not given to a statutory body, which in the instant case is the Wakf Board, to compromise on its statutory duty arising out of the Wakf Act, and hence the same is

inoperative. Reliance was placed on the authority in ***H.H.The Prince of Arcot, Endowments represented by its Agent Mohammed Khalilullah Vs Tamil Nadu Wakf Board by its CEO*** [(2006)3 MLJ 856 (DB)].

35. The issue central to the controversy is whether the Wakf Board has jurisdiction over those Wakfs that are administered by a Scheme framed by Court? Secondly, whether Nagoor Durgah, is a wakf that is to mean, a public wakf pure and simple, or is it a wakf-alal-aulad, a private wakf to which the jurisdiction of the Wakf Board does not extend?

36.1 A Wakf is a dedication made by a Mohammedan for what the Islam considers as pious, religious and charitable purposes. The property dedicated to the wakf vests in the God. Here there is a conceptual difference between the Trusts as understood in the English law and that which the Islamic law believes in. It is hence, when the Scheme decree in O.S.30 of 1946 stated that the property of the wakf will vest with the Board of Trustees, ***the Supreme Court in Commissioner of Income Tax Vs Managing Trustees, Nagore Durgha*** (AIR 1966 SC 73) has constructed it to mean: "what vests in the Nattamaigars is not the properties of the Durgha but the management and administration thereof."

36.2 Is the Wakf Nagoor Durgha, a public wakf? Here there is an element of unanimity on either side where both the Board and the Managing Trustee of the durgha agree that any durgha per se is a public wakf in character. Where

the difference arises is that while the Wakf Board contends that a private trust is attached to a public wakf, the Managing Trustee contends that the dominant intent behind the Wakf is private in character since the proportion of the income that was distributed to the *kasupangudars* in terms of Clause 44 of the Scheme is significantly higher than the amount spent on the *durgha*, which is one of the indices or criteria to ascertain the character of the wakf, and if so viewed, it is a wakf-alal-aulad and hence the Wakf Board has no jurisdiction.

36.3 Here it must be stated that in the counter to I.A.109 of 2008, the contention taken was that the wakf is partly public and partly private, and this was improvised during the arguments when the counsel for the *durgha* changed gears and contended that *Nagoor durgha* in essence is a wakf-alal-aulad, a private wakf for the benefit of the *kasupangudars*, to which public wakf aspects are attached. In essence it may mean that the wakf was founded only for the benefit of the *kasupangudars* and whatever income of the *durgha* that is diverted for what Islam considers as pious, religious and charitable purposes is an appendage to the said wakf-alal-aulad. As would be seen in the next few paragraphs, even if this argument is considered true, still it may not have the potential to keep the Wakf Board entirely away.

37. Is then the Nagoor Durgha a wakf pure and simple, or, is it a wakf-alal-aulad? Or is it a composite wafq that partakes both the characters of a wakf for

purposes recognised by Muslim law as *pious, religious and charitable* and also a wakf for the benefit of the family of the founder of the Wakf? If it falls under the second category, which aspect predominates the purposes of the wakf?

38.1. Historically there is no account on the exact origin of the wakf in this case. Consequently, there is no wakif or wakfnama available. The right of the *kasupangudars* to take a share in the surplus income of the *durgha*, therefore, must have had a historical origin, but appears to have been lost in antiquity. What we now have is a decree in favour of the *Kasupangudars* in O.S.45 of 1913 and this appears to have found recognition in the Scheme framed by the Court. Clause 44 is the repository of this right of *kasupangudars*. It reads:

"44: PAYMENT TO KASUPANGUDARS : *The Managing Trustee shall at the end of each fasil prepare a balance sheet verified by the Manager and ascertain the net amount available for payment to the kasupangudars.*

The Managing Trustee shall declare the amount due for each kasupangu, and the declaration shall be made with the customary Fateha between the 1st and 7th of July every year. After the amount due for each kasupangu has been ascertained, the Managing Trustee shall allocate the amount due to each kasupangudar in the list to be prepared for that purpose, each year. The names of the kasupangudars shall be entered in the Tamil alphabetical order in that list. The Manager shall pay the amount due to each kasupangudar in accordance with that list except in the case of purdanishan ladies who will be paid the amounts due to them by money order send by the

Manager at their cost."

