

(2025) 10 KL CK 0042

Kerala HC

Case No: Writ Appeal Nos.603, 606 Of 2025

State Of Kerala

APPELLANT

Vs

T.K.I. Ahamed Sherief

RESPONDENT

Date of Decision: Oct. 10, 2025**Acts Referred:**

- Constitution of India, 1950 — Article 226
- Waqf Act, 1954 — Section 3(l), 3(r), 3(s), 4(3), 4(6), 5, 5(2), 6, 6(1), 25, 25(7), 25(8), 26, 41, 54, 55E
- Waqf Act, 1995 — Section 7, 63, 83(1), 87, 97, 108, 108A
- Mussalman Waqf Act, 1923 — Section 2(e), 2(6)(10), 3, 3(3), 4
- Waqf (Amendment) Act, 1969 — Section 5(2), 6(4)
- Wakf (Amendment) Act, 1984 — Section 5(2), 6A, 6A(1)
- Kerala Wakf Rules, 1996 — Rule 95
- Kerala High Court Rules, 1971 — Rule 146A

Hon'ble Judges: Sushrut Arvind Dharmadhikari, J; Syam Kumar V.M., J**Bench:** Division Bench**Advocate:** K.Gopalakrishna Kurup, M.H.Hanil Kumar, S.Kannan, V.Manu, C.E.Unnikrishnan, P.K.Ibrahim, K.P.Ambika, Zeenath P.K., Jabeena K.M., Anaz Bin Ibrahim, Pradeep Kumar A., Jamsheed Hafiz , George Poonthottam**Final Decision:** Allowed

Judgement

Sushrut Arvind Dharmadhikari, J

1. The writ appeals at hand take exception to the final judgment dated 17.03.2025 passed by the Single Bench of this Court in batch of writ petitions, with the lead one being WP(C) No. 2839/2025 and other connected matters. Vide the impugned judgment, the learned Single Bench through reasoned findings quashed the notification dated 27.11.2024 issued under the provisions of Commissions of Inquiry Act, 1952 (for short, 'the COI Act'), constituting an Inquiry Commission headed by a former Judge of this Court to inquire into certain issues mentioned there

under relating to property situated in Survey No. 18/1 of the Vadakkekara village (hereinafter called 'the subject property'), Kozhikode district. The learned Single Bench held that since the subject property has been declared as a waqf property by the Kerala Waqf Board (for short, KWB), therefore in view of the specific statutory bar under the provisions of the Waqf Act, 1995 (for short, 'Act of 1995'), specifically Section 83(1), the Inquiry Commission (for short, 'IC') under the COI Act could not have been constituted at the threshold for carrying out any inquiry touching the nature of the said waqf property. Since the IC inevitably would be delving into the contours of the endowment deed through which the said property was gifted to R5, Farooq College Management Committee (for short, 'R5 Farooq Management'), therefore the State Government has acted ultra vires its powers available in the province of COI Act and acted contrary to provisions of Waqf Act, 1995.

2. The learned Single Bench also held that since the issue is already pending consideration before the Waqf Tribunal, Kozhikode, which is sought to be inquired into by the IC, recourse to the provisions of COI Act by the State Government was still born and could not have been ever resorted to. The IC has been appointed without any application of mind, which resultantly fails the test of law and consequentially quashed the impugned notification dated 27.11.2024 (Exhibit P1 before the Writ Court).

3. For the elaborate reasons and detailed findings to follow, we express our inability to agree with the findings of the learned single Judge, which in our opinion are ex facie erroneous, having been passed in ignorance of Mussalman Waqf Act, 1923, Waqf Act, 1954, Waqf Act, 1995 as also the pronouncements of the Supreme Court from time to time.

4. We shall be holding that the notification dated 25.09.2019 notifying the subject property as waqf is ultra vires the provisions of The Waqf Act, 1954, as also The Central Waqf Act, 1995 and nothing less than a land grabbing tactics of KWB which has affected the bread and butter, livelihood of hundreds of families and bonafide occupants who had purchased tranches of land decades prior to the notification of the waqf property. Whilst affirming the validity of Exhibit P1 notification constituting the IC, we shall also be holding that the State Government is not bound by the waqf declaration/ registration effected by KWB, being simply an eye wash to paint the subject property as a waqf property and Govt. possess widely conferred statutory powers to issue directions under Section 97 of the Waqf Act, 1995 post the conclusion of and submission of the report by the IC under challenge.

A. NECESSARY AND ADMITTED FACTS-

5. The facts adumbrated herein briefly have been borrowed both from the pleadings before the Single Bench as well as before this Court. An extent of 404.76 Acres of property comprised in old Survey No. 18 of then Vadakkekara Village of erstwhile Travancore State was transferred to R5 Farooq Management vide Document No.2115/1950 through an endowment deed, executed on 01.11.1950 by Mohammed Siddique Sait also titled as 'waqf endowment'. The aforesaid land originally measuring around 404.76 Acres was originally unregistered government land, which was assigned in favour of Shri. Abdul Sathar Haji Moosa Sait by the erstwhile Travancore Cochin Government originally. After his demise, the property was sold to one Shri. Mohammed Siddique

Sait by his legal heirs, who in turn through the endowment deed in 1950 being treated as a 'waqf deed' by the writ petitioners and 'gift deed' by the State and R5 Farooq Management on 01.11.1950 through Document No. 2115 of 1950. It is also admitted between the parties that out of the aforesaid extent of 404.76 Acres of land, due to sea erosion and gradual silting process, only 135.11 Acres remained, on which human inhabitation and activities could exist. Clearly a spectre of climate change our Mother Earth in the current century is witnessing and likely to witness much more on a different note.

6. It is further admitted that disputes of the R5 Farooq Management arose with the erstwhile Kudikidappukars (a landless person permitted by a landholder to occupy or erect a hut or homestead on another's land without any other land holding rights) who claimed fishing, plantation, sea farming who statedly carried out their operations much prior to the property being endowed to the R5 Farooq Management. The ongoing dispute between the R5 Farooq Management and the erstwhile Kudikidappukars eventually reached the portals of Sub Court, Parur through O.S. No. 53/1967, a civil suit for injunction simpliciter instituted by the R5 Farooq Management. The aforesaid suit was decreed through final judgment dated 12.07.1971 and was taken in appeal up to this Hon'ble Court, when the Division Bench through its final judgment dated 30.09.1975 passed in AS No. 600/1971 stamped its seal of approval to the decree of injunction of the Sub Court, Parur ruling in favour of the R5 Farooq Management. Resultantly the various encroachers, Kudikidappukars and others were enjoined from interfering in the peaceful possession of the R5 Farooq Management, where endowment deed was a fulcrum of the entire lis between the parties. We shall at a later part of this judgment be dealing with the findings recorded by the Sub Court, Parur as well as the Division Bench of this Court in the aforesaid round of litigation in support of our findings and conclusions that prima facie the subject property is not a waqf property, nor was the endowment deed ever executed with the intent of creating a waqf on the subject property.

7. In the 1980s and 1990s the R5 Farooq Management sold small-small plots and parcels of land to third parties in terms of the stipulations of the endowment deed of 1950, thereby creating third party ownership and occupancy rights. It's an admitted fact amongst all the contesting parties as also sufficiently pleaded in the pleadings that more than 50 third party ownership and occupancy rights have been created only parcels of land sold between the year 1960 to the year 2010 and large number of commercial activities like cafes, restaurants, wellness resorts, eco-tourism parks, beauty parlours and other business activities are being carried out by the land owners on whom the livelihood of substantial populous of the local region is dependent. Photographs were brought on record before the Single Bench as also before this Court demonstrating the existence of such large number of business and commercial activities claiming the protection of constitutional and fundamental rights of all such interveners from this Court.

8. The Government of Kerala (for short, 'GOK') through its notification dated 06.11.2008 exercising its powers under the COI Act in the same fashion as it has done now constituted an IC among others to inquire into the irregularities and illegalities of the Kerala State Waqf Board and its instrumentalities. The said Commission headed by the former District Judge, Shri. M.A. Nissar submitted various reports out of which Exhibit P-7, the 15th report pertains to the subject property.

9. Former District Judge, M.A. Nissar, though the terms of reference (for short 'TOR') of the IC never required or obligated the Commission to inquire into the status of subject property or to attribute waqf character to it, but however the Commission in its 15th report required the Kerala State Waqf Board (for short, 'KWB') to take necessary steps for declaring the subject property as a waqf property. Accordingly, after conducting certain inquiry proceedings, the KWB declared and registered the subject property as a waqf property in its waqf register in the name of Mohammed Siddique Sait Waqf with Registration No. 9980/RA. Thus, the subject property w.e.f. 25.09.2019 came to be registered as a waqf property. Though these facts are not in dispute, but however, we shall, on the basis of discussions to be undertaken in later parts of this judgment, hold that this inquiry was a sham and could not have attributed waqf character to the subject property after almost 70 years of the execution of the endowment deed in 1950.

10. It is further gleaned from the pleadings that certain proceedings have been instituted before the Waqf Tribunal Kozhikode by the R5 Farooq Management challenging the declaration and registration of the subject property as a waqf property by the KWB and the ancillary reliefs of the declaration that the endowment deed of 1950 was not a 'waqf deed', but a 'gift deed'.

11. After declaration of the subject property as a waqf property by the KWB, the State authorities, especially the Revenue Department stopped collection of land tax from various landholders holding private ownership over various parcels of the subject property. The landowners/interveners inform that KWB even initiated the process of eviction of all the occupant owners of various parcels of land as aforementioned, claiming the property under its control and ownership which precipitated large scale protests, dharnas and agitations by the local inhabitants who had settled there for almost two to three decades by then. The magnitude of public protests, dharnas and agitations reached phenomenal proportions affecting the law and order situation as well, which then compelled the government to convene a high level meeting under the chairmanship of the Chief Minister in November 2024. In this high level meeting, it was then decided by number of Cabinet Ministers chaired by the Chief Minister to appoint an IC to investigate, enquire and submit its recommendation for suggesting a permanent solution to the issues involved and to avoid confrontations between the various communities, likely to give rise even to communal tensions & disharmony. It is then that the impugned notification came to be issued on 27.11.2024 (Exhibit P1), appointing a former Judge of this Court, Justice (Rtd.)C.N.Ramachandran Nair as a one-member IC. As is clear from Exhibit P1, the IC has been constituted with the following TOR:

. *"To identify the present lie, nature and extent of property comprised in old survey No. 18/1 of the then Vadakkekara Village of the erstwhile Travancore State.*

. *To enquire and report as to how to protect the rights and interests of the bonafide occupants of the said land and to recommend the measures to be taken by the Government in that regard."*

[emphasis supplied by us]

12. Thus the GOK perceived the whole concern as a matter of definite and immense public importance, pertaining to which the IC has been directed to collect necessary public information and to devise measures and suggest solutions for protecting rights and interest of **bonafide purchasers and occupants of the said land.**

13. It is then that the writ petitions came to be filed by the writ petitioners who assailed the validity of Exhibit P1 being contrary to the provisions of Waqf Act, 1995. The Single Bench as stated supra allowed the writ petition through a detailed judgement observing that the notification constituting IC was incurably flawed and deserved quashment.

14. The present writ appeal therefore has a four cornered dimension, which was heard at length on various dates by this Court. The original writ petitioners and the KWB at one end vehemently opposed the constitution of the IC; the State Government on the diametrically opposite corner defends the same as being necessitated in larger public interest; the third corner being the R5 Farooq Management which contends that the endowment of 1950 never intended to create a waqf over the gifted property and it has been throughout treated as a private gifted property meant for public charitable use for educational purposes. R5 also opposed the very idea of property being characterized as a waqf property; the fourth set of contestants are the third party purchasers, bonafide occupants, owners and persons who are stated to be more than 50 in number, who had purchased the property and settled duly three to four decades prior to it being declared waqf property in 2019 by the KWB. These are the aggrieved third party purchasers, who had been protesting, agitating and staging dharnas against the takeover of the subject property by the KWB. They claim themselves to be bonafide purchasers and occupants who had received various parcels of property carved out from the subject property either from the R5 Farooq Management or the transferees of R5 Farooq Management as the subsequent purchasers.

