A LAL SHAH BABA DARGAH TRUST

v.

MAGNUM DEVELOPERS AND OTHERS

(Civil Appeal No. 14565 of 2015)

B DECEMBER 15, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

Wakf Act, 1995 – s. 83(as amended by 2013 Act) – C *Constitution of tribunal – Amendment of s. 83(4) whereby three members tribunal to be constituted by the State Government by notification in the Official Gazette – Whether till a three member tribunal is constituted by the State Government by issuing notification one member tribunal as* D *constituted under 1995 Act would continue functioning or it ceases to have jurisdiction – Held: State has not done its mandatory duty of issuing fresh notification constituting three members tribunal as provided u/s. 83 – It is common practice that the old institution/member continues to exercise duty till* E *the time any new institution/member takes charge of that duty – One member tribunal would continue to exercise jurisdiction till the time the State constitutes three members tribunal by notification in the Official Gazette – High Court erred in holding that after the Amendment Act, 2013 came* F *into force, the one member tribunal exercising jurisdiction ceased to exist even though a fresh notification constituting three member tribunal has not been notified and that the civil court would exercise jurisdiction in such situation – States to* G *take steps for constituting a three member tribunal as mandated by s. 83(4) and issue notification to that effect – Wakf (Amendment) Act, 2013.*

Doctrine/Principle – Doctrine of implied repeal – Application of – Explained

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Partly allowing the appeals, the Court A

HELD: 1.1 From perusal of the statement of objects and reasons of the Wakf (Amendment) Act, 2013, it reveals that the single member of the tribunal was working fine under the Waqf Act, 1995 (before 2013 amendment). The B idea of expanding the composition by the 2013 Amendment seems to make improvement in the functioning of the tribunal with the help of two more members in the tribunal. Even by the 2013 amendment in Section 85 of the Act, they have also ousted the C jurisdiction of the revenue court or any other authorities along with the civil court. Meaning thereby the legislatures wanted to make sure that no authorities apart from the tribunal constituted under Section 83 of the Act shall determine any dispute, question or other D matter relating to a waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property under this Act. [Paras 25 and 26] [985-F-H; 986-A]

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1.2 As per the amendment, the three members tribunal is to be constituted by the State Government by notification in the Official Gazette. However, the State has not done its mandatory duty as provided under Section 83 of the Act (as the Section 83 uses the word "shall"). It F should be kept in mind that it is common practice that the old institution/member continues to exercise duty till the time any new institution/member takes charge of that duty. The one member tribunal will continue to exercise jurisdiction till the time the State constitutes three G members tribunal by notification in the Official Gazette. The High Court erred in holding that the civil court would exercise jurisdiction in such situation as it is manifest by the intention of the legislature that they do not want H

A any other authorities to exercise over the Waqf property matter under the Act. [Para 27] [986-B-D]

1.3 It was submitted that by 2013 Amendment Act, sub-section 83(4) has been substituted replacing the B earlier sub-section 83(4) as the intention of the Legislature is that One Member Tribunal is not enough and in its place a Three Member Tribunal should function; that the old Section 83(4) and the amended Section 83(4) is inconsistent with each other and, therefore, doctrine C of implied repeal would apply. The submission that section 83 (4) of 1995 has been implied repeal cannot be accepted. [Para 28] [986-E-G]

1.4 In case where there is a repealing clause to a D particular Act, it is a case of express repeal, but in a case where doctrine of implied repeal is to be applied, the matter will have to be determined by taking into account the exact meaning and scope of the words used in the repealing clause. The implied repeal is not readily E inferred and the mere provision of an additional remedy by a new Act does not take away an existing remedy. While applying the principle of implied repeal, one has to see whether apparently inconsistent provisions have been repealed and re-enacted. The implied repeal of an F earlier law can be inferred only where there is enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law and the two laws cannot stand together. If the later law is not capable of taking the place of the earlier law, and for G some reason cannot be implemented, the earlier law would continue to operate. To such a case, the rule of implied repeal may result in a vacuum which the law making authority may not have intended. [Para 30-31] [987-B-F]

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1.5 There is a presumption against repeal by implication. The reason for the presumption is that the legislature while enacting a law has complete knowledge of the existing laws on the subject matter and, therefore, when it is not providing a repealing provision, it gives out an intention not to repeal the existing legislation. If by any fair interpretation, both the statutes can stand together, there will be no implied repeal and the court should lean against the implied repeal. Hence, if the two statutes by any fair course of reason are capable of being reconciled, that may not be done and both the statutes be allowed to stand. [Para 33] [988-G-GH; 989-A]