38.2. The surplus income or the net amount to be distributed to the *kasupangudars* in terms of the scheme is arrived by preparation of a balance sheet. It may have to be stated that the income of the Wakf is constituted of the income from wakf properties, including auctions, donations and gifts. From and out of the said income, the expenditure for the sustenance the *durgha* has to be deducted and what remains in balance alone is made available for distribution to the *kasupangudars*. It is akin to a company declaring dividend for its shareholders, but where it differs from a company is that the *kasupangudars*, or for that matter those who donate to the Wakf would not become a joint-founders along with the wakif. However, even the possibility of considering that scenario is not available here as the origin of the wakf is not known. The first inference that can therefore be drawn on a proper construction of the unambiguous terms of clause 44 of the Scheme is that the *Kasupangudars* are mere beneficiaries for sharing the residual income, and no more.

39. The point which is now required to be investigated is whether the right to have a share in the surplus income converts the wakf into a wakf-alal-aulad, a private wakf, or does it make it a predominantly private wakf? Here the following aspects are pertinent:

- Since long ago Nagoor durgha has emerged as an all religious place of pilgrimage. One of the important sources of its income is the offerings

of the worshippers and pilgrims. A practice has come to stay in *Nagoor Durgha* whereby the estimated offerings receivable from the worshippers and pilgrims would be auctioned, that the successful bidder would deposit the auction money, and he would thereafter collect the actual offerings made by the worshippers. Any amount received in excess of the auction amount would be the profit he earns. This system, not commonly seen, is at the best may serve the administrative convenience of the Wakf, but it should not be understood as affecting the character of the offerings. ***When worshippers and pilgrims make their offerings or donations they do not intend to benefit the kasupangudaras, or keeping them in mind. Nor do they do it with the knowledge or intention that the bidder of the offering-auction might be profited in his business. Therefore, irrespective of how the offerings are collected or accounted for in the books of account of the Wakf, every offering of the worshipper in whichever form they are made will continue to retain its character as public offerings.*** Even if their contribution is not substantial compared to other sources of income of the *durgah*, yet the position would remain unaltered. It may have to be stated here that besides the *durgah* at Nagoor, the Wakf Nagoor *durgah* owns few mosques and *thakias*, and all of which receive offerings, donations and contributions from public.

- The next aspect is that as per the scheme, the share to which the

kasupangudars has a right is not made the first charge on the income of the *durgha*, or it is required to be met first. It is the residual income, if there is any, to which they will be entitled to. In other words, there is a theoretical possibility that in a given *fasli*, there may not have been any balance income for them to share. If so viewed, the right of *kasupangudars* to a share in the residual or surplus income is a mere expectation. The fact that their expectation has not failed for several years does not promote their right of expectation to take a share in the surplus income of the Wakf to a first charge on the income of the wakf.

40. What then is a wakf-alal-aulad? It is a private wakf founded by one professing Islam (wakif) dedicating the property to God and confer the immediate benefit upon his family with an ultimate direction that the benefit be diverted for what Islam believes as pious, religious or charitable. The validity of the wakf-alal-aulad came to be tested in ***Abdul Fata Mohamed Ishak & Others Vs Russomoy Dhur Chowdry*** [(1894)22 I.A. 76]] before the Privy Council. It was a case where two brothers created a wakf which was to benefit their children in the first instance and their progenies in perpetuity and might ultimately appropriate to the poor. In his treatise titled '***Outlines of Muhammadan Law***' Fyzee catches the quintessence of the judgement of the Privy council as follows: "...if the gifts to charity were substantial, not illusory, wakfs were held valid; but where the wakfs were founded for the aggrandizement of a family, or where the gifts to charity were illusory or

merely nominal, the wakfs were held to be void." The consequent uproar this judgement had brought among the Muslim community in India resulted in the enactment of the Mussalman Wakf Validating Act, 1913. Sec.3 now declared that it is lawful for a Mussalman to create a wakf wholly or partially of his family, children and descendants.