15. This four-cornered slugfest has compelled this Court to dive deep into the real nature of controversy for ascertaining as to whether the IC so constituted by the State Government in exercise of its statutory powers be throttled or not. Incidental to the above issue shall also necessarily involve a prima facie scrutiny of the conduct of KWB of declaring the subject property as a Waqf property after almost 7 decades of execution of the endowment deed of 1950. The latter issue is a necessary adjunct to the former, in respect of which this Court shall only be recording prima facie findings to hold that the declaration of Waqf by the KWB shall have no meaning or efficacy for the State Government in constituting the IC in question.

B. SUBMISSIONS OF THE CONTESTING PARTIES

16. The writ appeal filed by the GOK had been vehemently opposed by the Original Writ Petitioners (for short, 'OWP's'), whereas the R5 Farooq Management and the interveners supported the stand of appellant GOK.

Their submissions have been capitulated below.

17. It was submitted on behalf of the appellant GOK represented through the Advocate General (for short, 'AG') Sri K. Gopalakrishna Kurup assisted by Shri S.Kannan, Senior Government Pleader as follows:

a. The Single Bench dealt with the issue cosmetically and superficially by holding simpliciter that once the declaration of subject property as waqf has been issued by the KWB, then the State Government must adopt a complete 'hands off approach' being disabled to deal with the said property in any manner whatsoever.

- b. The learned AG submits that both the State Government and this Court must examine closely the background of the whole controversy as to how the declaration came to be issued after a lapse of around 70 years (69 years to be precise) by the KWB in a completely unilateral manner declaring the subject property as a waqf property. The State Government is proposing to examine the modality, and manner in which the subject property suddenly came to be notified as a waqf property and without examining the claims of large number of bonafide owners, occupants, entities and persons whose lives and livelihoods are dependent entirely on the lands constituting parcels of the subject property;
- c. The learned AG would further contend that the Writ Court ought to have examined whether the statutory compliances were duly carried out, viz survey and quasi judicial inquiry at the behest of the KWB before declaring the subject property as a waqf property. Since the said exercise had never been undertaken, therefore the IC has been necessitated to be constituted to inquire into all the aforesaid issues for offering suggestions and measures for finding a solution to whole controversy at hand;
- d. The powers of the State Government are untrammelled under Section 97 of The Waqf Act, 1995 of issuing directions, which are felt necessary in the interests of the persons aggrieved by declaration of the subject property as a waqf property. He would submit that there is no bar on the State Government exercising its inherent powers under Section 97 of the said Act;
- e. The endowment deed of 1950 executed in favour of R5 Farooq Management never intended to create a waqf whilst donating the same, and the highest it was a 'gift deed', wherein the provisions of erstwhile Waqf Act, 1954 were never attracted. For this reason, therefore till the submission of report in 2009 by the IC of M.A. Nissar holding the subject property as waqf property, for 60 odd years nobody had staked any claim including the donees of endowment deed that the subject property has been donated as a waqf property;
- f. The role of the State Government at the highest would be only suggestive and recommendatory of the measures to be taken to protect the interests of all those whose ownership and occupancy interests and resultantly livelihood is likely to be affected by the declaration of the subject property as a waqf by the KWB;
- g. The constitution of the IC has been necessitated in view of large-scale public protests, agitations and dharnas staged by hundreds of aggrieved and affected persons whose livelihood is likely to be taken away with the declaration of the property as a waqf. This in turn created serious law and order problems for the State, which would have translated even into a communal dispute of severe magnitudes uncontrollable at a later stage. The State Government had on the basis of inputs, representations and materials received from various quarters and the authorities after a high-level meeting headed by the Chief Minister consciously taken a decision to constitute an IC. The said decision cannot be scuttled at the threshold by being declared contrary to the provisions of the Waqf Act, when it is also to ascertain whether the property was actually waqf or not;
- h. The learned AG also took us through the files and records of Civil Suit O.S. No. 53/1967 filed before the Sub Court Parur, including the pleadings and the final order passed by the Civil Court, which travelled up to this Court and eventually affirmed by the Division Bench of this Court through final judgment dated 30.09.1975 passed in A.S. No. 600/1971. On the basis of the same, it was his contention that the Civil Court of Parur District never went into the issue of title or

ownership of the subject property, nor framed any such specific issue of the property being endowed/ transferred as a waqf property. Even the suit plaint filed by R5 Farooq Management mentioned it throughout as a 'gift deed', and in the judgment also, it has been treated on very many places as a gift deed only. Neither the Division Bench of this Court nor the Civil Court ever had the occasion to examine whether the property was transferred as a 'waqf' in the hands of the R5 Farooq Management. Therefore, no advantages could have been drawn by the IC or by the KWB for selectively relying upon the orders passed in the said litigation to infer that the property is a waqf property. On a comprehensive analysis, the conclusion must be to the contrary that it was never intended to be a 'waqf', fundamentally because the R5 Farooq Management never treated it to be so;

i. All in all, therefore mere issuance of a declaration painting the subject property with the brush of waqf simpliciter will not attribute the said character and nature of the same to it, unless and until the statutory formalities mandated under the provisions of the Waqf Act, 1954 or that of the 1995 Act have been duly met and carried out. The Court can always examine whether the declaration was validly issued or not by relying on the judgments of *State of Andhra Pradesh v. Andhra Pradesh State Waqf Board & Ors.*(2022) 20 SCC 383 and *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (2017) 13 SCC 174.

Summing up, the learned AG prayed for setting aside the judgment of the Single Bench, whilst allowing the IC to proceed with the inquiry under the provisions of the COI Act, with the TOR for which it has been constituted.

18. The contentions of the OWP's to the contrary were as follows:

a. Once the endowment deed of 1950 was a waqf deed executed by Mohammed Siddique Sait in favour of the R5 Farooq Management and therefore applying the principle of 'once a waqf always a waqf', the nature of the transfer property could have never been altered. Delay in the declaration/notification of any would not come in the way of the same if the nature of endowment was as waqf from its inception;

b. The State Government gets completely incapacitated to issue any notification, even under the provisions of COI Act once the property has been declared waqf and the only competent authority to examine the validity of the declaration (post its declaration) is the Waqf Tribunal and no one else. The constitution of IC clearly amounts to usurpation of powers, which are vested with the Waqf Tribunal of determining the nature, character, and title of the property as a waqf, which is clearly impermissible. The State Government cannot do indirectly what it could not have done directly and should await the decision of Waqf Tribunal in the proceedings instituted already at the behest of R5 Farooq Management challenging the declaration of May 2019 of the subject property as a waqf;

c. The R5 Farooq Management had been taking inconsistent stance from time to time and before the Sub Court, Parur in O.S. No. 53 of 1967 it had itself stated that the endowment deed of 1950 intended to transfer property as a waqf in favour of its management. An issue was also specifically framed in the final judgement of the Civil Court, Parur as to whether the deed of 1950 is a waqf deed conferring the property on the R5 Farooq Management as a waqf deed;

d. Any third-party purchasers, owners and occupants who have bought the property from the R5 Farooq Management are all unauthorised purchases, who can claim no title, since the waqf property is completely inalienable and non-transferable. The R5 Farooq Management acted in excess of their authority by creating third party rights and executing sale deeds with third parties when inherently the waqf property could have never been transferred except under the provisions of The Waqf Act and that too only by the 'Mutawalli as administrator'. The Supreme Court in the judgement of *Rashid Wali Beg v. Farid Pindari & Ors.* (2022) 4 SCC 414, has categorically held that once a property is declared as a waqf, any dispute touching upon the nature, title, ownership, occupancy, or possession of the said property can be delved into only and only by the 'Waqf Tribunal' and none else. Reading out elaborately the judgement of *Rashid Wali Beg v. Farid Pindari & Ors.* (supra) it is clear that State Government could have never taken the decision of constituting any IC which is therefore beyond its powers;

e. The endowment deed of 1950 itself is titled as 'waqf endowment' implying that the donor always intended the endowment deed to be a waqf deed. It is in the form of permanent dedication of the property sought to be transferred in favour of the R5 Farooq Management, as a waqf deed. The nature of the deed therefore cannot be inferred or interpreted otherwise than as mentioned in the opening paragraph by this Court.

Summing up, the OWP's contended that judgement of Single Bench be affirmed and writ appeal be dismissed.

19. So far as the respondent No.4 Kerala State Waqf Board is concerned, Sri Jamsheed Hafiz, the learned Standing Counsel for the Waqf Board, after traversing the history of the Waqf Act, submitted that the first term of reference is essential as identification of the property is required, while the second term of reference is unnecessary. He further submitted that the Waqf Board has already declared the property to be a Waqf property and hence the Board is bound to recover all properties of the "waqf" including those that were alienated contrary to the Waqf Deed or the Waqf Act. He further argued that the action of the Board cannot be the subject matter of the commission of enquiry. Learned counsel ultimately prayed for dismissal of the Writ appeals.

20. The R5 Farooq Management and the interveners who are the third-party owners, occupants and purchasers of various lands from R5 argued in support of the GOK, putting forth their contentions broadly as follows:

a. The endowment deed of 1950 is to be tested not on the basis of its nomenclature as a waqf endowment/ deed simpliciter, but on the basis of its recitals. The recitals vide the opening paragraphs and Clauses 10 to 13 clearly stipulated that post-endowment, the R5 Farooq Management shall have the absolute right to own, transfer and alienate the subject property for the purposes of educational institutions in favour of third parties. Thus, the endowment deed was in fact a gift deed, as it was not a permanent dedication of the gifted property within the meaning of the Waqf Act, but a gift deed transferring the subject property for public charitable purposes like running of educational institutions. It is an essential facet of any document to constitute a waqf deed that a waqf must be created having the facets of 'permanent dedication' of the property for

the purposes of creation of waqf, in the absence of which it doesn't achieve the attributes of waqf. Since the right of alienation was conferred unconditionally and was available with the donee, therefore it never amounted to bringing into existence a waqf by its very nature. The learned counsel for R5 referred to the judgment of *Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu* (2023) 16 SCC 264, to contend that without permanent dedication, a waqf can never come into existence;

b. The R5 Farooq Management who is the ultimate beneficiary of the endowment deed never treated the property as a waqf and for this reason only from the year 1950 till date no steps were ever initiated for approaching any authority for declaration of the subject property as a waqf or appointment of any mutawalli as administrator of the same. It is owing to this clause, the entire management of the donee society had treated the same as a gift deed, in light of which the third-party rights were also created, sale deeds were executed by transfer of ownership and occupancy rights in the 1970s and the years/ decades following thereafter. Therefore, it doesn't lie in the mouth of the petitioners as third party outsiders to claim or attribute the nature of waqf to the endowment deed, when R5 itself is not treating it so. The third party rights were created in view of the specific stipulation of the right of the donee to dispose of the property for the necessity of generation of income and revenue for its educational institutions;

c. The proceedings in O.S. No. 53 of 1967 before the Sub Court, Parur, were never relating to the ownership or title of the subject property, but only limited to claiming injunction against interference by erstwhile Kudikidappukars. The Civil Court itself observed in the judgment dated 30.09.1975 that the suit is not for declaration of title/ownership but only for injunction and eventually decreed the same in favour of the R5 Farooq management. They have paid all the heads of municipal and local taxes till 2019 with respect to the land and superstructures on the subject property, treating it to be a non-waqf property under their ownership and occupation. If they intended to treat the property as a waqf property, the first attempt would have been to stop paying the taxes and seek exemption from its levy thereof;

d. In all the proceedings which reached up to the Division Bench of this Court in A.S. No. 600/1971, the endowment deed have been throughout referred by the R5 Farooq Management as plaintiff therein as the gift deed and no reference was made by the competent/authorised signatory to the same as waqf deed. The affidavit of 'Vyavahara Karyasthan' - M. Kalanthan referred to in the writ petition is an affidavit filed by unauthorised signatory as only the Secretary/Joint Secretary were authorised to swear and file pleadings on behalf of the R5 Farooq Management before the Civil Court and no one else. Therefore, the incorrect pleadings made in the affidavit filed by 'Vyavahara Karyasthan' - M. Kalanthan in the civil suit before the Parur Court is unauthorised and not binding on the R5 Farooq management. In fact, in the plaint of the original suit the endowment deed of 1950 was nowhere referred to as the waqf deed but only as a gift deed, which buttresses the stand of R5 that an affidavit filed randomly by some member of the management will not bind them or their stand before the Civil Court;

e. The IC headed by Shri. M.A. Nissar, former District Judge returned findings without any reference being made to it with respect to status of the subject property and clearly transgressed its TOR. It recorded without any basis overlooking the fierce opposition of the R5 that the subject property was never intended to be a 'waqf endowment'. Therefore, the findings of the IC 2008 cannot have any binding value, which were without any survey or any quasi-judicial inquiry. The

resultant action carried out by KWB of declaring subject property as the waqf property is also a completely unilateral, one without preceded by any survey, field study or proper quasi-judicial inquiry about the actual status of the property;

f. R5 and the interveners vociferously contented that the declaration by KWB which has not heard any of the third-party owners, occupiers and purchasers of various lands constituting part of the subject property carries no legal sanctity and is in the teeth of the provisions of 1954 as well as 1995 Waqf Acts. The declaration cannot bind the State Government, which is issued without hearing the actual parties and persons aggrieved who were likely to be affected by the declaration of waqf of the subject property.

