BHANWAR LAL & ANR.

v.

RAJASTHAN BOARD OF MUSLIM WAKF & ORS.

(Civil Appeal No. 7902 of 2013)

SEPTEMBER 9, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Rajasthan Wakf Act, 1995:

s. 85 read with ss. 5,6 and 7 – Bar of jurisdiction of civil court – Jurisdiction of Tribunal – Explained – Held: In the instant case, the suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees — Suit for possession and rent as also for cancellation of sale deed is to be tried by civil court — However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal — Since the suit was filed much before the Act came into force, the civil court, where the suit was filed, will continue to have the jurisdiction over the issue and would be competent to decide the same – Jurisdiction.

The property in dispute being in the possession of the petitioners, respondent no. 1, the Rajasthan Board of Muslim Wakf and Respondent No. 2 the Muslim Board Committee, claiming it to be a wakf property, filed a civil suit for possession of the said property and for rendition of accounts as also for a declaration to the effect that the sale deed dated 28.2.1983 in favour of the petitioners was invalid. The petitioners contested the suit, and all the parties led their evidence. When the matter was ready for final hearing, on 2.12.2000, respondents Nos. 1 and 2 filed an application u/s 85 of the Rajasthan Wakf Act, 1995 contending that the jurisdiction of the civil court having been barred, the suit could not be tried by it and prayed

A **that the plaint be returned to be presented before the Tribunal constituted under the Act. The application was allowed. The revision petition filed by the petitioners was dismissed by the High Court relying upon the judgment in *Syed Inamul Haq Shah's*[1] case.**

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Allowing the appeal, the Court

HELD: 1.1. As per sub-s. (1) of s.7 of the Rajasthan Wakf Act, 1995, the question whether a particular property specified as wakf property in a list of wakfs is wakf
C **property or not has to be decided by the Tribunal and its decision is made final; and the jurisdiction of civil court stands concluded to decide such a question in view of specific bar contained in s.85. The subject matter of a suit which can be filed before the Tribunal, relates to the list of**
D **Wakfs as published in s.5. If any dispute arises in respect of the said list, namely, whether the property specified in the said list is Wakf property or not or it is Shia wakf or Sunni wakf, suit can be filed for decision on these questions. However, as per sub-s. (5) of s.7, if a suit or**
E **proceeding subject matter whereof is covered by sub-s.(1) of s.6, is already pending in a civil court before the commencement of the Act, then such proceedings before the civil court would continue and the Tribunal would not have any jurisdiction. [para 11 and 15] [730-F-H; 733-E-F]**

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1.2. On a conjoint reading of s.7 and s.85 of the Act, legal position is summed up as under:

(i) In respect of the questions/ disputes mentioned in sub-s. (1) of s.7, exclusive jurisdiction vests with the
G **Tribunal, having jurisdiction in relation to such property.**

(ii) Decision of the Tribunal thereon is made final.

H 1. *Syed Inamul Haq Shah vs. State of Rajasthan* and Anr. AIR 2001 Raj 19.

(iii) The jurisdiction of the civil court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property or other matter, which is required by or under the Act, to be determined by a Tribunal,

(iv) There is however an exception made u/s 7(5) viz., those matters which are already pending before the civil court, even if the subject matter is covered under sub-s. (1) of s. 6 , the jurisdiction of civil court would continue and the Tribunal shall have no the jurisdiction to determine those matters. [para 12] [731-A-E]

Sardar Khan and Os. vs. *Syed Nazmul Hasan (Seth) and Ors.* **2007 (3) SCR 436 = 2007 (4) Scale 81= 2007(10) SCC 727**; *Ramesh Gobindram (Dead) Through LRs* v. *Sugra Humayun Mirza Wakf*; **2010 (10) SCR 945 = 2010 (8) SCC 726; and** *Board of Wakf, West Bengal & Anr.* v. *Anis Fatma Begum & Anr.* **2010 (13) SCR 1063 = (2010) 14 SCC 588 – relied on.**

Syed Inamul Haq Shah vs. *State of Rajasthan and Anr.* **AIR 2001 Raj 19 – stood overruled.**

1.3. In the instant case, the suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit have not been filed before this Court and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known. Some of the reliefs claimed in the suit appear to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. However, the legal position may be clarified in that going by the ratio of *Ramesh Gobind Ram*, suit for possession and rent is to be tried by the civil court. But, suit pertaining to removal of trustees and rendition of