1.6 The intention of the Parliament while substituting Section 83(4) is not that one member tribunal vanishes or ceases to exist till a three member tribunal is constituted. Intention to bring new sub-section (4) in Section 83 is nothing but improvement in the constitution of the tribunal and both the earlier and the substituted sub-sections are not inconsistent with each other. [Para 39] 992-C-D]

1.8 The High Court erred in holding that after the Amendment Act, 2013 came into force, the one member tribunal exercising jurisdiction ceased to exist even though a fresh notification constituting three member tribunal has not been notified. The States have not till date issued fresh notification constituting three members tribunal as mandated by Section 83(4) of the Act. The States are directed to immediately take steps for constituting a three member tribunal and notification to that effect must be issued. [Paras 40, 42] [992-E, F, H; 993-A]

Rajasthan State Road Transport Corporation and Another vs. Bal Mukund Bairwa (2) **(2009) 4 SCC**

A **299: 2009 (2) SCR 161;** *Afcons Infrastructure Limited and Another vs. Cherian Varkey Construction Company Private Limited and Ors.* **(2010) 8 SCC 24: 2010 (8) SCR 1053;** *M.P. Wakf Board vs. Subhan Shah* **(2006) 10 SCC 696: 2006 (8) Suppl. SCR 85;** *Municipal Council, Palai vs. T.J. Joseph* **AIR 1963 SC 1561:1964 SCR 87;** *Bhagat Ram Sharma vs. Union of India* **AIR (1988) SC 740: 1988 SCR 1034;** *Om Prakash Shukla v. Akhilesh Kumar Shukla* **AIR 1986 SC 1043: 1986 SCR 855;** *Municipal Council, Palai vs. T.J. Joseph* **AIR 1963 SC 1561: 1964 SCR 87;** *Harshad S. Mehta vs. State of Maharashtra* **(2001) 8 SCC 257: 2001 (2) Suppl. SCR 577 – referred to.**

D *Mangin vs. IRC* **(1971) 1 All ER 179 (PC) – Referred to.**

CASE LAW REFERENCE

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2009 (2) SCR 161	**Referred to.**	**Para 13**
2010 (8) SCR 105	**Referred to.**	**Para 13**
2006 (8) Suppl. SCR 85	**Referred to.**	**Para 14**
AIR 1963 SC 1561	**Referred to.**	**Para 28**
1988 SCR 1034	**Referred to.**	**Para 28**
1986 SCR 855	**Referred to.**	**Para 32**
1964 SCR 87	**Referred to.**	**Para 34**
2001 (2) Suppl. SCR 577	**Referred to.**	**Para 36**

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CIVIL APPELLATE JURISDICTION:Civil Appeal No. 14565 of 2015

From the Judgment and Order dated 11.09.2015 of the High Court of Judicature at Bombay rendered in Civil Revision Application No. 395 of 2015

WITH

C. A. NOS. 14566, 14567, 14569, 14570 & 14571 OF 2015

P. B. Gaikwad, Y. H. Muchhala, Saghar A. Khan, Ejaz Maqbool, C. George Thomas, Akriti Chaubey, G. D. Shaikh, Faraz Maqbool, Sudhanshu S. Choudhari, Samir Patel, Vatslya Vigya, Rajat Kapoor, Shakil Ahmed Syed, Mohd. Parvez Dabas, Uzmi Jameel Husani, Shirish K. Deshpande, Ajay K. J. Panicker, Shyam Moorjani, Sureshan P., Vaibhav S. Nagvekar, Ravindra Keshavrao Adsure, Nishant Ramakantrao Katneshwarkar for the appearing parties.

The Judgment of the Court was delivered by

M.Y. EQBAL, J.:In the special leave petition being SLP(C)No.29234 of 2015, the petitioner (plaintiff) seeks to challenge the impugned judgment and order dated 11.9.2015 passed by Single Judge of the Bombay High Court in Civil Revision No.395 of 2015, whereby waqf suit instituted by the petitioner before one member Waqf Tribunal has been held to be not maintainable and necessary directions have been issued by the said order for return of the plaint and for presentation before the appropriate civil court for adjudication of disputes.