g. Right from the year 1950 till 2019, there was a mandatory statutory requirement of carrying out a proper survey and conducting quasi judicial inquiry with the participation of all interested and concerned persons, where after only any declaration of waqf could have been registered by the KWB, which has not been done. The entire exercise is a sham and KWB has acted as a sheer land grabber eyeing on the subject property, which has assumed high commercial value due to commercial developments in the last few decades. The KWB therefore acted contrary to the procedure and provisions of Waqf Act, 1954 as well as 1995 after an inordinate delay of around 70 years, which itself makes the whole exercise unreasonable in nature and not binding on the State Government;

h. The State Government is essentially undertaking the exercise which was the statutory obligation of the KWB of hearing all the aggrieved and affected parties and finding a solution, which the KWB failed to do. Therefore, it is not the State Government but the action of the KWB whose action is ultra vires the provisions of the Waqf Act and liable to be declared non-existent, not binding on the State Government at all;

i. The State Government possesses inherent powers under Section 97 to issue appropriate directions on the basis of findings of the IC constituted by it through the impugned notification so as to alleviate the sufferings and predicament of bonafide third-party purchasers, owners and occupants, hundreds of whose livelihood is dependent on the business and various activities being carried out on parts of the land sold to them already decades before;

In conclusion the R5 Farooq Management and the interveners prayed for allowing the writ appeal by setting aside the judgment of the Single Bench and dismissal of the writ petition filed by the OWP's.

C. INTERIM ORDERS OF THIS COURT IN THE PRESENT PROCEEDINGS

21. A co-ordinate Bench of this Court through its interim order dated 28.03.2025 issued notices and posted the matter for hearing on 3rd April 2025. Thereafter, through a detailed interim order dated 07.04.2025, after weighing all the factors and equities, it stayed the operation and implementation of the judgement of the Single Bench dated 17.03.2025. The Sole Member Commission was directed to proceed with the inquiry, however the report if any being prepared and submitted by the Commission was directed not to be acted upon without the leave of this Court.

D. ISSUES FOR CONSIDERATION

22. Having adumbrated the facts briefly above, the following issues arise for our consideration in the present matter:

- i. Impact of the amending provisions of Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 on the present lis and its implications;
- ii. Whether the OWP's possess the requisite locus standi to have instituted the writ petition for challenging the impugned notification of the State Government under Art. 226 of the Constitution of India?
- iii. Whether the endowment deed of 1950 transferring the subject property in favour of R5 Farooq Management was a 'waqf deed' or a 'gift deed', 'creating a permanent dedication' for religious (islamic) purposes in the hands of R5 Farooq Management by the donor Shri. Muhammed Siddique Sait?
- iv. Whether declaration of the subject property as waqf would oust the writ jurisdiction of this Court under Art. 226 of the Constitution of India?
- v. What is the effect and impact of declaration of subject property as waqf property by KWB on the State Government and the third party bonafide owners and occupants already in possession of various parcels of subject property?
- vi. The scope and effect of powers of the State Government after constitution of IC, especially under Section 97 of The Waqf Act, 1995.

E. IMPACT OF THE AMENDING PROVISIONS OF UNIFIED WAQF MANAGEMENT, EMPOWERMENT, EFFICIENCY AND DEVELOPMENT ACT, 1995 ON THE PRESENT LIS

23. The Supreme Court in the interregnum after the judgement was reserved for hearing in the present matter, pronounced its interim order on batch of petitions challenging the validity of various amendments made to the Waqf Act, 1995 through the amending act title 'Unified Waqf Empowerment, Efficiency, and Development Act, 1995', effected in 2025. In these batch of petitions before the Supreme Court, challenge was laid to various provisions including the two provisions which concern us in the present matter as well. The Supreme Court had reserved its interim order after prolonged hearings in batch of petitions challenging the aforesaid amendments of 2025, which was recently pronounced on 17.09.2025 (In Re: The Waqf Amendment Act, 2025 (1) with batch of writ petitions, lead being WP(C) No. 276/2025). Some of the amending provisions which might have a bearing on the present matter are as follows:

- a. Amendment to Section 3(r) deleting the clause relating to 'waqf by user', which has been declined to be stayed by the Supreme Court;
- b. Omission/deletion of Section 108, through which the Waqf Act, 1995 possessed overriding effect over any other Central or State enactment coming in conflict with it. The omission/deletion of this provision also has been declined to be stayed by the Supreme Court in its order dated 17.09.2025 holding that the said provision was introduced vide amendment of 2013 for the first time and its deletion in 2025 therefore does not affect any person's fundamental rights.

Implying thereby that both the aforesaid provisions as introduced to the Waqf (Amendment) Act, 2025 are applicable in full force as on date. The Supreme Court vide Para 147 of the judgement also held that wherever the waqf could not be registered for a period of 102 years as required under the earlier provisions, the Mutavallis cannot claim that they be allowed to continue with the waqf even if they are not registered. Vide Para 149, the Court held that if for a period of 30 long years from 1995, the mutawallis (the administrators of waqf) had chosen not to make any application of registration, they cannot be allowed to claim that provision for registration is arbitrary or deletion of 'waqf by user' is unconstitutional. The Supreme Court vide Paras 206 and 208 also did not interfere with the deletion of Section 108A of The Waqf Act, 1995 holding that such a provision was not existent till 1995, nor introduced in The Waqf Act, 1995 on its enactment and was introduced only in the year 2013 by way of an amendment. The Parliament has not acted ultra vires by deleting the said provision 108A from the Act of 1995.

F. IN RE: ISSUE (I) - LOCUS STANDI OF THE OWP'S TO MAINTAIN THE WRIT PETITION

24. The writ petitions had originally been filed by a registered publicly conscious and active Kerala Waqf Samrakshana Vedhi, stated to be an organisation working for protection and conservation of Waqf properties in the State of Kerala. Likewise, Petitioner No. 2 is the president of Petition No. 1 society. Interestingly, the writ petition has been filed under Art. 226, projecting the writ petitioners as 'person aggrieved', and not as a PIL. This seems to be a clever attempt to avoid and bypass the rigors of Rule 146A of Kerala High Court Rules, 1971, which reads thus:

“146A. Affidavits in Public Interest Litigation.-A person filing a Public Interest Litigation, in addition to the requirements stipulated in the other rules of this chapter, shall precisely and specifically affirm in the affidavit to be sworn to by him the public cause he is seeking to espouse, that he has no personal or private interest in the matter, that there is no authoritative pronouncement by the Supreme Court or the High Court on the question raised and that the result of the litigation shall not lead to any undue gain to himself or to anyone associated with him.”

[emphasis supplied by us]

25. The learned Single Judge held that the writ petitioners would fall within the periphery of 'person aggrieved', making the writ petition itself maintainable before the Single Bench. We fail to fall in line with the said view for the reason that the writ petitioners have failed to sufficiently plead and demonstrate how they are directly affected by the issuance of the IC and the decision of the State Government of inquiring into the plight of bonafide occupants and third-party purchasers of various properties in the subject property. Why the writ petitioners preferred to file the writ petition as a 'person aggrieved' and not as a PIL is a lurking question not having been answered till the final hearing before this Court. It would have been a different matter had any person acting as Mutawalli of the subject property approached this Court for enforcement of the various provisions of Waqf Act, but that's clearly not the case. The writ petitioners labelling themselves as public-spirited citizens having inherent interest in preservation of waqf character of the subject property have approached this Court. There is no explanation why the writ petitioners preferred to

sleep till 2019, when the third-party rights were being created in the subject property and large number of occupants had started inhabiting the same; it is also not explained anywhere why from the year 1950 till 2019 did the petitioner or any other person similarly situated approach this Court for necessary directions for registration of the subject property as a waqf property. The filing of the writ petition by the writ petitioner raises more questions than it can answer, fundamentally because they are projecting themselves as 'person aggrieved'.

26. The expression 'person aggrieved' has fallen for consideration on very many occasions in the context of maintainability of writ petition at the instance of third parties/outside to those who have direct and immediate relation with the cause of action. This is more so when the R5 Farooq Management, in whose favour the endowment deed of 1950 was executed, has throughout maintained that the endowment deed is not a 'waqf deed' but a 'gift deed' simpliciter and has opposed vehemently the writ petition filed by the petitioners. Clearly both the writ petitioners as well as the R5 Farooq Management (who are the transferees of the endowment deed) are at loggerheads and at severe variance from each other. Holding the writ petitioners to be 'person aggrieved' would also be doing injustice to the actual entities who may be the 'person aggrieved' like the R5 Farooq Management or the third party bonafide occupants who are affected by the declaration of subject property as a waqf property. Even the KWB has not chosen to initiate the present litigation, as has been the case with many other properties where KWB comes forward to preserve waqf character of the property so declared and registered by it. Therefore, in the humble opinion of this Court clearly the original writ petitioners can be treated as masquerading the interests of certain other interested parties, who are undertaking the present proceedings as a proxy litigation for certain ulterior purposes. This Court clearly cannot permit doing so, more so when the KWB itself has not come forward contesting the legality and validity of the State action of constitution of an IC. On the first issue, therefore we would answer in the negative holding that the writ petitioners clearly lack the locus standi to institute the writ petition and on the said score itself the writ petition ought to have been dismissed for want of a real 'person aggrieved' approaching this Court.

27. Regardless of what we have held above, we would not desist from deciding the matter on merits, especially when the executive action of no one else but the State Government itself is under challenge, that too in exercise of statutory powers available under the provisions of COI Act. We would therefore proceed to answer the challenge on merits as well.

28. The Supreme Court in the matter of *Dr. B. Singh v. Union of India* (2004) 3 SCC 363, held that any person approaching the Writ Court must show his bonafides and the public interest he seeks to espouse. The Writ Court should not show indulgence to busybodies, meddlesome interlopers or officious interveners having absolutely no interest in the subject matter disguised as proxy of others or for any other extraneous motivation or for the glare of publicity. Accordingly, the Supreme Court vide Para 14 of the aforesaid judgment laid down various objective criteria and guidelines vide which the issues of maintainability and locus were to be determined of any person not imminently and immediately connected with the cause of action approaching the Writ Court under Art. 226. Further in the matter of *Ghulam Qadir v. Special Tribunal & Ors.* (2002) 1 SCC 33, again the Supreme Court reiterated the settled position of law that the remedy under Art.