A **accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by s.6 or 7 of the Act. Moreover, relief of possession, which can be given by the civil court,**
B **depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession are inextricably mixed with each other. Since the suit was filed in the year 1980, i.e. much before the Act came into force, going by the dicta laid down in *Sardar***
C ***Khan*, the civil court, where the suit was filed, will continue to have the jurisdiction over the issue and would be competent to decide the same. [para 13 and 23] [731-E; 740-E-H; 741-A-C]**

1.4. The impugned judgment of the High Court is set
D **aside. The application filed by the respondents is dismissed. [para 24] [741-C-D]**

Case Law Reference:

AIR 2001 Raj 19	**stood overruled**	**para 6**
2010 (13) SCR 1063	**relied on**	**para 7**
2007 (3) SCR 436	**relied on**	**para 16**
2010 (10) SCR 945	**relied on**	**para 17**

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F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7902 of 2013.

From the Judgment & Order dated 21.04.2006 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil
G Revision No. 419 of 2001.

B.D. Sharma, N. Vyas, S.C. Verma, Mukti D., Ved P. Arya for the Appellant.

S. Wasim A. Qadri, Zaid Ali, Tamim Qadri, Lakshmi
H Raman Singh for the Respondents.

The Judgment of the Court was delivered by A

A.K. SIKRI, J. 1. Leave granted.

2. The question that needs determination in the present appeal is as to whether Civil Court lacks the jurisdiction to entertain the suit filed by the respondent herein or the subject matter of the suit lies within the exclusive jurisdiction of the Tribunal constituted under the Rajasthan Wakf Act, 1995 (hereinafter to be referred as the 'Act'), having regard to the provisions of Section 85 of the Act. Though the suit was filed by the Respondent in the Civil Court, it is on the application of the Respondent itself stating that the suit was not maintainable in view of the bar contained in Section 85 of the Act, the Civil Court returned the plaint accepting the said contention of the Respondent. The Petitioners herein, who were the Defendants in the suit, challenged the order of the Civil Court by filing Revision Petition under Section 115 of the Code of Civil Procedure in the High Court of Judicature for Rajasthan, at Jodhpur. The said Revision Petition is also dismissed by the impugned orders. It is how the present proceedings arise, questioning the validity of the orders of the High Court. B C D E

3. The facts around which the controversy is involved do not require big canvass and are re-capitulated herein below:

The property in dispute which is the subject matter of litigation, is situated in the town of Nagaur in the State of Rajasthan and is in the possession of the petitioners herein. Respondent No. 1 is the Rajasthan Board of Muslim Wakf and Respondent No. 2 is the Muslim Board Committee. Both the Respondents claimed that the subject property is the Wakf Property. These Respondents, filed the Civil Suit in the year 1980 for possession of the said property as well as for rendition of accounts against the petitioners herein claiming it to be a wakf property. On coming to know, after filing of the suit, that one trustee Mr. Naimuddin S/o Abdul Bari had sold the property to the petitioners vide sale deed dated 28.2.1983, the F G H

A Respondent Nos. 1 & 2 amended the plaint by adding the relief of declaration to the effect that the said sale deed dated 28.2.1983 was invalid.

4. The Petitioners filed the written statement and contested the suit raising number of defences. The Trial Court, i.e. the B Additional District Judge, framed the following issues on 4.8.1984:

(i) Whether Haveli and the land of compound including the land underneath the measurements of which C have been given in paragraph-3 of the plain, are Wakf Property?

(ii) Whether the sale deed executed by Defendant No. 1 in favour of Defendant No. 3 regarding the Haveli and the land of the compound dated 22.06.1960 for D Rs. 400/- is invalid because the property is Wakf Property?

(iii) Whether the sale deeds in favour of Defendants No. 4 and 5 are invalid with respect to Haveli and E the land of the compound because the property is Wakf Property?

(iv) Whether the sale deed executed by defendant Naimuddin in favour of defendant No. 5 on F 28.2.1983 is invalid.

(v) Whether the plaintiffs are entitled to file the present suit?

(vi) Whether the suit is barred by limitation?

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(vii) Whether Court Fee insufficient?

(viii) Relief.

5. The suit, thereafter, went on trial. All the parties led their

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evidence, though it took considerable time. When the matter was ready for final hearing, on 2.12.2000, the Respondent Nos. 1 & 2 filed the application under Section 85 of the Act raising the contention that the suit in question could not be tried by the Civil Court as the jurisdiction of the Civil Court was barred. Prayer was made that the plaint filed by them may be returned to be presented before the Tribunal constituted under the Act, which alone had the jurisdiction to try the suit.