2. The plaintiff, a trust called Lal Shah Baba Dargah Trust, instituted the suit before the one member Maharashtra Waqf Tribunal, Aurangabad (in short, "the Tribunal") claiming the suit

A property as waqf property held by the trust, for perpetual injunction restraining defendants nos. 1 to 7 from illegally developing portion of the suit plot in City Survey No. 1/50 to 11/50 and part of C.S.No.50 situated at Tawripada, Lalbagh, Mumbai; from raising further construction; creating third party
B interest; from changing the nature of the suit properties as also from handing over the possession of the flats constructed therein. A separate application for temporary injunction was also filed before the Tribunal, which was partly allowed and an ad-interim injunction in those terms has been granted.
C

3. Aggrieved by the order passed by the Tribunal granting injunction, the defendant-respondents moved the High Court under Section 83(9) of the Waqf Act, 1995 by way of civil revision, which was registered as C.R. No.395 of 2015. The
D defendant-respondents, besides other defence, challenged the jurisdiction of one man Tribunal on the ground *inter alia* that the functioning of single member Tribunal constituted under Section 83(4) of the 1995 Act ceased to have jurisdiction after the 1995 Act was amended by Wakf (Amendment) Act of 2013,
E which came into force with effect from 1.11.2013 i.e. much before the commencement of the suit before one man Tribunal.

4. The High Court after hearing the parties allowed the civil revision application and set aside the order of the Tribunal
F holding that it has no jurisdiction. However, the High Court in the impugned order did not interfere with the interim order. The High Court finally held:-

"74. Now it is also necessary to consider the fate of suits
G or other proceedings which are instituted prior to coming into force of the Amendment Act with effect from 1.11.2013. The legislature has not made any transitory provision. The legislature has also not provided for transfer of suits/proceedings which are instituted prior
H to 1.11.2013. In view of Section 6(e) of the General

Clauses Act, 1897, suits/proceedings instituted before a single member Tribunal prior to 1.11.2013 shall be continued as if Section 83(4) is not amended. In view thereof, it has to be held that the waqf suit instituted by the plaintiff after 1.11.2013 before a single member Tribunal is not maintainable and consequently Plaint is liable to be returned along with Applications Exhibit 19 and 30. Parties shall appear before the Tribunal when the Tribunal will pass further orders for return of Plaint along with Applications-Exhibit 19 and 30 for presentation before appropriate Civil Court in the light of observations made herein. The impugned order will have to be quashed and set aside on the ground that it is without jurisdiction and Applications-Exhibit-19 and Exhibit-30 filed by the plaintiff are liable to be restored to the file. The said Applications will have to be decided by the Civil Court after return of Plaint along with Applications Exhibit 19 and 30, on their own merits and in accordance with law uninfluenced by the observations made herein.

75. In the light of the aforesaid discussion, Civil Revision Application is allowed as under:-

1. The waqf suit instituted by the plaintiff before a single member Tribunal is not maintainable and consequently Plaint along with Applications-Exhibit 19 and 30 are liable to be returned for presentation before appropriate Civil Court. Parties shall appear before the Tribunal on 15.9.15 and the Tribunal will pass necessary orders within two weeks from the date of appearance of the parties.

2. Impugned order passed by the Tribunal is quashed and set aside on the ground that the said order is without jurisdiction and Applications-Exhibit-19 and 30 filed by the plaintiff are restored to the file. The said

A Applications shall be decided by the Civil Court after return of Plaint on their own merits on the basis of material on record and in accordance with law uninfluenced by the observations made herein.

B 3. Suits or any other proceedings instituted prior to 1.11.2013 before a single member Tribunal will continue to be tried by the said Tribunal in view of Section 6(e) of the General Clauses Act, 1897.

C 4. On and after 1.11.2013, being the date when Amendment Act came into force, a single member Tribunal has no jurisdiction to entertain and try disputes referred in Section 83(1) of the Act. Suits or any proceedings instituted on and after 1.11.2013 cannot be tried by a single member Tribunal.

D 5. Civil Courts will have jurisdiction to entertain and try suits or any other proceedings instituted on and after 1.11.2013 despite bar of Section 85 till such time the State Government issues notification appointing a

E three member Tribunal as per the amended Section 83(4).

6. As there is no provision for transfer of pending suits in the Amendment Act, suits or any other proceedings, so instituted on or after 1.11.2013, shall continue to

F be tried by Civil Courts even after the State Government issues notification constituting a three member Tribunal as per the Amended Section 83(4) unless the Central Government intervenes as per Section 113 or the Act is suitably amended.

G 7. Notwithstanding setting aside the impugned order, Clauses (2) and (3) of operative part of the impugned order shall remain in force for a period of six weeks from today so as to enable the plaintiff to obtain

H appropriate adinterim, interim order from Civil Court.