226 can be enforced only by an aggrieved person, except in cases where the writ prayed for is Habeas Corpus or Quo Warranto or writ petition has been filed by way of a Public Interest Litigation (for short, 'PIL'). The existence of the individualised legal right and its infringement are the foundation that accords locus standi to any person to approach the Writ Court. Even though liberal approach has been adopted by Constitutional Courts, even then, the person approaching the Writ Court must satisfy that the action impugned by him is likely adverse to his individual/personal rights, traceable to some source in some statutory provision. If such a person filing the writ petition is found to be a stranger, having no personal right of his being infringed directly, then clearly the writ petition cannot be held to be maintainable. Therefore, applying the primary test, none of the personal/individualised right of the OWP's is shown to have been infringed if the IC constituted by the State Government is allowed to go ahead with the inquiry. In the opinion of this Court, if the IC proceeds ahead with the inquiry and files its report with suitable suggestions to the State Government to take any action, there's no harm even perceived to occur to the petitioners. It is rather for the actual person aggrieved by such a report being prepared and tabled by the IC, that too at a later appropriate stage to approach this Hon'ble Court pointing out clearly how his/her rights are infringed by the mere constitution of an IC.

G. IN RE: ISSUE (II) - NATURE OF THE ENDOWMENT DEED OF 1950

29. Before we proceed to analyse the nature of dedication of the subject property under the endowment deed of 1950, it would be condign referring to the definition of "waqf" under the three enactments which were/ are stated to be applicable to the subject property relating to waqfs. The original enactment which was applicable in the pre-independence regime was the Mussalman Waqf Act, 1923 (for short, 'Act of 1923') which governed the endowment of waqf properties to the donors. Section 2(e) of this Act of 1923 defined waqf as:

3. "Definitions.-In this Act, unless there is anything repugnant in the subject or context...

(e) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in Section 3 of the Mussalman Wakf Validating Act, 1913 (6 of 1913), under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants."

[emphasis supplied by us]

30. The aforementioned Act of 1923 gave way to the Bengal Waqf Act, 1934, which was held to be applicable to the administration of waqf property in erstwhile (undivided) Bengal. This Act, though was never made applicable to Kerala, but for the purposes of definition of waqf, we find it appropriate to refer to the same, which was defined vide Section 2(6)(10) again as 'permanent dedication' by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable, and includes a wakf by user.' In 1950, when the said endowment deed was executed, it is our understanding that the Mussalman Waqf Act, 1923 was applicable, which gave way to the Waqf Act, 1954. Though, vide Section 69 of this Act of 1954, the Mussalman Waqf Act, 1923 ceased to apply wherever the Act of 1954 was made applicable, however the Mussalman Waqf Act of 1923 came to be repealed only in April

2025 by the Mussalman Waqf (Repeal) Act, 2025.

31. Section 3 (l) of Act of 1954 defined waqf as follows:

3. “Definitions.—*In this Act, unless the context otherwise requires,—*

(l) “wakf” means the permanent dedication by a person professing Islam 14[or any other person] of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a wakf by user [but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser];

16[(ii) grants (including mashrut-ul-khidmat

17 [muafies, khairati, qazi services, madadmash]) for any purpose recognised by the Muslim law as pious, religious or charitable; and]

18[(iii) a wakf-alal-aulad;]

19[Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives:]

[Inserted through Act 69 of 1984- Nos. 16, 17, 18].”

[emphasis supplied by us]

32. The aforesaid Waqf Act of 1954 came to be repealed and substituted by the Central Waqf Act, 1995. Section 3(r) and Section 3(s) define respectively ‘waqf’ and ‘waqf deed’ as follows:

3. “Definitions.—*In this Act, unless the context otherwise requires,—*

[(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

i. a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

ii. a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

iii. “grants”, including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

iv. a waqf-alal-aulad to the extent to 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;]

v. “[waqf] deed” means any deed or instrument by which a 1[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;”

[emphasis supplied by us]

33. The upshot of the above discussion is that at the time when the Endowment Deed of 1950 was executed by the donor Mohammed Siddique Sait, the Act of 1923 was applicable; after execution of which the Waqf Act, 1954 came to be applied followed by the applicability of the Central Waqf Act, 1995.

34. In all the enactments, the common feature about the definition of 'waqf' has been that there must be 'permanent dedication' by a person professing Islam of the property to be treated as waqf. 'Permanent dedication' implies creation of an absolute inalienable interest which is non-reversionary in nature, in the property by the donor in favour of the donee, so that the property may be utilised exclusively for the purposes of religious, pious or charitable in nature.

35. If the property being transferred with the intent of being treated as 'waqf' has the facet of being alienated or being transferred to third parties by the donee (to whom the property is transferred), depending on his choice and discretion, then clearly it doesn't qualify as a 'permanent dedication'. It then ceases to possess the character of 'waqf' and instead possesses simpliciter the character of a public charitable entity and nothing more. We draw our inferences and conclusions from the following sources and judgements as described in the paragraphs to follow.

36. Implying thereby that both the aforesaid provisions as introduced to the Waqf (Amendment) Act, 2025 are applicable in full force as on date. The Supreme Court vide Para 147 of the judgement also held that wherever the waqf could not be registered for a period of 102 years as required under the earlier provisions the Mutavallis cannot claim that they be allowed to continue with the waqf even if they are not registered. Vide Para 149, the Court held that if for a period of 30 long years from 1995, the mutawallis (the administrators of waqf) had chosen not to make any application of registration, they cannot be allowed to claim that provision for registration is arbitrary or deletion of 'waqf by user' is unconstitutional. The Supreme Court vide Paras 206 and 208 also did not interfere with the deletion of Section 108A of The Waqf Act, 1995 holding that such a provision was not existent till 1995, nor introduced in The Waqf Act, 1995 on its enactment and was introduced only in the year 2013 by way of an amendment. The Parliament has not acted ultra vires by deleting the said provision 108A from the Act of 1995.

37. Justice S.I. Jaffrey, in his book Waqf Laws in India published in 2015, has explained that a waqf is an unconditional and permanent dedication of property with an implied detention in the ownership of God perpetually in such a manner that the property of the owner may be extinguished and its profits may revert to or be applied for the benefit of mankind, except for purposes prohibited by Islam. The following are some of the characteristics of the waqf as explained in his book by Justice S.I. Jaffrey:

4. "Essential requisites of a waqf - Under the Muslim law a waqf means dedication by a person embracing the Muslim faith of any property for any purpose recognised by the Muslim law as religious, pious or charitable. **The dedication must be permanent and by the owner of the property who by reason of such dedication of the property should divest himself of such property and hand over the possession thereof to the mutawalli.** (Durr., 333; Prince of Arcot Endowments Estate v. Ponnuswami Nattar AIR 1955 NUC (Mad) 3924, AIR at p. 3925; Mofizuddin Howlader v. Abdur Rashid. (1983) 34 DLR 36 (Dhaka SC))

It is a settled position of law with regard to the waqfs that the waqfs may be divided into two classes i.e. (1) public and (2) private. A public waqf is one for a public, religious or charitable object. A private waqf is one for the benefit of the settlor's family and his descendants, and is called waqf-alal-aulad. At one time, it was considered that there must be a dedication of the property to constitute a valid waqf solely to the worship of God almighty him or for religious or charitable purposes. [Mian Sahataz Pir v. Sk. Ahmed 2013 SCC OnLine Ori 608 at p. 904 (Orissa).]

The wakif got himself divested of the property, the moment waqfnama was executed and registered and named himself as mutawalli as before his death he used to spend money for religious purposes recognised by the Muslim law, such as, sending persons for Haj, incurring expenditure for burial of poor Muslim persons and also for conversion. (Assam Wakf Board v. Khaliquor Rahman 1993 SCC OnLine Gau 152, Civil LJ at p. 692: Gau LR at p. 29.)
[emphasis supplied by us]

38. As has also been held in the judgment of *Maharashtra State Board of Wakfs v. Yusuf Bhai Chawla & Ors.* (2012) 6 SCC 328, the essential feature of a muslim waqf is that it is dedicated to God for perpetuity and the dedicator does not retain any title over the waqf properties. It is different from a public charitable trust created for the purpose of running hospitals, shelter homes, educational institutions, etc. In the latter case, where a trust is created but not a waqf, the trust properties do not vest in God and the trustees (in terms of the deed) are entitled to deal with the same for the benefit of the trust and its beneficiaries as they deem fit. This is the essential line of demarcation between a waqf deed and other endowment deed.

39. As has also been explained by the Constitution Bench of the Supreme Court in the matter of *Nawab Zain Yar Jung (Since deceased) & Ors. v. Director of Endowments & Anr.* 1962 SCC OnLine SC 270, the essential attribute of waqf is that it is all about ***'permanent tying up of the property in the ownership of God, the Almighty, and devotion of the profits for the benefit of human beings.'*** As a creation of a waqf, the right of the wakif is extinguished and ownership stands absolutely transferred to the Almighty. The manager of the waqf becomes the Mutawalli, the governor, superintendent or curator and loses all his personal rights in the property belonging to the waqf; the property ceases to vest in him and he cannot act even as a trustee in the legal sense of the said waqf. Thus, alienation or transfer of property is completely foreign to the idea of waqf of entire or any part of the property so made subject matter of the waqf. The Constitution Bench vide Paras 18 and 19 also held that for ascertaining the intent of the whole document/ deed which is referred and relied as creating a waqf, all the clauses must be seen and the document must be adjudged in its entirety.

40. From the above, the essential attributes of waqf can clearly be discerned that it should not confer any authority or the license to the donee/transferee of creating any third party rights or alienating the property in any manner. Viewed from this perspective, if the endowment deed of 1950 is being seen as filed by the OWP's along with the writ petition as Exhibit P2(a), the following clauses are pertinent to be spelled out:

*'I hereby grant you the right to possess the aforementioned properties, which have been transferred to you on behalf of the College Managing Committee. **You have the absolute right to transfer the property, pay taxes, and obtain a Patta (Sale Certificate) in your name for the needs and requirements of Farook College.***

*However, the said properties and the income derived therefrom shall be used solely for the educational purposes of the said college and not for any other purpose. **If, at any time, the college ceases to function and any portion of the said properties remains, I and my legal heirs shall have the right and authority to reclaim the properties listed above.'***

41. From the above, it is luminescent that the donor of the endowment deed, Shri. Mohammed Siddique Sait gave an extent of 404.76 Acres of land in favour of R5 Farooq Management represented by its President, Shri. Khan Bahadur P K Unnikkammu Sahib only by way of gift. It is also stated vide Paras 5 to 11 of the counter filed by R5 before the Writ Court categorically that the element of 'permanent dedication' was never reflected in the said endowment deed, wherein the beneficiary was not only entitled to sell the property, but also utilise the sale proceeds for themselves and there was a specific provision of reversion of the property to the donor or his successor in case any portion of the property still remains.

42. In the opinion of this Court also, clearly such recitals specifically the one providing for reversion of the property back to the donor or his successor cannot be treated as amounting to permanent dedication or tying up of the whole property to 'the Almighty God'. Thus in view of the law as discussed above, it can be inferred that there was a clear absence of permanent dedication or any inalienable feature in the endowment deed. Therefore, we deem to attribute it to the character of a gift deed and not a waqf deed. The issue is accordingly answered in favour of appellants on the said aspect.

43. Reference in the above respect can also be made to the recent most judgment of the Supreme Court in the matter of *Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu & Ors.* (2023) 16 SCC 264, wherein vide Paras 25 to 28, the Supreme Court in the context of issue as to whether a document can be treated as a waqf deed or not, observed as follows:

25. "Under Muslim law, a wakf can be created in several ways but primarily by permanent dedication of any movable and immovable property by a person professing Islam for any purpose recognised by Muslim law as pious, religious or charitable purpose and in the absence of such dedication, it can be presumed to have come into existence by long use.

26. Ordinarily, a wakf is brought into existence by any express dedication of movable or immovable property for religious or charitable purpose as recognised by Muslim Law. Once such a dedication is made, the property sought to be dedicated gets divested from the wakif i.e. the person creating or dedicating it and vests in the Almighty Allah. The wakf so created acquires a permanent nature and cannot be revoked or rescinded subsequently. The property of the wakf is unalienable and cannot be sold or transferred for private purpose.