41. If Sec.3(r) of the Wakf Act, 1995, is turned to, it defines Wakf in following terms:

(r) "waqf" means the permanent dedication by any person, or any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes -
 (i), (ii), (iii)
 (iv) a waqf-alal-aulad to the extent 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;

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The definition is an inclusive definition, and necessarily it has to be given an expanded meaning. The definition *per se* did not exclude a wakf-alal-aulad from the ambit of its definition. In the context of the scheme of the Wakf Act, it introduces a limitation when it says " wakf-alal-aulad"- to the extent to which the property is dedicated for purposes recognised in Muslim law as pious, religious and charitable. The Wakf Act is not concerned with any

private wakf, but where it is a composite wakf, then the Act takes notice of and concerns itself with only that portion of the wakf-alal-aulad which is public in character. Hence, the doctrine of segregation, or the need for ascertaining the pre-dominant purposes of a wakf-alal-aulad came to be judicially emphasised as in **Board of Wakf, West Bengal Vs Anis Fatma Begum & Another** [(2010)4 SCC 588], **V. Mohammed Mohin case** [AIR 1968 Madras 243], **Fuad Musavee case** [2008-3-LW. 644(DB)], which are few of the authorities relied on by Mr. Srinath Sridevan.

42. Statutorily, a Wakf Board can have jurisdiction over all public wakfs and where it is a wakf-alal-aulad, its jurisdiction is limited to the extent to which a wakf-alal-aulad accommodates a public wakf. In all the authorities on the point on which Mr. Srinath Sridevan has placed reliance on, this aspect has been unequivocally stated. The ratio is to the effect that in cases of composite wakfs, Wakf Board has jurisdiction only over that part of the wakf which is public in character and not over the part which is intended for the benefit of the family of the wakif. This Court subscribes to this view with least hesitation.

43.1 However, in the case at hand how does it operate? For a wakf-alal-aulad to be created, the wakif must vest the property in God and grant the beneficial interest thereof to his family either exclusively, or couple it with a charity for the public or like purposes recognised by the Muslim law. In **Nagore Durgah, by the present Managing Trustee Vs Commissioner of Income Tax** [AIR 1955 Madras 588 (DB)], this Court has recorded:

"From the immovable properties and the shops possessed by the Durgah and also from offering in cash and kind made by the devotees, a large income is derived by the durgah. The Durgah is managed by a body of trustees called nattamaigars. The income is applied for the purposes of the Durgah and whatever surplus remains after meeting its expenses is divided into 640 shares among the descendants of Eusoof, who are called kasupangudars. **There is no written deed of trust but the hereditary right of the nattamaigars and the right of the kasaupangudars to the surplus has been recognised by custom and also by judicial decisions.** In O.S.No.45 of 1918 on the file of the Sub Court, Nagapattinam, the right of the descendants of Eusoof., ie., Kasupangudars to the surplus was recognised and it was held in that suit that **the Durgah is a public trust but the surplus is a private trust for the benefit of the kasupangudars.**" (emphasis supplied)

In **Commissioner of Income Tax, Madras Vs Managing Trustee, Nagore Durgha** [AIR 1966 SC 73], the question before the Supreme Court was whether the surplus amount in the hands of the Managing Trustee which is intended for distribution to the *kasupangudars* is liable to be assessed as an income of association of persons under Sec.41 of the Income Tax Act, 1922. In paragraph 8, the Supreme Court declared:

"... The effect of the said decision is that Nattamaigars are only the managers of the properties in which the Durgha and kasupangudars have beneficial interests. The properties do not vest in them. **They receive income there from on**

behalf of both of them. *After meeting the expenses of the Durgha they hold the balance on behalf of the kasupangudars and distribute the same in accordance with their shares.”*
(emphasis supplied)

43.2 These decisions are not generic in nature but are *Nagoor Durgha* specific. Nowhere in either of the cases, the Court has understood that distribution of surplus income of the wakf to the *kasupangudars* has converted it into a wakf-alal-aulad, but treated it only as a private trust. And as earlier indicated the character of this private Trust is contingent, depending upon the Wakf leaving surplus funds. Consequently, till the balance or surplus or residual income for the previous year is determined, the private trust purposes for the year may not take place. Accordingly, in the context of the present case, the ingredients necessary for constituting a wakf-alal-aulad is missing since the benefit conferred on the *kasupangudars* is not traced to any wakfnama, and hence to a wakif, but to a scheme, and the predominant purpose of the wakf is not to benefit the *kasupangudars* (as they derive a share only in the residual/surplus income of the wakf,) but the durgha. After all residual private benefit can never be termed as a dominant object of the wakf. And, the surplus income is not vested in God, but in the Board of Trustees for the benefit of the *kasupangudars*. Thus, the Board of Trustees holds the funds both for the Wakf up to the point of determining the surplus income, and thereafter holds it for the benefit of the *kasupangudars*. To approach this