Continuation of the ad-interim order shall not be treated as expression of merits of the case either way. All the contentions in that regard are expressly kept open.

8. Rule is made absolute in the aforesaid terms with no orders as to costs."

5. The defendant-respondent Maharashtra State Board of Wakfs, also aggrieved by the impugned order, has filed special leave petition being SLP(C) No. 31610 of 2015. The petitioners in SLP(C) Nos.31605, 31606 and 31595 of 2015 are aggrieved by that part of the impugned order whereby the High Court divested jurisdiction of the Waqf Tribunal in respect of the waqf suit and conferred jurisdiction to the civil court to decide all those suits.

6. In SLP(C) No.30725 of 2015, the petitioner-defendants have assailed that part of the impugned order passed by the High Court whereby the High Court refused to interfere with the interim order passed by the Tribunal and directed that the interim order passed by the Tribunal shall continue till the plaint of the suit is presented to the civil court.

7. Since all these special leave petitions arise out of the impugned judgment passed by the High Court and common questions of law are involved, these applications have been heard together and are disposed of by this common judgment.

8. Leave granted.

9. Mr. Saghar A. Khan, learned counsel appearing for the appellant, assailed the impugned judgment and order passed by the High Court as being illegal and wholly without jurisdiction inasmuch as in exercise of revisional power under Section 83(9) of the Waqf Act, 1995. The High Court ought not to have entered into the merits of the case and decide the jurisdiction

A of Single Member Tribunal before which the suit was pending for adjudication. According to the learned counsel, when the petition was filed by the respondent under Section 9(A) CPC of the Maharasthra Amendment Act was pending before the Tribunal, the High Court ought not to have decided the B jurisdiction of the Tribunal in the revision petition which was filed by the defendant-respondent assailing the order of interim injunction.

10. Learned counsel then submitted that in any case so C long as the State Government by notification in the official Gazette does not constitute a Tribunal as per amended Section 83(4) of the Act, the Single Member Tribunal shall continue to determine and decide the matters referred to it under Section 83(1) of the Act. It was submitted that the Waqf Act, 1995 was D amended and the notification to that effect was issued on 20.09.2013 amending certain provisions of the Waqf Act, 1995 including Section 83(4) of the Act. By the said amendment the Tribunal which was already functioning under the principal Act was continued since no fresh notification constituting Three E Member Tribunal was issued. Learned counsel submits that in terms of amended Section 83(4) of the Act, the State Government shall have to issue a fresh notification in the official gazette constituting Three Members Tribunal. Till a fresh notification is issued, the One Member Tribunal shall continue F to function. In this respect learned counsel submitted that the Andhra Pradesh High Court, Gujarat High Court and Kerala High Court have uniformly taken a view that so long as the State Government has not constituted a Three Member Tribunal in terms of the amendment in Section 83(4) of the Act, a Single G Member Tribunal is competent to decide the questions referred to it.

11. Lastly, Mr. Khan, brought to our notice a notification issued by the Central Government dated 14.05.2015 by which H

several amended acts sought to repeal including the Wakf Amendment Act, 2013 which came into force on 01.11.2013. According to the learned counsel, the said notification of the Central Government of 2015 repealing various amendment acts was not brought to the notice of the High Court. In the alternative, learned counsel submits that after the Amended Act, 2015, repealing 2013 amendment, the One Member Tribunal is fully competent to entertain and decide the suit that has been filed by the appellant.

12. Learned counsel further contended that the High Court has totally ignored the mandate of Section 90(1) and (3) of the Act allowing the prayer of the defendants to delete the name of Respondent No.2 – Waqf Board from the said Revision Application. The impugned order was passed without issuing notice to the Waqf Board and on this ground alone the impugned order is liable to be set aside. The High Court further failed to consider the provisions of Section 6, Section 7 and Section 85 of the Waqf Act, 1995 which completely oust the jurisdiction of Civil Court to decide the nature of Auqaf and Waqf properties as the same requires adjudication by the Waqf Tribunal alone.