27. The dedication resulting in the creation of a wakf may at times in the absence of any express dedication may also be reasonably inferred from the facts and circumstances of the case such as long usage of the property as a wakf property provided it has been put to use for religious or public charitable purposes. In this regard, reference may be had to the Constitution Bench decision of this Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*.

28. In the case at hand, there is no iota of evidence from the very inception as to any express dedication of the suit land for any pious, religious or charitable purpose by anyone professing Islam. Therefore, on the admitted facts, the wakf by dedication of the suit land is ruled out."

[emphasis supplied by us]

H. IN RE: ISSUE NO. (III) - WHETHER ANY COURT OF LAW HELD/DECLARED THE ENDOWMENT DEED OF 1950 AS A WAQF DEED?

44. It has been vehemently contended on behalf of the GOK, joined with same vehemence by counsel for R5 Farooq Management and the interveners that never any Court of law in the previous rounds of litigation had declared or decided the character of endowment deed of 1950 as a 'waqf deed'. The OWP's have argued to the contrary relying on the various observations made in the final order dated 12.07.1971 of the Civil Court, Parur in O.S. No. 55/1962. We would prefer to answer the issue as this also touches upon the contention regarding declaration of the subject property as a waqf property. The suit plaint of O.S. No. 55/1962 filed before the Civil Court, Parur by the R5 Farooq Management against large number of defendants who all essentially were Kudikidappukars. The pleadings of this suit filed as Exhibit R5-C along with the reply of R5 Farooq Management before the Writ Court was closely perused by this Court which makes it clear beyond any pale of doubt that the suit filed through the Joint Secretary, M.V. Hydrose of the R5 Farooq Management was filed with the limited relief of injunction against the defendant Kudikidappukars. The plaint throughout described the subject property as being owned by it through a gift deed executed in 1950 (the endowment deed). R5 Farooq Management also treated the property as being gifted to it and nowhere pleaded in the suit as being a waqf property or the R5 Farooq Management being appointed as the mutawalli of the same. The suit also stated vide Paras 18 to 21 that plaintiff R5 Farooq Management is entitled to restrain the defendants through a permanent injunction from trespassing on the plaint property and the cause of action in respect of the same arose on 01.11.1950, that is the date of gift deed. The contention of the OWP's, therefore, deserves to be rejected outrightly on the basis of plain and simple pleadings of O.S. No. 55/1962 that R5 Farooq Management had filed the suit treating the same as a waqf property.

45. Proceeding further, the Court also had a close reading of both the orders dated 12th July 1971 passed by the Civil Court, Parur as well as the judgement of the Division Bench of this Court dated 30.09.1975 passed in A.S. No. 600/1971 and other connected matters. The Civil Court, Parur never decided the issue of title or ownership or the nature of the endowment deed by framing a specific issue in the said regard. To the contrary, the Civil Court framed the following issues, which can be quoted pertinently for understanding the scope of lis/suit instituted before it:

2. Is the secretary competent to represent the plaintiff-Society?

3. Is the gift deed relied on by the plaintiff, binding on the property claimed to be in the possession of the defendants?

4. Has the plaintiff title to and possession over the entire plaint schedule property?

13. Whether the 20th defendant is in possession of any portion of the plaint property? If so, under what right?

14. If the 20th defendant, is in possession of any portion of the plaint property, has the plaintiff any subsisting title thereto? is the 20th defendant liable to be evicted? If so, what, if any, is the value of the improvements he is entitled to?"

[emphasis supplied by us]

46. The Civil Court also used the terms gift deed and waqf deed interchangeably throughout the judgement loosely without recording any finding that the said endowment deed was a waqf deed. It also recorded vide Para 17 as follows:

17. "As already stated the properties which Siddique Sait obtained by document No. 875/1123 were on the east and west of a poramboke canal and he conveyed by Ext P30 to the plaintiff only the properties lying to the west of the canal and Ext P31 patta relates to 404.76 acres comprised in Sy. No. 18/14 to 20 and 39. The plaintiff has been paying sircar Tax as seen from Exts P34, P34(a) and P66. The plaintiff has also paid tax to the panchayat as could be seen from Exts P35, P36 and P37. **Therefore the plaintiff has prima facie evidence to prove his title. It is argued that Ext. P16 and P31 cannot prove title. But it has to be remembered that it is not Exts P16 and P31 alone that is relied on. They are based on the title deeds viz., documents No. 875/1123 and Ext P30 and from the circumstances already discussed, it can be seen that the mistaken Survey Number have been rectified in Ext P16 and p31. Therefore I am of opinion that the plaintiff has prima facie title to the 404 acres 76 cents described in the plaint.**"

[emphasis supplied by us]

47. From the above observations, it is clear that R5 Farooq Management proved their title prima facie before the Civil Court on the basis of various tax and revenue receipts as paid to various authorities from time to time till the date of judgment. There is not a single observation appearing anywhere in the whole judgment which would demonstrate on the basis of findings that the endowment deed was held by the Civil Court, Parur to be a waqf deed. So much hue and cry was made by the OWP's that the Civil Court, Parur held the endowment deed to be a waqf deed conclusively, but on a complete and proper reading of the judgment, it is clear that there is no such specifically worded finding recorded defining the nature of the endowment deed. Even the Division Bench of this Court in the appellate order has not dealt with or decided the aforesaid issue. To the contrary, it mentioned the said endowment deed as a gift deed throughout in its judgment. Reference in this respect can be made to Paras 6, 7, and 11, wherein it was held as follows:

6. "The point that arises for consideration in this MPR/175 appeal is whether the plaintiff has succeeded in establishing his possession immediately prior to the institution of the suit in order to justify a decree of perpetual injunction against the appellants (defendants 1 to 14) in so far as it related to the 12 acres of land claimed to be in the possession of the appellants. **The question of title may have reference incidentally only for entering a finding on the question of present possession of the area in dispute between the appellants and the respondent.** Though the dispute now is confined to 12 acres out of 135.11 acres mentioned in the plaint schedule, to arrive at a finding in regard to possession in respect of that area, the question of possession of that area may have to be considered in the context of the plaintiffs case regarding his possession of the entire extent of 135.11 acres.

7. No argument has been advanced before us by the Counsel for the appellants in regard to the maintainability of the suit. The appellants do not also deny that certain lands had really been registered in the name of Sathar Sait; that the said right over a portion of it had devolved on Siddique Sait; **and that the property in questions was, under the gift-deed dated 01-11-1950, a copy of which in Ext. 630, obtained by the plaintiff. Their main contention seems to be that the registry granted to Sathar Sait did not take in the area immediately to the west of the poramboke thodu and therefore Sathar Sait or Siddique Sait or the plaintiff was never having title to or possession of the property immediately to the west of the poramboke land; within which the 12 acres, alleged to be in the possession of the appellants, was included.**

11. Counsel for the appellants submitted that the best person to give evidence would have been Siddique Sait himself and that the trial Court ought not to have placed much reliance on the evidence of persons like P.W.3, P.W.5 and

P.W.6 who were in the position of ordinary labourers managers or accountants. We do not think that there is any substance in this contention. What has been spoken to by the witnesses examined on the side of the plaintiff on this aspect of the matter is mostly borne out by the records, and persons who were examined were those who were acquainted with the property and through whom acts of possession were exercised by Siddique Sait. It is also doubtful whether a person of Siddique Sait's position who actually got things done through his workers and managers would have been in a better position to speak about the facts of the case. We are also of the opinion that Siddique Sait who wanted to make a generous gift to the College would not have thought of including any property which was not included in his title deed of which was not in his actual possession.

[emphasis supplied by us]

48. In view of the above observations, therefore, we have no doubt in rejecting the contentions of the OWP's that the litigation that ensued at the behest of the R5 Farooq Management can lead to conclusive inferences that the subject property was a waqf property and was treated as such by the R5 Farooq Management. Such contentions made, on the basis of random observations made in the judgments of the Civil Court, Parur as also the Division Bench of this Court, are nothing less than a puff of smoke blown in the air without any permanency.

I. IN RE ISSUE NUMBER (IV & V) - VALIDITY OF THE DECLARATION OF WAQF AT THE INSTANCE OF KWB AS REGISTERED IN SEPTEMBER 2019

49. Ordinarily, this Court would not have delved into the validity of the declaration/notification so issued by the KWB about the subject property as a waqf property and more so when the said issue is sub judice before the Waqf Tribunal, Kozhikode at the instance of R5 Farooq Management. However, in view of the challenge made at the behest of OWP's to the constitution of an IC and its validity under the provisions of COI Act, 1952, we feel constrained to return prima facie findings upon the validity and sustainability of the declaration of the subject property as a waqf and its consequential registration in September 2019. This exercise is intricately connected to deciding upon the validity of the impugned notification of GOK. Even otherwise as would be observed a little later, the Writ Court can always examine whether the decision by any statutory authority has been arrived at by following the statutorily prescribed procedure, it is not violative of principles of natural justice and is not arbitrary, violative of constitutional guarantees available to the citizens of this country. Therefore, in our exercise to decide whether the impugned notification issued by GOK is sustainable or not, we are left with no choice but to determine whether the declaration of September 2019 of the KWB is legally tenable or not.

50. At this juncture we find it necessary to trace and describe the law as it has been existing and applicable to the subject property in question referring again to The Mussalman Waqf Act, 1923 insofar as it related to creation and ordainment of waqf by any person. Vide Sections 3 and 4 of the Act of 1923, every mutawalli in control of any waqf property was mandatorily required to furnish to the jurisdictional Court the complete details of the waqf property under his administration. It was to be furnished in the form of a statement accompanied by all the specifics and particulars of the waqf property the said mutawalli was in control of. Vide Section 3(3) if a new waqf was brought into existence after the commencement of the Act of 1923, within six months it was

mandatory for the mutawalli to furnish a statement as aforementioned with all the details, which were thereafter to be published by the jurisdictional Court inviting any person to offer his comments to the same or seek more particulars. Failure to comply with the mandate of Sections 3 or 4 was punishable with exemplary fine as a penalty. Sections 3(3) and 4 of the Act of 1923 read as follows:

3. Obligation to furnish particulars relating to wakf.-(1) *Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely -*

- (a) a description of the wakf property sufficient for the identification thereof;*
- (b) the gross annual income from such property;*
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;*
- (d) the amount of Government revenue and cesses, and of all rents, annually payable in respect of the wakf property;*
- (e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;*
- (f) the amount set apart under the wakf for-*
 - (i) the salary of the mutwalli and allowances to individuals;*
 - (ii) purely religious purposes;*
 - (iii) charitable purposes;*
 - (iv) any other purposes; and*
- (g) any other particulars which may be prescribed.*

(3) Where-

- (a) a wakf is created after the commencement of this Act, or*
- (b) in the case of a wakf such as is described in section 3 of the **Wakf Validation Act, 1913** (6 of 1913) the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder, the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.*

4. Publication of particulars and requisition of further particulars.-(1) *When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.*

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be

served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.”

[emphasis supplied by us]

51. As stated supra the aforesaid Waqf Act of 1923 gave way to Waqf Act of 1954 which was a much more comprehensive and elaborated piece of legislation. Vide provisions contained under Chapter II - ‘SURVEY OF WAKFS’ various provisions were provided for preliminary survey and final publication of lists of waqfs by the competent authority designated under the provisions. ‘Section 4’ titled as ‘Preliminary survey of wakfs’ obligated the State Government to appoint Survey Commissioners for carrying out inquiry and submission of reports from time to time regarding the number of waqfs situated in any State. After making inquiry the Survey Commissioner was required to furnish all the details to the State Government containing specifically the various facets as delineated and prescribed under ‘Section 4(3)’ of the Act of 1954; vide Section 4(6) the State Government was empowered to direct the Survey Commissioner to make subsequent surveys of waqf properties in the State and provide updated information regarding the same. This is followed by Section 5 titled as ‘Publications of list of wakfs’, whereunder, on receipt of a report from the Survey Commissioner as aforementioned, the State Government was to forward a copy of the same to the waqf board. The waqf board under Section 5(2) was statutorily obligated to publish in the official gazette thereafter a list of waqfs in the State in various parts of the State existing prior to commencement of the Act of 1954 or post its commencement. Section 6 titled as ‘Disputes regarding wakfs’ prescribed the Civil Court as the forum for resolution of disputes pertaining to status of any listed public notified property as a waqf. Second proviso to Section 6(1) clearly stated that disputes in case of waqfs existing prior to commencement of The Waqf (Amendment) Act, 1969 would have been entertained not beyond the period of one year from such commencement. Vide Section 6(4) the list of waqfs as published under Section 5(2) in the official gazette by the waqf board on the recommendation of the State Government was made final and exclusive.