point slightly differently, which or who could have come first - The Wakf or the *Kasupangudars*? Where would the *kasupangudars* be if the wakf has not been there? Where from the surplus or the balance income come? Therefore, it is necessary to understand that at no time the Wakf depends on the *kasupangudars* for its existence, but the *kasupangudars* depend hugely on the Wakf for their benefit. The Hon'ble Supreme Court has held in ***Sayed Ali vs. Andhra Pradesh Wakf Board, Hyderabad***, [(1988) 2 SCC 642], once a wakf is established it always remains a wakf, and accordingly it is not given to those who derive any personal or private benefit out of the income of the wakf, a practice generated by custom and now traceable to the Scheme decree, to claim that it is a wakf-alal-aulad.

44. In conclusion it is held that *Nagoor Durgha* is a public wakf with a contingent private trust attached to it. And, till such time the balance or surplus income for the year is determined, the public wakf part would extend and going by the settled law, the Wakf Board will have jurisdiction. It is only on the determination of the surplus income for the year the public character of the wakf ceases, and the private trust purposes commences. To the latter part the Wakf Act will not apply and so does the jurisdiction of the Wakf Board.

45. The next issue is how far the compromise entered into between *Nagoor Durgha* and the Tamil Nadu Wakf Board will impact the aforesaid conclusion of

this Court? *Nagoor Durgha* filed WP.No.3660 of 1971 for issuance of a writ of certiorari to quash a demand made by the Wakf Board for payment of contribution. On 19-12-1973, this was compromised between the parties. Clause 4 of the Compromise is relevant here. It reads:

"4. So far as the aforesaid Scheme Decree is concerned it shall continue in force as before."

On the face of it, it only means the scheme decree will continue. But the issue here is not about anything by which the existing Scheme is sought to be replaced now but who should have the residual power of superintendence over the working of the Scheme? Until now, the Court retained to itself the residuary power to administer the Scheme it framed and from now it is going to be replaced by the Wakf Board. But the *Nagoor Durgha* seems to believe that the compromise operates as an estoppel against the Wakf Board from replacing the Court in its role to ensure the working of the Scheme. In **H.H. The Prince of Arcot case** [(2006) 3 MLJ 856], a Division Bench of this Court had an occasion to hold:

"The compromise cannot read to mean that any particular authority or institution would become above law and no action would be taken in accordance with law notwithstanding any transgression or violation of law. No immunity above law would have been contemplated to be given by way of compromise."

To this, this Court now intends to add that no statutory authority has the

power to barter away his statutory responsibility, duty or authority merely to facilitate a compromise, howsoever honourable the intentions that peace may reign in a cause be.

46.1 To sum up, even where the Courts have framed a scheme under Sec.92 CPC for the administration of the Wakf, on the establishment of Wakf Board, the residual power of superintendence of the Wakfs which hitherto remained with the Court as the conscience keeper of the public trusts founded on the principle of *parens patriae* would shift from the Scheme Court to the Wakf Board. In effect, the Wakf Board replaces the Principal District Court, Nagapattinam, in administering the Scheme settled in O.S.30 of 1946. However, its power of superintendence stops on determination of surplus income meant for the *kasupangudars*. The authorities which the counsel for the Wakf Board has cited and listed in paragraph 32 above may be referred to. One immediate effect is that the Wakf Board cannot claim contribution in relation to the surplus funds meant for distribution to the Kasupangudars.

46.2 The conclusion is to make a formal statement: That the Wakf Board succeeds both in CRP.No.938 of 2010 and W.P.7809 of 2010.

47. Since this Court has held that only the Civil Court has jurisdiction to decide on the successor to the office of the eighth trustee, it directs that the Subordinate Judges Court, Nagapattinam, to dispose of O.S.31 of 2014

pending on its file within six months from today. The Adhoc Board of Administrators would continue till then and work with the Wakf Board. In view of the findings of this Court, the Adhoc Board of Administrators are directed to submit all their reports to the Wakf Board. The Registry is also directed to forward all the reports of the Adhoc Board of Administrators filed before this Court to the Wakf Board.

48. This batch of cases is specially assigned to this Court and was heard along with the cases assigned to it as per its roaster. The hearing of the cases commenced on 16-08-2017, and till it was reserved for orders on 21-12-2017, was heard on 11 days, spread over four months. Several authorities have been placed before this Court, and this Court too was required to do its own research to ascertain some aspects of law. Added to this was the fact that one of us (M. Sathyanarayanan J) was posted to preside the Madurai Bench of the High Court from January to March, 2018, which delayed the internal discussion between us. All the above factors led to some delay in preparing the Orders.