13. Per contra, Mr. Y.H. Muchhala, learned senior counsel appearing for the defendant-respondents firstly contended that the plaintiff instituted the waqf suit after amendment to Section 83(4) came into force in 2013. On and from 01.01.2013, the Single Member Tribunal cannot decide and determine the dispute referred to instituted before the Tribunal. According to the learned counsel while amending the Act of 1995 the Legislature has not made any transitory provision, hence bar under Section 85 cannot be invoked in the facts and circumstances of the present case and particularly when the State Government has not issued a fresh notification appointing a Three Member Tribunal in terms of amended Section 83(4). So long as a Three Member Tribunal is not constituted by the

A State Government, the jurisdiction of Civil Court is not ousted. The High Court, therefore, rightly held that the plaintiff can approach the Civil Court and obtain appropriate relief so long as the Three Member Tribunal is not constituted in terms of Section 83(1)(4) of the Act. In support of the submission, B learned counsel relied upon the decision of this Court in the case of ***Rajasthan State Road Transport Corporation and Another vs. Bal Mukund Bairwa (2),*** (2009)4 SCC 299; and ***Afcons Infrastructure Limited and Another vs. Cherian Varkey Construction Company Private Limited and*** C ***Others,*** (2010) 8 SCC 24.

14. It has further been submitted on behalf of the defendants that the plaintiff has not prima facie established that the suit properties are the waqf properties belonging to the plaintiff, D and therefore, the Tribunal was not justified in granting ad-interim order. Whereas it has been pleaded on behalf of the plaintiff that coming into force of the Act is one thing and enforcement of the Act is another thing. Though the Principal Act came into force with effect from 1.1.1996 and the E Amendment Act came into force with effect from 1.11.2013, the scheme of the Act itself contemplates that in stage-wise the Act will be enforced. Till such time, the Tribunal is constituted in terms of the amended Section 83(4), single member Tribunal can proceed to decide the disputes as contemplated under F the amended Section 83(1). Learned counsel submitted that the Principal Act as also Amendment Act contemplate different statutory authorities. Each of such authorities must exercise the functions within the four corners of the Statute. In support of this proposition, plaintiff relied upon the decision of the Apex G Court in the case of ***M.P. Wakf Board vs. Subhan Shah***, (2006) 10 SCC 696.

15. As noticed above, the High Court in the concluding para 74 of the impugned order, quoted hereinabove, held that H

the suit before the One Member Tribunal is not maintainable and till a fresh notification is issued by the State Government constituting a Three Member Tribunal, the Civil Court has jurisdiction to entertain such suits and decide the dispute with regard to waqf properties. However, learned Single Judge refused to interfere with the interim order of injunction passed by One Member Tribunal. The Court in paragraph 73 of the impugned order held:-

> "73. The question whether the suit properties are wakf properties or not, is not a pure question of law. It is a mixed question of law and fact. Parties will have to lead evidence in order to substantiate the respective case. For the reasons recorded in paragraphs 32 and 34 in the impugned order, the Tribunal has granted ad-interim order. I do not find that the Tribunal committed any error in passing the ad-interim order. I, therefore, do not find that defendants no. 1 to 7 have made out any case for interfering with the impugned order in the exercise of revisional jurisdiction."

16. We have heard learned counsel for the parties and examined the relevant provisions of both the principal Act and the amendment Act brought in 2013.

17. A cursory glance of the Waqf Act, 1995 would show that the Waqf Act, (for short '1995 Act') came into force with effect from 1.1.1996. By Section 3(q), the Tribunal is defined as the Tribunal constituted under sub-section 1 of the Section 83 of the Act having jurisdiction in relation to that area. Section 84 confers power to the Tribunal to decide and determine dispute, questions or other matters relating to a waqf property and decide the proceeding as expeditiously as possible.

18. The relevant provision i.e. Section 83 confers power to the State Government to constitute Tribunals. In the original

A Act, Section 83 provides for constitution of Tribunal consisting of only one person. Sub-section 4 of Section 83 as it stood under the original Act is quoted hereinbelow:-

"(4) Every Tribunal shall consist of one person, who shall
B be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation".

C 19. Certain amendments have been brought in the Act of 1995 in 2013 called the Wakf (Amendment) Act, 2013. By this Amendment Act, 2013, many sections have been amended including Section 83. After amendment, Section 83 reads as under:-

D **"83. Constitution of Tribunals, etc.-**

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or
E other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;

F (2) Any mutawalli person interested in a Waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has
G been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Waqf.

(3) Where any application made under sub-section (1) relates to any Waqf property which falls within the
H territorial limits of the jurisdiction of two or more Tribunals,

such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the Waqf actually and voluntarily resides, carries on business or personally works for gain, and where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Waqf or any other person interested in the Waqf or the Waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Waqf or Waqf property, transfer such application to any other Tribunal having jurisdiction , and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

A (4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.