52. Through the amendment of 1984, Waqf Tribunal was brought into existence and vested with exclusive jurisdiction and powers to decide questions relating to status of any property specified as a waqf. The aforesaid relevant extracts of Section 4 to 6A can be quoted, at this juncture, which read as follows:

4. Preliminary survey of wakfs.-(1) *The State Government may, by notification in the official gazette, appoint for the State a [Survey Commissioner] of Wakfs and as many additional or assistant [Survey Commissioners] of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.*

(2) *All additional and assistant [Survey Commissioners] of wakfs shall perform their functions under this Act under the general supervision and control of the [Survey Commissioner] of Wakfs.*

(3) *The [Survey Commissioner] **shall, after making such inquiry as he may consider necessary**, submit his report [in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof,] to the State Government containing the following particulars, namely:-*

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

(4) The [Survey Commissioner] shall, while making any inquiry, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any Court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) any other matter which may be prescribed.

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

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the official gazette, a list of wakfs [in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter,] to which the report relates, and] containing such particulars as may be prescribed.

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

Provided that no such suit shall be entertained by the civil Court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:

[Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil Court within the period of one year from such commencement.]

[Explanation.-For the purposes of this section and Section 6-A, the expression 'any person interested therein', occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in than behalf during the course of the relevant inquiry under Section 4.]”

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

(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 of any rules made thereunder.

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

[5] On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil Court in that State in relation to any question referred to in sub-section (1).]

[6-A. power of tribunal to determine disputes regarding wakfs.-

(1) If, if after the commencement of the wakf (Amendment) Act, 1984, any question arises whether the particular property specified as wakf property in a list of wakfs published under subsection (2) of section 5 is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board of 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 in respect of such matter shall be final:

Provided that-

(a) in the case list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the wakfs (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs under sub-section (2) of section 5; and

(b) in the case of list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984 such an application may be entertained by the tribunal within the period of one year from such commencement:

Provided after 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 be 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 of the pendency of any suit, application or of any appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The wakf commissioner shall not be made a party to any application under sub-section (1).

(4) The list of wakf published under sub-section (2) of section 5, and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

...

[emphasis supplied by us]

53. Chapter IV titled as "REGISTRATION OF WAKFS", of the Act of 1954 as amended from time to time, substantially in the years 1969 and 1984 mandated registration of waqf with the Waqf Commissioner, through the mutawalli. Before registration of the waqf on such an application, vide Section 25(7) the Waqf Commissioner was statutorily obligated to carry out an inquiry in respect

of the genuineness of the application for registration. Vide Section 25(8) for all the waqfs created before the commencement of the 1954 Act, an application for registration was to be mandatorily filed within 3 months of such commencement of the 1954 Act. Vide Section 26, titled 'Register of Waqfs', the Waqf Commissioner was obligated mandatorily to maintain a register of waqf containing necessary information and details of all the waqfs along with the copies of their respective waqf deeds existing in the State. Vide Section 41, 'penalties' were prescribed to be imposed on Mutawalli for his failure to get the waqf registered within the statutory timelines, which was punishable either with a hefty fine or with imprisonment up to 6 months. This included punishment and penalty for both the waqfs created before the commencement of the Act of 1954 (or the subsequent amending Acts of 1969/1984) or the waqfs created after such commencement. Vide Section 55E, a specific statutory bar was imposed on unregistered waqfs seeking enforcement of their rights. This provision restrained the institution of any suit, appeal, or any other legal proceeding on behalf of Waqf, which had not been registered in accordance with the provisions of the Act of 1954 or its subsequent amending acts. However, though the amendment was incorporated, it is not clear whether it was implemented or not. The provision, however, admittedly became part of the Act of 1954 and continued till 1995 when the Act of 1954 was repealed to give way to the Waqf Act of 1995. Relevant extracts of sections 25, 26, 41 and 55E (as introduced through the 1984 amendment) read thus;

25. "Registration.-(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the [Wakf Commissioner].

(2) Application for registration shall be made by the mutawalli: Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the [Wakf Commissioner] may prescribe and shall contain the following particulars, so far as possible-

(a) a description of the wakf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue and cesses, and of all rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for-

(i) the salary of the mutawalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the [Wakf Commissioner].

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The [Wakf Commissioner] may require the applicant to supply any further particulars or information that [he may consider] necessary.

(7) On receipt of an application for registration, the [Wakf Commissioner] may, before the registration of the wakf, make such inquiries [as he thinks fit] in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the [Wakf Commissioner] shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) **In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement** and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf.

(9) Every wakf registered under this section before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed to have been registered on such commencement, at the office of the Wakf Commissioner.

(10) Every application for registration under this section pending immediately before the commencement of the Wakf (Amendment) Act, 1984 before the Board shall, on such commencement, stand transferred to the Wakf Commissioner and the Wakf Commissioner shall deal with such application as if it were an application pending before him.]

26. Register of wakfs.- (1) The [Wakf Commissioner] shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:-

- (a) the class of the wakf;
- (b) the name of the mutawalli;
- (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;
- (d) particulars of all wakf properties and all title deeds and documents relating thereto;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;
- (f) such other particulars as may be prescribed.

[(2) The register of wakfs maintained under this section immediately before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed, on such commencement, to be the register maintained by the Wakf Commissioner under sub-section (1).]

41. Penalties.- If a mutawalli fails -

- (a) to apply for the registration of a wakf;
- (b) to furnish statements of particulars or accounts or returns as required by this Act;
- (c) to supply information or particulars as required by the Board;
- (d) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;
- (e) to deliver possession of any wakf property, if ordered by the Board or the Court;
- (f) to carry out the directions of the Board;
- (g) [***]
- (h) to discharge any public dues; or
- (i) to do any other act which he is lawfully required to do by or under this Act, he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with [fine which may extend to two thousand rupees].

[(1-A) Notwithstanding anything contained in sub-section (1), if,

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,

(i) in the case of a wakf created before the commencement of the Wakf (Amendment) Act, 1984, within the period specified therefore in sub-section (8) of Section 25 or within a period of one month from such commencement, whichever period expires later; or

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Wakf Commissioner or the Board, as the case may be, which he knows or has reason to believe to be false, misleading, untrue or, incorrect in any material particular, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to five thousand rupees.]

(2) No Court shall take cognizance of an offence punishable under this Act save upon complaint [made by the Board or the Wakf Commissioner or by an officer duly authorised by the Board or the Wakf Commissioner] in this behalf.

(3) No Court inferior to that of a [Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(5) In every case where an offender is convicted after the commencement of the Wakf (Amendment) Act, 1984, of an offence punishable under sub-section (1), and sentenced to a fine, the Court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default.]

[55-E. Bar to the enforcement of right on behalf of unregistered wakfs.-(1) Notwithstanding anything contained in any other law for the time being in force, **no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act,** shall be instituted or commenced or heard, tried or decided by any Court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.]”

[emphasis supplied by us]

54. At this juncture, a brief reference must be made to the Waqf Amendment Act, 1984, which brought sweeping changes to the Waqf Act, 1954. As stated supra, the Act of 1954 contained wide-ranging and comprehensive provisions for mandatory registration of all the waqfs, despite which they had not registered themselves. The Central Government accordingly appointed a Waqf Inquiry Committee consisting of senior members for suggesting changes to the Waqf Act, 1954, in a way to make it more effective, efficient, and ensure accountability of those administering, controlling, and managing waqfs. The final report of the Waqf Inquiry Committee was submitted in the year 1976 and certain observations from the report of the Waqf Inquiry Committee can appropriately be referred to, which we have borrowed from the recently passed interim order of the Supreme Court, dated 17.09.2024 passed in WP(C) No. 276/2025, vide Paras 96 to 98, as follows;

96. “The final report of the Wakf Enquiry Committee was submitted in the year 1976. It will be relevant to refer to the following observations of the report submitted by the Wakf Enquiry Committee:

“Bar to hear or decide suits

(i) Deliberate concealing of wakfs and wilful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure. We consider that a carrot-and-stick policy is also required in the matter; dangling the carrot wherever possible and using the stick whenever it becomes necessary. We consider that, in the implementation of this policy, we have a very salutary provision under Section 31 of the Bombay Public Trusts Act 29 of 1950, which bars the hearing of any suits in respect of a public trust which has not been registered under the Act.

We consider that a similar provision is necessary in the Central Wakf Act of 1954, and no Mutawalli who has failed to have wakfs registered as required under the Central Wakf Act of 1954 should be provided with the facility of enforcing any right in a Court of law unless he has duly registered his wakf as required under the Act. We, therefore, recommend that a fresh Section 55A may be added to the Central Wakf Act of 1954 on the following lines:

“(a) 55(1) No suit to enforce a right on behalf of a wakf which has not been registered under this Act shall be heard or decided in any Court of law or tribunal.”

“(2) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such wakf.”

[emphasis supplied by us]

97. It can thus be seen that the said Committee noticed that there were instances of deliberate concealing of wakfs and wilful failure to have them registered. It was observed that such a malady, which was deeply prevalent, was affecting the administration of wakfs. The Committee, therefore, recommended imprisonment as a punitive measure for such non-compliances. The Committee noticed that under the Bombay Public Trusts Act, 1950, there was a provision which barred the hearing of any suits in respect of a public trust which had not been registered under the said Act. The Committee was of the opinion that such a salutary provision was also necessary in the 1954 Act. As a matter of fact, in order to give effect to the said recommendations of the Wakf Enquiry Committee, the 1954 Act was sought to be amended by Wakf (Amendment) Act, 1984, by inserting Section 55E, which reads thus:

“55E. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.”

98. However, it is to be noted that the Wakf (Amendment) Act, 1984, was not brought into effect.”

[emphasis supplied by us]

55. From the above narration of statutory provisions under the Waqf Acts of 1923, 1954 and the amendments of 1984, the following inferences are candescent:

a. Registration and gazette notification of waqfs has been an essential requirement throughout under the Waqf Acts of 1954, continued till 1984 and even later;

- b. The registration of any waqf has to be preceded by a proper survey and a quasi-judicial inquiry by the competent authority (Survey Commissioners and other such officers mentioned in the enactments), after hearing all the persons interested, in the absence of which inquiry the registration/notification/declaration of any property as a waqf will not carry any legal sanctity;
- c. Vide the Amendment of 1984, for non-registration of the waqfs, even a statutory bar on institution of any suit, appeal or any proceeding was also clamped down by the Parliament, though it was not brought into effect. However the fact remains that requirement of registration has been made compulsory throughout;
- d. Penalties and punishments have been prescribed and are imposable upon the Mutawalli/any administrator or manager of the waqf property, who fails to get the work registered/notified at his own responsibility through various statutory provisions;
- e. Specific statutory limitation periods were also prescribed for institution of any suit/proceeding against or by any waqf before the competent judicial Civil Court relating to its declaration, failing which the right to sue disappeared on the expiry of such statutory period.

From all the above, it is clear that survey, inquiry (inquiry followed by gazette notification) of the waqf had been an essential requirement under the Waqf Act, 1954 which was applicable till the year 1995, when it was substituted by the Central Waqf Act, 1995.