6. Their application was allowed by the learned Additional District Judge vide orders dated 4.1.2001 holding that the question whether the property in question was Wakf Property or not, could be decided only by the Tribunal and Section 85 of the Act specifically barred the jurisdiction of Civil Court. In the Revision Petition filed by the petitioners challenging the validity of the orders of the Additional District Judge, the High Court has concurred with this view, stating that the position in law in this behalf was settled by the judgment of the Rajasthan High Court in *Syed Inamul Haq Shah* vs. *State of Rajasthan and Anr.*; AIR 2001 Raj 19. In the short order of two paragraphs referring to the aforesaid judgment, the Revision Petition has been dismissed.

7. Learned Counsel for the appellant, at the outset, drew our attention to the judgment of this Court whereby the said judgment of the High Court has been overruled. The judgment in this Court is reported as **2007 (10) SCC 727** titled *Sardar Khan and Os. vs. Syed Nazmul Hasan (Seth) and Ors.* He, thus submitted that since the very foundation of the impugned judgment stood demolished in view of overruling of the said judgment by this Court, the order of the High Court needs to be set aside.

8. To this extent submission of the learned Counsel for the appellant is correct. As pointed above, without any discussion of its own, the High Court has simply relied upon its earlier judgment in Syed Inamul Haq (supra) and dismissed the

A Revision Petition. Therefore, while setting aside the impugned order, we could have remitted the case back to the High Court to decide the Revision Petition afresh. However, learned Counsel for both the parties submitted that the question of jurisdiction be decided by this Court so that this aspect attains B finality, more so when the lis is pending for quite some time. Conceding to this prayer of both the parties, we heard the matter on the aforesaid question in detail. We now propose to answer this question of jurisdiction, as formulated in the beginning.

C 9. We have already mentioned the subject matter of the suit filed by the Respondent Nos. 1 & 2 herein, which is predicated on the plea that the suit property is Wakf Property. On this basis it is pleaded in the suit that the sale deed in favour of the Petitioners is null and void as Mr. Naimuddin who D purportedly executed sale deed dated 22.9.1983 in favour of the Petitioner No. 2 had no authority to do so. As a consequence, the Respondent Nos. 1 & 2 maintain that the petitioners are in unauthorized possession of the Property. Possession of the said property alongwith rendition of accounts E are the other reliefs claims in the suit.

10. Rajasthan Wakf Act, 1995, governs the Wakf properties in the said State. The Tribunal is constituted under this Act and is *inter alia* empowered to determine suits F regarding wakfs as laid down under Section 7 of the Act. Therefore, we would like to reproduce here Section 7 of the said Act.

7. Power of Tribunal to determine disputes regarding wakfs –

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(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a H Shia wakf or a Sunni wakf, the Board or the

mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs.

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (5), no proceeding under this Section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be mad a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified

A in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) 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 91) of section 6, before the commencement of this Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be".

Section 85 of the Act barred the jurisdiction of the Civil D Court to decide such issues. Section 85 reads as under:

"85. Bar of Jurisdiction of Civil Courts. – No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter E which is required by or under this Act to be determined by a Tribunal".

11. As per Sub-section (1) and Section 7 of the Act, if any question arises, whether a particular property specified as wakf F property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands concluded to decide such a question in G view of specific bar contained in Section 85. It would be pertinent to mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the H Tribunal would not have any jurisdiction.

12. On a conjoint reading of Section 7 and Section 85, legal position is summed up as under:

(i) In respect of the questions/ disputes mentioned in sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

(ii) Decision of the tribunal thereon is made final.

(iii) The jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal,

(iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under sub section (1) of section 6, the jurisdiction of Civil Court would continue and the tribunal shall have no jurisdiction to determine those matters.

13. Present suit was instituted in the year 1980, i.e. much before the Rajasthan Wakf Act, 1995 was enacted. Therefore, if the subject matter is covered by sub-section (1) of Section 6, the jurisdiction of Civil Court remains by virtue of Section 5 of the Act. To enable us to find an answer to this, the provisions of Section 5 and 6 also become relevant and need to be noticed at this juncture. Before that, we would like to state the scheme of chapter II of the Act which contains all these Sections including Section 7 Chapter II starts with Section 4.