B (5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure,1908(5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the code of Civil C Procedure, 1908(5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

D

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

E (9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal: Provided that a High court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to F any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such G determination or pass such order as it may think fit."

20. Perusal of the amended sub-section (4) of Section 83 would show that now the Tribunal shall consist of three members and the State Government shall by notification constitute a H Tribunal consisting of three members. Indisputably, till date,

as per amended sub-section (4) of Section 83, the State Governments of different States have not constituted Tribunal consisting of three persons by issuing notification. A

21. The only question, therefore, that arises for consideration is as to whether till a three member tribunal is constituted by the State Government by issuing notification one member tribunal as constituted under 1995 Act shall continue functioning or it ceases to have any jurisdiction to entertain disputes and decide it in accordance with the provisions of Act. B C

22. The statement of objects and reasons for bringing Wakf (Amendment) Act, 2013 is quoted hereinbelow :-

> "The Wakf Act, 1995, [which repealed and replaced the Wakf (Amendment) Act, 1984] came into force on the 1st day of January, 1996. The Act provides for the better administration of auqaf and for matters connected therewith or incidental thereto. However, over the years of the working of the Act, there has been a widespread feeling that the Act has not proved effective enough in improving the administration of auqaf. D E
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> 2. The Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on the 17th November, 2006 considered the aforementioned issue and suggested certain amendments to the Act relating to women's representation, review of the composition of the Central Wakf Council and the State Wakf Boards, a stringent and more effective approach to countering encroachments of Waqf properties and other matters. The Committee stressed the need for setting up of a F G H

A National Waqf Development Corporation and State Waqf Development Corporations so as to facilitate proper utilization of valuable waqf properties for the objectives intended. The Committee recommended that the Act should be amended so that the State Waqf Boards
B become effective and are empowered to properly deal with the removal of encroachments of waqf properties. It also recommended to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint
C Parliamentary Committee on Waqf in its Third Report presented to the Rajya Sabha on the 4th March, 2008 made re commendations for a wide range of amendments relating to time bound survey of waqf properties, prevention and removal of encroachments,
D making the Central Waqf Council a more effective and meaningful body, provisions for development of waqf properties, etc. In its Ninth Report presented to the Rajya Sabha on the 23rd October, 2008, the Joint Parliamentary
E Committee reconsidered certain issues. The recommendations of the Joint Parliamentary Committee on Waqf were considered by the Central Waqf Council. The various issues and the need for amendments to the Act have also been considered in consultation with other
F stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairmen and the Chief Executive Officers of State Waqf Boards."

G 23. With the aforesaid object, necessary provisions have been substituted in the original Act. Clause 40 of the Bill sought to amend Section 83 of the Act relating to constitution of the Tribunal with a view to expand the composition of a tribunal. Clause 41 of the Bill sought to amend Section 85 of the Act
H dealing with bar of jurisdiction of civil courts so as to bar the

jurisdiction of the revenue courts and any other authorities besides civil courts in respect of disputes, question or other matters relating to Waqf. Waqf properties or other matters required to be determined by the Tribunal. A

24. The aforementioned objectives nowhere stated that there was any issue with regard to the functioning of the single member tribunal in the Waqf Act, 1995, which was functioning before the Wakf (Amendment) Act, 2013 (27 of 2013) came into force. They have come up with the idea of three members Tribunal only to expand the composition of the Tribunal as mentioned in the Clause 40 of the Wakf (Amendment) Bill, 2010 (Bill No.53 of 2010), which provides that it seeks to amend Section 83 of the Act relating to constitution of Tribunals, etc. Every Tribunal constituted by the State Government will have a Chairman who shall be a member of the State Judicial Service holding a rank not below that of a District, Sessions or Civil Judge Class- I. There will be two other members, one of whom shall be an officer from the State Civil Services equivalent in rank to that of Additional District Magistrate and the other a person having knowledge of Muslim law and jurisprudence. B C D E

25. From perusal of the statement of objects and reasons, it reveals that the single member of the Tribunal was working fine under the Waqf Act, 1995 (before 2013 amendment). The idea of expanding the composition by the 2013 Amendment seems to make improvement in the functioning of the Tribunal with the help of two more members in the Tribunal. F

26. Even by the 2013 amendment in Section 85 of the Act, they have also ousted the jurisdiction of the revenue court or any other authorities along with the civil court. Meaning thereby the legislatures wanted to make sure that no authorities apart from the Tribunal constituted under Section 83 of the Act shall determine any dispute, question or other matter relating to a waqf property, eviction of a tenant or determination of rights G H

A and obligations of the lessor and the lessee of such property under this Act.