49. As this Court approaches the final stages to drop curtains on these proceedings it has become necessary for it to record, with a degree of anguish, that it kept receiving several letters with and without the senders' address, almost right through the commencement of the hearing, and intermittently during the interregnum between the conclusion of the

arguments and pronouncing this Order. This included in one instance a letter in the name of the Nagapattinam Bar Association. Whether the senders actually sent them, or in their guise somebody else has sent them, is in the realm of the heavenly God. Sometime during the hearing this was brought to the notice of the counsel appearing for the parties hereto, but it did not take the spirit out of the mail-senders to keep repeating what they are accustomed to. Strictly speaking, the conduct such as this is pernicious, and every ounce of the attitude that breeds this conduct amounts to criminal contempt of court as they aim to interfere with the course of justice. However, this Court felt that in a society where degeneration is fast, rapid, and goes almost unchecked, litigants, or may be his rivals, too are easily consumed by it, and hence we decided to consign their unholy efforts to the dustbins of our chambers. They are now cautioned that law is not loaded with excessive generosity to condone the deliberate faults of the litigants ad infinitum, and that it has the vitality to act, and to act sternly. For the present, let peace be upon them.

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THE RESULT:**I**

Sl. No	Case No.	Status of the case
1.	WP.No. 27431 of 2014 and WP.No.27595 of 2015	Allowed. The Wakf Tribunal, Nagapattinam is prohibited by a Writ of Prohibition not to proceed with WOP.3 of 2014.
2.	W.A.No.272 of 2017	Allowed. The order of this Court dated 06.02.2017 made in M.P.No.3 of 2015 in W.P.No.27341 of 2014 is set aside.
3.	W.A.No.1640 of 2016 and W.A.No.145 of 2017	Dismissed. The order of this Court dated 22.11.2016 in W.P.No.33181 of 2016 is hereby confirmed.
4.	W.A.271 of 2017 and W.A.144 of 2017	Dismissed.
5.	CRP.(PD)No.73 of 2015 and CRP (PD) No.74 of 2015	Dismissed. The order of the Sub Court, Nagapattinam dated 21.11.2014, rejecting IA (unfiled) IACFR No.4908/2014 and IACFR.No.4872/2014, is confirmed.

II

Sl. No.	Case No.	Status of the case
1.	CRP.(PD) No.938 of 2010	Partly-allowed and the order dated 07.08.2009 in I.A.No.109 of 2008 in O.S.No.30/1946 on the file of District Judge, Nagapattinam is set aside to the extent that the revision petitioner will replace the District Court, Nagapattinam in overseeing the administration of the Wakf Nagoor Durgah in terms of the scheme framed in O.S.No.30 of 1946.
2.	WP.No.7809 of 2010	Dismissed.

III

No costs in all the above cases. Consequently, connected miscellaneous petitions in all cases are closed.