14. Under Section 4 of the Act, power is given to the Survey Commissioner to conduct survey and make enquiries for discerning whether particular properties are wakf properties

A or not. After making the enquiries, the Survey Commissioner, who is given the powers of Civil Court under the Code of Civil Procedure in respect of certain matters specified under Section 4 (4) of the Act, makes a report to the State Government. On receipt of such a report under sub-section (3) of section 4 of
B the Act, the State Government has to forward a copy of the same to Wakf Board as stipulated under Section 5(1) of the Act. The Wakf Board is required to examine this report, as provided under sub-section (2) of section 5 of the Act and is to publish in the official gazette a list of Sunni wakfs or Shia wakfs in the
C State, whether in existence at the commencement of this Act or coming into existence thereafter. If any dispute arises in respect of wakfs list which is published in the official gazette under section 5 of the Act, the Board or the mutawalli of the wakf or any person interested therein is given a right to institute
D a suit in a tribunal. This remedy is provided under Section 6 of the Act, Section 6 of the Act which reads as under:

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"6. Disputes regarding wakfs. –

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(1) If any question arises whether a particular property specified as wakf property in the list of wakfs 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
F interested therein may institute a suit in a tribunal for the decision of the question and the decision of the tribunal in respect of such matter shall be final.

Provided that no such suit shall be entertained by
G the tribunal afer the expiry of one year from the date of the publication of the list of wakfs.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the
H

pendency of any such suit or of any appeal or other proceeding arising out of such suit. A

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. B

(4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive. C

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1)". D

15. The subject matter of the suit which can be filed before the tribunal, relates to the list of Wakfs as published in Section 5. If any dispute arises in respect of the said list namely whether the property specified in the said list is Wakf property or not or it is Shia wakf or Sunni wakf, suit can be filed for decision on these questions. Sub-section (5) of section 7 saves the jurisdiction of those suits, subject matter whereof is covered by sub- section (1) of section 6, which were instituted before the commencement of said suit. Keeping in view this legal framework, we have to answer this issue that has arisen. E F

16. Before we deal with controversy at hand, we would like to discuss some judgments of this Court that may have bearing on the issue. G

First case that needs mention is *Sardar Khan and Ors.* vs. *Syed Nazmul Hasan (Seth) and Ors.*; 2007 (4) Scale 81; 2007 (10) SCC 727. In that case Civil Suit was filed by the plaintiffs (Respondents in the Supreme Court) in the year 1976 H

A in the Court of Additional District Judge, Jaipur which was dismissed. The plaintiffs filed the appeal before the High Court taking the plea that by virtue of Section 85 of the Act, the Civil Court failed to have any jurisdiction in the matter and, therefore, judgment and decree passed by the learned Additional District B Judge was without jurisdiction. This appeal was allowed accepting the contention of the Respondents. Challenging the order of the High Court, the appellants had filed the Special Leave Petition in which leave was granted and the appeal was heard by this Court. The Court took into consideration the C provisions of Sections 6, 7 and 85 of the Act and concluded that the said Act will not be applicable to the pending suits or proceedings or appeals or revisions which had commenced prior to 1.1.1996 as provided in sub-section (5) of Section 7 of the Act and allowed the appeal holding that Civil Court will D continue to have the jurisdiction in respect of the cases filed before coming into force Wakf Act, 1995.

17. The provisions of Andhra Pradesh Wakf Act, 1995 which are identical in nature, came up for consideration again in the case of *Ramesh Gobindram (Dead) Through LRs v.* E *Sugra Humayun Mirza Wakf*, 2010 (8) SCC 726. The question which was posed for determination was:

> "Whether the Wakf Tribunal constituted under Section 83 of the Act, 1995 was competent to entertain and adjudicate F upon disputes regarding eviction of the appellants who are occupying different items of what are admittedly wakf properties?"

18. Suits for eviction were filed before the Wakf Tribunal which had held that it had the jurisdiction to entertain those suits G and after adjudication had decreed the suits filed by the Respondent – Sugra Humayun Mirza Wakf. The tenants/ appellant filed revision petitions against that order before the High Court of Andhra Pradesh which dismissed the revision petition, affirming the view of the Wakf Tribunal regarding its H jurisdiction. Against the order of the High Court, the appellant

approached this Court. The Court noticed that in few judgments High Court of Andhra Pradesh had taken the view that the Tribunal established under Section 83 of the Wakf Act is competent to entertain and adjudicate upon all kinds of disputes so long as the same relate to any Wakf Property. Similar views were expressed by the High Court of Rajasthan, Madhya Pradesh, Kerala as well as Punjab and Haryana High Court. However, in the judgments rendered by the High Courts of Karnataka, Madras, Allahabad and Bombay a contrary view was taken. This Court, after detailed analysis of the provisions of the Act, affirmed the view taken by the High Court of Karnataka and other High Courts and held that the judgment of the High Court of Andhra Pradesh etc. was incorrect in law. It was categorically noted that the Tribunal established under Section 83 of the Act had the limited jurisdiction to deal only with those matters which had been provided for in Section 5, Section 6(5), Section 7 and 85 of the Act and the jurisdiction of Civil Court to deal with matters not covered by these Sections was not ousted in respect of other matters. The court exhaustively dealt with the provisions of Sections 6 and 7 of the Act in order to determine the scope of jurisdiction of the Tribunal. It noted that the plain reading of sub-section (5) of section 6 (supra) would show that the civil court's jurisdiction to entertain any suit or other proceedings stands specifically excluded in relation to any question referred to in sub-section(1). The exclusion, it is evident from the language employed, is not absolute or all pervasive. It is limited to the adjudication of the questions (a) whether a particular property specified as wakf property in the list of wakfs is or is not a wakf property, and (b) whether a wakf specified in such list is a shia wakf or sunni wakf. It was also expressed that from a conjoint reading of the provisions of Sections 6 and 7 of the Act, it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a shia wakf or a sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a civil court in relation to any such question after the commencement of the Act. What is