27. As per the amendment, the three members Tribunal is to be constituted by the State Government by notification in B the Official Gazette. However, the State has not done its mandatory duty as provided under Section 83 of the Act (as the Section 83 uses the word "shall"). Then the question is should any party suffer due to the inaction of the State. We should keep in mind that it is common practice that the old C institution/member continues to exercise duty till the time any new institution/member takes charge of that duty. In the present case also, the one member tribunal will continue to exercise jurisdiction till the time the State constitutes three members tribunal by notification in the Official Gazette. The High Court D erred in holding that the civil court will exercise jurisdiction in such situation as it is manifest by the intention of the legislature that they do not want any other authorities to exercise over the Waqf property matter under the Act.

E 28. Mr. Muchhala, learned senior counsel appearing for the defendant/respondent, submitted that by 2013 Amendment Act, sub-section 83(4) has been substituted replacing the earlier sub-section 83(4) of the Act as the intention of the Legislature is that One Member Tribunal is not enough and in F its place a Three Member Tribunal should function. According to the learned counsel the old Section 83(4) and the amended Section 83(4) is inconsistent with each other and, therefore, doctrine of implied repeal will apply. In other words, the word substitution used in the Amended Act must be interpreted as G implied repeal. In this connection, learned counsel relied upon ***Afcons Infrastructure*** (supra), ***Municipal Council, Palai vs. T.J. Joseph,*** AIR 1963 SC 1561, and ***Bhagat Ram Sharma vs. Union of India,*** AIR (1988) SC 740.

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29. We are unable to accept the submission made by the learned counsel that Section 83(4) of 1995 Act has been impliedly repealed.

30. It is well settled that in case where there is a repealing clause to a particular Act, it is a case of express repeal, but in a case where doctrine of implied repeal is to be applied, the matter will have to be determined by taking into account the exact meaning and scope of the words used in the repealing clause. It is equally well settled that the implied repeal is not readily inferred and the mere provision of an additional remedy by a new Act does not take away an existing remedy. While applying the principle of implied repeal, one has to see whether apparently inconsistent provisions have been repealed and reenacted.

31.The implied repeal of an earlier law can be inferred only where there is enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law and the two laws cannot stand together. If the later law is not capable of taking the place of the earlier law, and for some reason cannot be implemented, the earlier law would continue to operate. To such a case, the rule of implied repeal may result in a vacuum which the law making authority may not have intended.

32. The principle of implied repeal was considered by three Judges Bench of this Court in the case of ***Om Prakash Shukla v. Akhilesh Kumar Shukla,*** AIR 1986 SC 1043, this Court held thus:-

> ".....An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law, that is, where the two laws — the earlier law and the later law — cannot stand

A together. This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction. The later laws abrogate earlier contrary laws. This principle is, however, subject to the condition that the later law must be effective. B If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented, the earlier law would continue to operate. To such a case the Rule of implied repeal is not attracted because the application of the Rule of implied repeal may result in a C vacuum which the law-making authority may not have intended. Now, what does Appendix II contain? It contains a list of subjects and marks assigned to each of them. But who tells us what that list of subjects means? It is only in the presence of Rule 11 one can understand the D meaning and purpose of Appendix II. In the absence of an amendment reenacting Rule 11 in the 1947 Rules, it is difficult to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be E applicable to the ministerial establishments of the subordinate civil courts. The High Court overlooked this aspect of the case and proceeded to hold that on the mere reintroduction of the new Appendix II into the 1947 Rules, the examinations could be held in accordance with F the said Appendix. We do not agree with this view of the High Court."

33. There is a presumption against repeal by implication. The reason for the presumption is that the legislature while G enacting a law has complete knowledge of the existing laws on the subject matter and, therefore, when it is not providing a repealing provision, it gives out an intention not to repeal the existing legislation. If by any fair interpretation, both the statutes can stand together, there will be no implied repeal and the H court should lean against the implied repeal. Hence, if the two

statutes by any fair course of reason are capable of being reconciled, that may not be done and both the statutes be allowed to stand. A

34. The principle of implied repeal has been elaborately discussed in the case of ***Municipal Council, Palai vs. T.J. Joseph,*** AIR 1963 SC 1561, this Court held:- B

> "9. It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new act are so inconsistent with the old ones that the two cannot stand together. As has been observed by *Crawford on Statutory Construction*, p. 631, para 311: C D E
>
> "There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal ... for the intent of the legislature to repeal the old enactment is utterly lacking." F

35. Their Lordships further observed as under:-

> "The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in *Crosby* v. *Patch* and is as follows: G
>
> "As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the H

A Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. *Bowen* v. *Lease* (5 Hill 226). It is a rule, says Sedgwick, that a general statute without negative B words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. 'The reason and philosophy of the rule,' says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a C subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to effect the more particular or positive previous provisions, unless it is absolutely necessary to give the D latter act such a construction, in order that its words shall have any meaning at all."