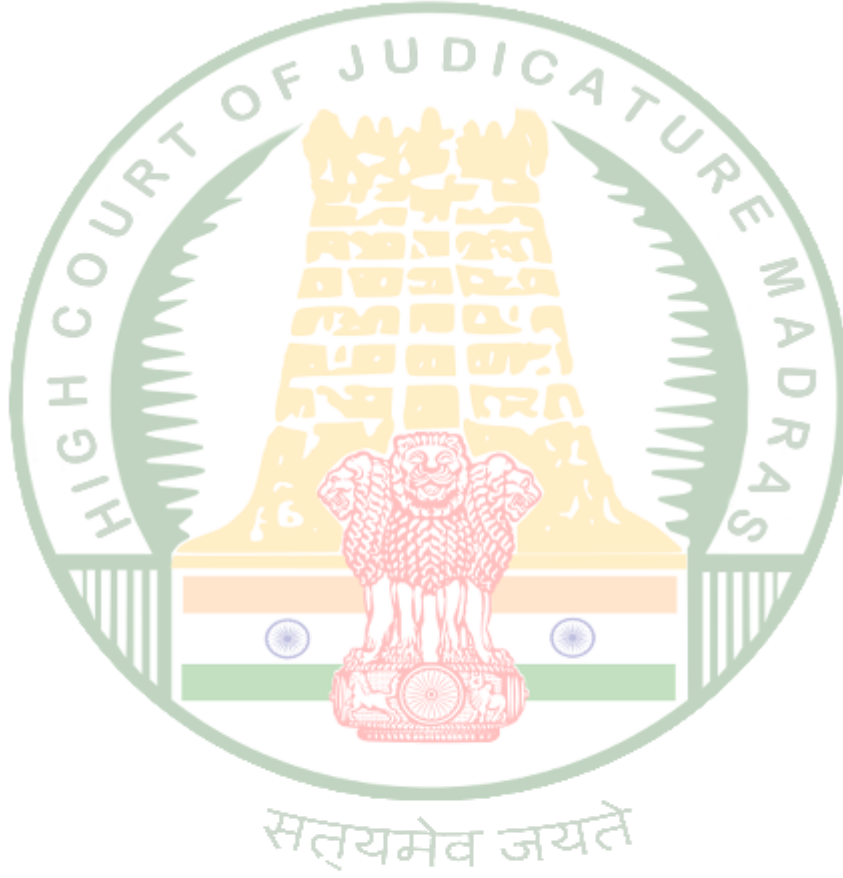
[M.S.N.J.,] [N.S.S.J.,]
08.06.2018

ds

Index : Yes /No

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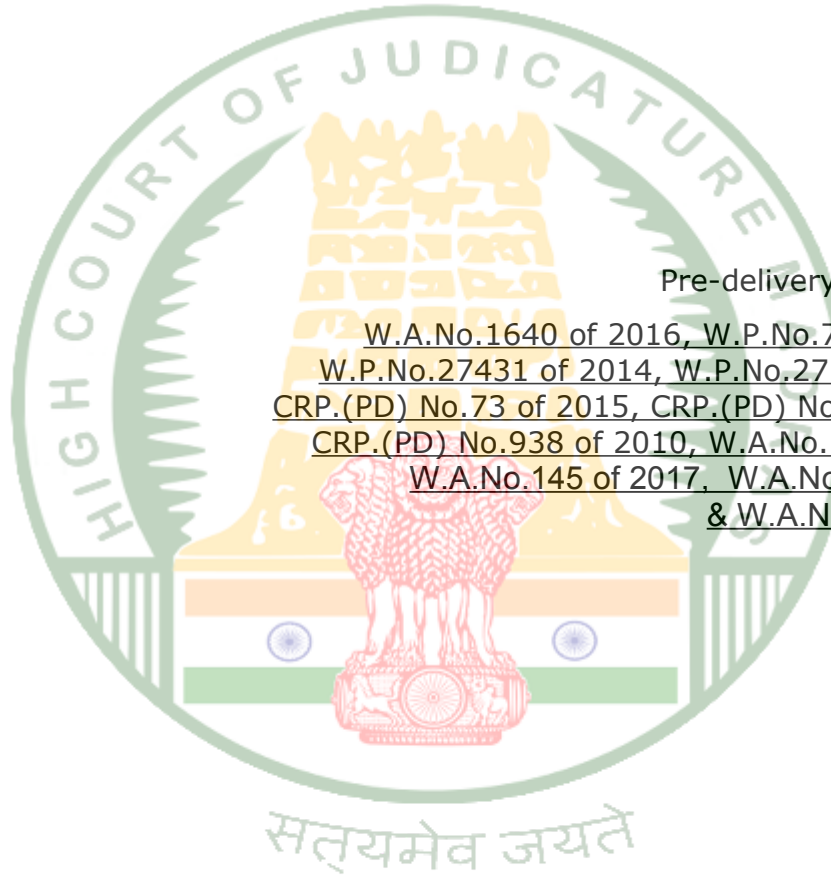
The Wakf Tribunal
Nagapattinam.



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M.SATHYANARAYANAN,J.,
and
N.SESHASAYEE,J.,

ds



Pre-delivery Judgment in

W.A.No.1640 of 2016, W.P.No.7809 of 2010,
W.P.No.27431 of 2014, W.P.No.27595 of 2014,
CRP.(PD) No.73 of 2015, CRP.(PD) No.74 of 2015,
CRP.(PD) No.938 of 2010, W.A.No.144 of 2017,
W.A.No.145 of 2017, W.A.No.271 of 2017
& W.A.No.272 of 2017

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08.06.2018