56. Even under the Act of 1995, *pari materia* provisions existing under the Act of 1954 regarding 'primary survey of waqf' and its publication in the official gazette were continued in similar form under the Act of 1995. Like before, under the Act of 1995 again provision and procedure for conducting inquiry were prescribed similarly before registration and gazette notification of any waqf property. The mandatory requirement of registration as existing earlier under the Act of 1954 was continued vide Section 36 under the new Act of 1995, wherein vide Section 36(8) it was obligatory for the Mutawalli to have made an application for registration of the unregistered waqfs existing prior to the commencement of the Act of 1995 within three months from its commencement. Section 36 of the Act of 1995 read as follows:

36. Registration

(1) Every [waqf], whether created before or after the commencement of the Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli: Provided that such applications may be [made by the waqf] or his descendants or a beneficiary of the [waqf] or any Muslim belonging to the sect to which the [waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:-

(a) a description of the [waqf] properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue cesses, rates and taxes annually payable in respect of the [waqf] properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the [waqf] properties;

(e) the amount set apart under the [waqf] for-

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the [waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the [waqf],

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the [waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the [waqf] property, the Board shall, before registering the [waqf], give notice of the application to the person administering the [waqf] property and shall hear him if he desires to be heard,

(8) In the case of [waqf] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of [waqf] created after such commencement, within three months from the date of the creation of the [waqf]:

Provided that where there is no Board at the time of creation of a [waqf], such application will be made within three months from the date of establishment of the Board.”

[emphasis supplied by us]

57. Section 87 of the Act of 1995 was similarly worded as earlier Section 55E under the Act of 1954 (Inserted through the Amendment of 1984). Titled as ‘Bar to the enforcement of right on behalf of unregistered wakfs’, Section 87 prior to its repeal in the year 2013 read as follows:

87. “Bar to the enforcement of right on behalf of unregistered wakfs -

(1) Notwithstanding anything contained in any other law for the time being in force **no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any [waqf] which has not been registered** in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such [waqf] has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any [waqf] which has not been registered in accordance with the provisions of this Act.” [emphasis supplied by us]

58. Thus, even from the year 1984 till 2013 there was a statutory bar with respect to unregistered waqfs, which could not be registered in accordance with the provisions of the Act of 1995. It is crystal clear therefore that from 1954 till 2013 for a period of almost 60 years, despite mandatory statutory provisions for registration and declaration of waqf, in the present case the same was not registered, nor any application or attempt was made by the R5 Farooq Management for doing so.

59. Despite the mandatory requirement of registration and publication in the official gazette, if the donee of the endowment deed of 1950 did not take any effective steps for registration as a waqf, then it is clearly inferable that they never treated the status of the property as a waqf in their hands. The submission of R5 Farooq Management appeals to us immensely that the endowment deed was a gift deed and not a waqf deed of the subject property which was transferred in their favour by Mohammed Siddique Sait. It is for this reason in the civil suit plaint as also before the Civil Court, Purur and before the Division Bench of this Court that R5 Farooq Management throughout treated the subject property as gifted to them and not handed over as a waqf. We find ourselves in agreement with the contentions of R5 Farooq Management that because it was not a waqf property and a transfer by way of gift simpliciter for the purposes of running educational institutions professing Islamic culture and education, therefore to keep it running, from time to time excess land available to them was being transferred to third parties by way of sale deeds and occupancy rights. Had the R5 Farooq Management itself treated the subject property as a waqf (and not as a gift), then in the face of mandatory requirement of registration as a waqf, some minimal steps would have been taken by them timely for its declaration and notification in the official gazette of such a character. The same having not been done so justifies the stand of R5 that it has always treated the property as a transfer by way of gift and not any other character.

60. It is rather a strange situation where outsiders and busy bodies like OWP's are filing the petition claiming the subject property as a waqf property, whereas the actual transferee or the real beneficiary, viz., the R5 Farooq Management has been at pains in persuading the Court to the contrary. This is yet another reason why we seriously doubt the locus standi and maintainability of the writ proceedings at the instance of OWP's, who chose to approach this Court only in the year 2025 and never between the interim period of 1950 to 2019 when the property was not declared as waqf. There are reasons far more than what meets our eyes, which are perceivable during the course of hearing, that the OWP's are entities set up by some invisible third party to somehow wrest the entire property and land from the R5 Farooq Management in the name of having been declared as a waqf.

61. That takes us to the next stop - the IC that was constituted in the year 2008 under the chairmanship of former District Judge, M.A. Nissar, by the GOK under the very same provisions of the very same COI Act, which the OWP's have questioned the competency of. Interestingly, the TOR of the notification dated 06.11.2008, constituting the Sole Member Commission read broadly (filed as Exhibit P6) as follows:

“The TOR to the Commission shall be as follows:-

To enquire into and report,-

i. Whether Government is informed of the necessary details regarding the functioning of Wakf Board;

- ii. *Whether the Secretary has committed any lapse in informing Government on lapses of the Board Members in participating in Board meetings and in proceeding with follow-up action;*
- iii. *Whether the salary and other allowances, drawn by the Chief Executive Officer at present is allowable to the post, and if not, which are the allowances drawn beyond limit and the action to be taken against such drawals;*
- iv. *State the nature and gravity of the financial loss caused to Wakf Board and Wakf Institutions;*
- v. *Fix responsibility on the loss of the asset and finance and recommend action for recovering the same;*
- vi. *Whether there is any base for the complaint that the applications for registering Wakf Properties are ignored;*
- vii. *Whether the Chief Executive Officer is biased and partial while enquiring into complaints and taking action there on;*
- viii. *Whether there is any partiality while awarding Social Welfare Schemes;*
- ix. *Whether there are irregularities in expenditure and financial mismanagement in connection with the construction of Wakf Head Office, purchase of vehicles and in their use, etc.;*
- x. *Whether any appointment and fixation of employees was made when the same was banned by Government;*
- xi. *Submit recommendations examining other issues, if any, in the complaints than those mentioned above;*
- xii. *Suggest actions to be taken on the basis of Enquiry report for the upkeep of Wakf Institutions and their assets.*

The Commission shall complete the enquiry and submit its report to Government within 10th January, 2009."

[emphasis supplied by us]

62. Bare reference to the TOR would show that nowhere the Commission was required to inquire into the status of subject property as a waqf property or a gift deed. How the consideration for subject property as a waqf property cropped up and was inquired into by the Sole Member Commission headed by Shri. M.A. Nissar as Chairman is not comprehensible. The Commission was expected to prepare, complete the inquiry and submit its report only qua the TOR made to it and the manner in which reference to the subject property cropped in in the final report filed on 26.06.2009 creates a room for serious doubts in our minds. However, we are not going into the validity or otherwise of the aforementioned IC's report of June 2009, but made a reference because this became a trigger for the KWB to declare the subject property as a waqf property in 2019.

63. As stated supra, the aforementioned IC headed by Shri. M. A. Nissar submitted its 15th report on 26.06.2009, wherein answering the TOR No. 11, vide Para 1 clause (b), the reference to subject matter came into scene. Before the Commission, the perusal of the 15th report dated 26.06.2009, especially Paras 3 to 5 shows that R5 Farooq Management not only denied the status of subject property as a waqf property but also filed objections questioning the very jurisdiction of the Sole Member Commission of conducting an inquiry into the subject matter, without any specific TOR in the said regard. A detailed reply cum representation was also submitted on behalf of R5 Farooq Management on the basis of directions of this Court dated 18.08.2008 for deciding the very issue of jurisdiction of the Sole Member Commission of proceeding against ascertaining the waqf status of the subject property. The Sole Member Commission also heard the R5 Farooq Management even appeared and objected to the Commission inquiring into its waqf status on 25.05.2009, which was overruled holding that the Commission was authorized to deal with the same. The recommendations of the Sole Member Commission made vide Para 6 are worthy of being spelled

out here to support our understanding that the said Commission proceeded simply on assumptions and presumptions about the waqf status of property, without according any opportunity of hearing to the actual stakeholders or the bonafide third party owners occupying the parts of subject property. Paras 6 to 8 of the IC report dated 26.06.2009 (Exhibit P7) read as follows:

6. The TOR No. IV of this Commission is as follows:

"State the nature and gravity of financial loss caused to the Wakf Board and Wakf Institutions"

The TOR No. V of this Commission is as follows:

"Fix responsibility on the loss of asset and finance and recommend action for recovering the same".

The TOR No. XI of this Commission is as follows:

"Submit recommendation after examining other issues, if any, in the complaints than those mentioned above.

"Therefore, in view of the above TOR, this Commission has jurisdiction to consider as to whether any Wakf property has been alienated without the sanction of the Wakf Board and if so ascertain the loss sustained to the Wakf

7. Of course, for the limited purpose, this Commission has to ascertain whether this property covered by the registered document No. 2115/1950 of Edappalli Sub Registrar Office (Styled as Wakf Deed in the document) is a 'Wakf' or not.

Since the R5 Farooq Management is disputing its alleged Wakf Character, this Commission is to conduct an enquiry as to whether this property is a Wakf or not and the consequential matters. But we do not propose to conduct an enquiry on this matter as the Wakf Board is seized of the matter. *The Wakf Board is the competent authority under the Wakf Act to decide the question whether a property is Wakf property or not. The Chief Executive Officer of the Wakf Board placed before this Commission the order he has pronounced on 24-06-2009 in this matter. The Chief Executive Officer ordered that it is a Wakf property and that this Wakf can be registered with the Wakf Board. The Chief Executive Officer ordered to place the matter before the Wakf Board for action under Rule 95 of the Kerala Wakf Rules.*

8. In the result, we recommend to the Government to direct the Wakf Board under Section 97 of the Wakf Act to expedite the proceedings pending before it under Rule 95 of the Kerala Wakf Rules, 1996 and to consider as to whether any action to be taken against the persons responsible for sale of the Wakf property, styling it as gifted property in the sale deed and that too without the sanction of the Wakf Board. The Wakf Board may also be directed to report to the Government the action taken in this matter.

(Sd/-)

1. M.A. NISSAR

Chairman

Ernakulam

26-06-2019

(Sd/-)

2. ABOOBACKER CHENGAT

Member Secretary"

[emphasis supplied by us]

64. From the above observations of the IC, it is clear that without any specific TOR, the IC proceeded to deal with the issue of the endowment deeds being a waqf or not. No inquiry or survey was done and the whole consideration of the matter was left in the hands of the KWB as a

competent authority to decide whether the subject property is a waqf or not. Reference has been made to one order of 24.06.2009 of the CEO, waqf board placed before the Commission, but the said order is not a part of the record. Be that as it may.

65. The GOK was accordingly recommended to direct the waqf board under Section 97 to expedite the proceedings pending before it under Rule 95 of the Kerala Waqf Rules, 1996 and to consider the proposed action against persons responsible for sale of the parcels out of the subject property. It is clear that neither any survey, nor any inquiry with the involvement of all the aggrieved and affected stakeholders was carried out by the IC, but simply on the basis of some random information received from the KWB that the KWB was directed to take a decision on the status of the property as a waqf property.

66. The aforesaid report dated 26.06.2009 of the IC was accepted by the State Government and the GOK issued the following directions under Section 97 of The Waqf Act on submission of the inquiry report with recommendations, as follows:

. “*Waqf enquiry Commission report and the notes prepared based on the report are approved.*

. *The report shall be published and further action shall be initiated.*

. *Action shall be taken on the recommendation of the Commission as per section 97 of the Central Waqf Act and Sec. 63 of the Waqf rules.”*

[emphasis supplied by us]

67. On the basis of the aforesaid report, the KWB initiated the process of registration of the subject property as a waqf and through its final order dated 20.05.2019 held that the endowment deed was nothing more than a ‘gift deed’. The KWB further held that alienations which have been carried out are violative of various provisions of the Waqf Act and carry no legal sanctity. The KWB interpreted the deed to mean a ‘waqf deed’ and not a ‘gift deed’, wherein R5 Farooq Management was simpliciter a mutawalli of the whole property. In pursuance thereof, a declaration certificate also came to be issued on 11.10.2019, through which the KWB formally declared that the subject property as donated by Shri Mohammed Siddique Sait, is a waqf property registered under the provisions of Section 36 of the Waqf Act with a registration number.