A noteworthy is that under Section 6 read with Section 7 of the Act, the institution of a suit in the civil court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property. It further noted that
B under Section 85 of the Act, the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes
C concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court. The Court thus, concluded that the jurisdiction of civil courts to try eviction cases was not excluded. Rather, the aforesaid provisions of the Act did not include such disputes to fall within the jurisdiction of the Wakf Tribunal, and
D therefore the Wakf Tribunal did not have the jurisdiction to deal with eviction matters. For better appreciation of the issue decided in the said judgment, we reproduce hereunder the relevant discussion:

> "31. It is clear from sub-section (1) of Section 83 above
E that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction.
F Sub – section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the Rules framed there under to approach the Tibunal for determination of any dispute, question
G or other mater relating to the wakf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the Rules. The
H remaining provisions of Section 83 provide for the

procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reasons of such establishment.

33. It is noteworthy that the expression "for the determination of any dispute, question or to her matter relating to a wakf or wakf property " appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.

34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before

A a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the civil court would stand excluded.

B 35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the C tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

19. It would also be profitable to refer to that part of the D judgment where the Court gave guidance and the need for a particular approach which is required to deal with such cases. In this behalf the Court specified the modalities as under:

"11. Before we take up the core issue whether the E jurisdiction of a civil court to entertain and adjudicate upon disputes regarding eviction of (sic from) wakf property stands excluded under the Wakf Act, we may briefly outline the approach that the courts have to adopt while dealing with such F questions.

12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the G civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the H courts. The court would lean in favour of a

construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted. A

13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In *Rajasthan SRTC v. Bal Mukund Bairwa*, a three-Judge Bench of this Court observed B C

"There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction." D E

20. Another aspect of this Act came up for consideration in the case of *Board of Wakf, West Bengal & Anr. v. Anis Fatma Begum & Anr.* (2010) 14 SCC 588. The subject matter of the dispute in that case related to the demarcation of the wakf property in two distinctive parts, one for wakf-al-al-aulad and the remaining portion for pious and religious purposes. The demarcation was challenged on the ground that it was not in consonance with the provisions of the Wakf Deed. The Court held that it is the Tribunal constituted under Section 83 of the Act which will have exclusive jurisdiction to deal with these questions in as much as these questions pertained to determination of disputes relating to wakf property and the jurisdiction of Civil Court was ousted. F G

21. As per the ratio in *Ramesh Gobindram* (Supra) the H

A exclusive jurisdiction lies with the Tribunal to decide only those disputes which are referred to in section 6 and 7. Further, jurisdiction of Civil Courts is barred only in respect of such matters and the matters which are not covered by Section 6 and 7 of the Act. Moreover, in view of the judgment in *Sardar* B *Khan's* case, the suits which are already pending before coming into force the Wakf Act, 1995 will remain in civil court which will continue to have jurisdiction.

22. On the basis of the aforesaid principles we proceed to discuss the present case. Interestingly, as per the C Respondents themselves there is no dispute that the property in question is a wakf property. It is argued by the learned Counsel for the Respondents that even before the trial court, the appellant had accepted that the disputed property is wakf property (Though issues framed suggest otherwise). This is so D recorded in para 3 of the orders passed by the trial court while deciding the application of the respondent for returning of the plaint.

23. The suit is for cancellation of sale deed, rent and for E possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that F some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of *Ramesh Gobind Ram* (supra), suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain G of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decided such an issue. Moreover, relief of possession, which can be given by

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the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.

24. We, thus, allow the appeal and set aside the impugned judgment of the High Court thereby dismissing the application filed by the respondent under Order 7 Rule 10 of the C.P.C. with the direction to the civil court to decide the suit.

25. No costs.

R.P. Appeal allowed.