36. In the case of ***Harshad S. Mehta vs. State of Maharashtra***, (2001) 8 SCC 257, a three Judges Bench of E this Court considered the principle of implied repeal and held:-

"31. One of the important tests to determine the issue of implied repeal would be whether the provisions of the Act are irreconcilably inconsistent with those of the Code F that the two cannot stand together or the intention of the legislature was only to supplement the provisions of the Code. This intention is to be ascertained from the provisions of the Act. Courts lean against implied repeal. If by any fair interpretation both the statutes can stand G together, there will be no implied repeal. If possible, implied repeal shall be avoided. It is, however, correct that the presumption against the intent to repeal by implication is overthrown if the new law is inconsistent with or repugnant to the old law, for the inconsistency or H

repugnancy reveals an intent to repeal the existing laws. Repugnancy must be such that the two statutes cannot be reconciled on reasonable construction or hypothesis. They ought to be clearly and manifestly irreconcilable. It is possible, as contended by Mr Jethmalani, that the inconsistency may operate on a part of a statute. Learned counsel submits that in the present case the presumption against implied repeal stands rebutted as the provisions of the Act are so inconsistent with or repugnant to the provisions of the earlier Acts that the two cannot stand together. The contention is that the provisions of Sections 306 and 307 cannot be complied with by the Special Court and thus the legislature while enacting the Act clearly intended that the said existing provisions of the Code would not apply to the proceedings under the Act. Learned counsel contends that this Court will not construe the Act in a manner which will make Sections 306 and 307 or at least part of the said sections otiose and thereby defeat the legislative intendment whatever be the consequences of such an interpretation."

37. Learned counsel for the respondent put reliance on the decision of this Court in ***Afcons case*** (supra). In this case the question that came for consideration before the Court was whether Section 89 of the Code of Civil Procedure empowers the Court to refer the parties to a suit to arbitration with the consent of both the parties. While considering the provisions of Section 89 and Order 10 Rule 1A of the Code, this Court held that consideration for reference under Section 89 is mandatory. While deciding the question various decisions on the point of interpretation of statute are being considered and decide the issue holding that Court will have to follow the rule of literal construction which enjoins the Court to take words as used by the Legislature to give it the meaning which naturally implies.

38. In ***Mangin vs. IRC***, (1971) 1 All ER 179 (PC), the Privy Council held that the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

39. Mr. L. Nageswara Rao, learned senior counsel appearing for the Wakf Board, has rightly contended that the intention of the Parliament while substituting Section 83(4) is not that one member tribunal vanishes or ceases to exist till a three member tribunal is constituted. Intention to bring new sub-section (4) in Section 83 is nothing but improvement in the constitution of the Tribunal and both the earlier and the substituted sub-sections are not inconsistent with each other.

40. Having regard to the law discussed hereinbefore and giving our anxious consideration in the matter, we are of the definite opinion that the High Court has committed serious error of law in holding that after the Amendment Act, 2013 came into force, the one member Tribunal exercising jurisdiction ceased to exist even though a fresh notification constituting three member Tribunal has not been notified. The High Court further erred in law in directing the Civil Court to decide the disputes in respect of waqf property.

41. We, therefore, allow all the appeals except the appeal arising out of SLP(C)No.30725/2015 and set aside the impugned judgment passed by the High Court. Consequently, the appeal arising out of SLP(C) No.30725/2015 is dismissed holding that the interim order passed by the Tribunal shall continue.

42. Before parting with the order we record our serious exception to the conduct of the States who have not till date

issued fresh notification constituting three member Tribunal as mandate by Section 83(4) of the Act. We, therefore, direct the States to immediately take steps for constituting a three member Tribunal and notification to that effect must be issued within four months from today. Let copy of this judgment be sent to the Chief Secretaries of all the States for compliance. A B

Nidhi Jain Appeals partly allowed.