68. For the detailed reasons to follow, we would hold that the ***declaration by the KWB in May 2019 of the property as a waqf is a complete sham***. Though no express challenge has been made to the order of the KWB, nor the certificate declaring the subject property as a waqf, however as stated above we are recording an opinion as to why it will not have any binding effect on the appellant State Government for having been issued in contravention of the provisions of various enactments. The grounds pertaining to validity and invalidity of declaration of subject property have been agitated by no one else, but the appellant State Government itself before us, which have been supported by R5 Farooq Management. To answer those grounds laid before this Court and to repel the contention of the OWP’s that waqf was validly created by the KWB, it is necessary for us to record a clear determination about the validity of the declaration/registration of the subject property as a waqf.

69. The only declaration of waqf available on record is dated 20th May 2019, by which time admittedly large chunks of land from the subject property were already sold in favour of third parties; they have come in physical possession and occupation of the same having started their respective businesses, vocations, and other sources of livelihood. The Order which came after almost 69 years (7 decades) records no reason for its issuance, except the trigger of certain findings recorded in the report of the Sole Member IC of 2009. Though some inquiry is referred to in the order, but nowhere does it reflect that third parties, including the interveners before this Court were ever heard of or considered by the KWB before declaring it as a waqf; whether any notice of hearing was issued to the hundreds of bona fide occupants and owners whose rights were created decades prior to waqf accompanied with a proper hearing and how the overall inquiry qua them was convened; who all were the persons summoned to appear before the board during the inquiry; what papers and records were considered by KWB; whether the members or representatives of the board physically visited the various sites in question on which already large scale commercial activities and businesses had already begun; when and how the sale deeds were executed by the R5 Farooq Management in favour of such third parties; who all and how many are likely to be affected by the outcome of its declaration nowhere seems to have been considered or entered consideration for the KWB whilst declaring the subject land as a waqf property in one shot. ***The declaration dated 20th May 2019 (Exhibit P8) is therefore a completely nonspeaking, unilateral declaration having been passed only after hearing the R5 Farooq management within the four walls of the board.*** The question is, therefore, whether the Court can keep its eyes shut to such a palpable illegality and blatant arbitrariness on the part of KWB of having woken from deep slumber after 69 years and declaring entire parcel of property as waqf, that too without conducting a proper inquiry with the involvement of all the persons interested and aggrieved. The answer is clearly 'NO', as it appears nothing, but a sheer exercise of land grabbing on the part of KWB without following the due procedure under the applicable statutes.

70. We have referred to the various statutory provisions in extenso, wherein right from 1954 till 2013, there was a mandatory obligation of the waqf board to carry out surveys through its designated competent officers and include properties in the register, whichever possessed the character of a waqf. The provisions fixed timelines of three to six months at every stage in 1954, 1969, 1984 and thereafter in 1995 for registration of waqfs existing from prior to the commencement of the concerned enactment/amending act, but however the waqf board never chose or bothered to move its eyeballs over the subject property. There's no explanation appearing from the records as what kept the KWB adopt a Himalayan silence for 69 years regarding the status of the subject property. Various provisions of both 1954 Act and 1984 Amendment Act also specifically stipulated for notification of the registered waqf property in the official gazette, but admittedly in the present case no such publication in the official gazette has taken place till 2019. There was no categorical answer forthcoming or any document filed on record, which would even remotely show that as on date the land in question has been notified in the official gazette as a waqf property after declaration by the KWB in October 2019. This is yet another indicia for us to be convinced that the subject property cannot be attributed the nature of being a waqf property. Sections 55E and 87 under the Act of 1954 and the Act of 1995 respectively clearly stipulated that no suit or proceedings could be instituted against unregistered waqfs, after the particular time limit

stipulated under the enactment. Despite this what kept KWB in deep slumber for decades together is not explainable at all.

71. So much so that there were penalties and punishments prescribed for responsible persons (mutawallis) of the waqf in question for failing to get it registered as waqf within the statutorily fixed time period. However neither all these facts were inquired into as to why and what restrained R5 Farooq Management from getting the property registered as a waqf; nor the responsibility fixed upon any person despite a stringent statutory framework for punishing the same; nobody took any serious and sincere step to get the subject property registered as a waqf for 70 years. This all is a clear pointer towards the understanding of the R5 Farooq Management that the deed was not meant to be a waqf one, but a 'gift deed'. ***The mere availability of power with the authority doesn't automatically imply that it can be resorted to at any point of time; rather it must be exercised promptly, timely and within a reasonable period.*** Thus, there was no reason for the KWB to have waited for 70 years to issue the declaration all of a sudden by conducting a unilateral inquiry, classifying the subject property as a waqf. The inordinate delay in itself is sufficient enough a reason to taint the whole exercise of KWB as unreasonable and arbitrary.

72. Also as stated supra, the endowment deed of 1950 never intended to create any permanent dedication in favour of Almighty the God (Allah), but was a transfer inter vivos by way of gift. Merely on the basis of a title/nomenclature, as a waqf endowment, it could not have been treated as a waqf deed. The KWB unfortunately failed to examine this vital aspect of the waqf deed and mechanically declared the property as a waqf property. The manner in which the KWB has acted is nothing more than land-grabbing tactics after almost 7 decades, affecting fundamental rights, and the livelihood of hundreds of helpless citizens, who have been left with no choice, but to come down on the roads to launch protests, stage dharnas and agitations, which is what compelled the State Government to take the drastic step of setting up an IC. The brazen manner in which the KWB has acted in the case at hand shows reckless disregard of not only the provisions of the Waqf Act, but also the fundamental rights of a large number of citizens whose livelihood is dependent as bona fide purchasers and occupants on land under dispute. ***If judicial seal of approval is placed on such an arbitrary declaration of waqf, tomorrow any random building or structure, including Taj Mahal, Red Fort, Niyama Sabha Mandiram (State Legislature Complex), or even this Court's building would be vulnerable of being painted with the brush of a waqf property by the waqf board on the basis of any random document at any point of time. The Court obligated to act under the Constitution, especially in a secular country like India cannot permit such a belated and fanciful exercise of power.*** Acknowledging the existence of so much unaccounted power at the disposal of the waqf board would imperil the previously guarded constitutional right to property under Art. 300A guaranteed to every citizen of the country; it would throttle the right to freedom to do business and the right to life and livelihood under Arts. 19 and 21 respectively, to be trampled anytime by the waqf boards on a mere declaration / registration of property as a waqf without following the due process of law. The Court was also apprised by the AG that not only the collection of land revenue been stopped, but also eviction proceedings of all the bona fide occupants, as illegally and unauthorized encroachers on the subject property have been initiated by the KWB and consequently hundreds of people face eviction who had purchased properties and had settled permanently on the subject land two-three decades ago. The brazenness of the KWB

proceeding for eviction against such permanent settlers is premised upon the said illegally issued order and declaration of waqf. Therefore, we were left with no choice, but to record a finding that the declaration/ registration of waqf is an exercise completely untenable in law which cannot bind the appellant State before us.

73. At this juncture we must also meet the vehement contention on behalf of OWP's that in view of the judgment of the Supreme Court in *Rashid Wali Beg v. Farid Pindari & Ors.* (2022) 4 SCC 414, and Section 83(1) of the Waqf Act, 1995, the dispute at hand about the nature and character of the property being waqf can be dealt only and only by the Waqf Tribunal and neither the Writ Court nor the State Government is competent to decide such issues. Whilst expressing our complete deference to the judgment and observations made in the case of *Rashid Wali Beg v. Farid Pindari & Ors.* (supra), this Court is of the opinion that ***where ex-facie the substantive conditions of creation or ordainment of waqf itself are not made out and the statutorily mandated procedure has not been followed for the declaration of any property as a waqf, there the Writ Court cannot sit idly and wash off its hands.*** The Court is always permitted constitutionally to examine whether essential attributes of declaration of waqf have been made out or not and whether the document/deed in question qualifies the definition of a waqf deed under the provisions of the Act of 1954 or Act of 1995; the Court can always scrutinise whether the procedure of survey and conducting quasi-judicial inquiry prior to declaration of any property as waqf has been diligently and sincerely observed by the authorities as it has the draconian consequence of depriving & displacing a large number of citizens of their fundamental and constitutional rights; the Court can surely decline to acknowledge the character of waqf to any property, if it finds that it has not been published in the official gazette or not being so declared after the mandatory procedure to be followed for its gazette notification; the Court can always intervene when it finds that power by the waqf authorities has been resorted to after an undue delay, which lies unexplained and unjustified. In any case, it is the OWP's who knocked the doors of this Court seeking a writ of quashment of the impugned notification of constitution of the IC, which has compelled this Court to record its reasons and findings as to why the declaration of waqf will not bind the State Government from proceeding ahead with the inquiry proceedings.

74. At this stage, it is apposite referring to certain pronouncements of the Supreme Court itself where the waqf authorities had staked claim to a property/land/structure as waqf property in a similar fashion abridging the fundamental rights of large numbers of adversely affected citizens or have acted arbitrarily. In the matter of *Madanuri Sri Ramachandra Murthy v. Syed Jalal* (2017) 13 SCC 174, the Supreme Court clearly held that conducting of survey by the Survey Commissioner prior to notification of any property as a waqf is an indispensable statutory procedure and survey contemplates a quasi-judicial inquiry at the grassroots level as to whether the property is actually a waqf property or not. The inclusion of any property as a waqf property must be with due application of mind, whereafter only it can be sent to the Government for notification in the official gazette. If the above exercises have not been carried out including publication in the official gazette, then the said property cannot be assumed as a waqf property. Vide Paras 11 to 13, 16 to 18 and 20, the Supreme Court observed as follows:

11. A bare reading of the aforequoted provisions (relevant provisions for the purpose of this matter) contained in the 1954 Act and the 1995 Act, makes it manifestly clear that the provisions which are relevant for this case are almost in *pari materia* with each other,

12. Section 4 of the 1954 Act, empowered the State Government to appoint a State Commissioner, and as many Additional and Assistant Survey Commissioners of Wakf as may be necessary, by a notification in the official gazette for the purpose of making survey of wakf properties existing within the State. The Survey Commissioner, after making a survey of wakf properties, would submit his report to the State Government containing various particulars as mentioned in sub-sections (3) and (4) of Section 4 of the Act. Section 5 of the 1954 Act mandated that on receipt of such report from the Survey Commissioner made under sub-section (3) of Section 4, the State Government should forward a copy of the same to the Wakf Board. The Wakf Board would examine the report forwarded to it and publish in official gazette, the list of wakfs in the State. For resolving the disputes regarding wakfs, Section 6 of the 1954 Act, provided jurisdictional civil Court as a forum and decision of civil Court in respect of such matters should be final. It was also clarified that no such suit should be entertained by the civil Court, after the expiry of one year from the date of publication of the list of wakfs as per sub-section (2) of Section 5. Sub-section (4) of Section 6 stated that the list of wakfs published under sub-section (2) of Section 5 shall be final and conclusive unless such list is modified on the direction of the civil Court.

13. The provisions found in Sections 5 and 6 of the Wakf Act, 1995 and the 1954 Act are almost akin to each other. However, the change brought in by Parliament under the 1995 Act is that, in the case of dispute regarding wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and consequently, the jurisdiction of the civil Court is taken away. Except the aforesaid change, no other substantial modification is found in those provisions. Section 7 of the 1995 Act empowers the Tribunal to determine the disputes, regarding auqaf/wakfs, the particulars of which are specified therein.

14. **Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under the 1995 Act (it was by the Board under the 1954 Act).** As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. **The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not.** Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the gazette. Since the list is prepared and published in the official gazette by following the aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's Report. Since the Surveyor's Report was required to be considered by the State Government as well as the Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the official gazette, it was not open for the High Court to conclude that the Surveyor's Report will have to be reconsidered. **On the contrary, the Surveyor's Report merges with the gazette notification published under Section 5 of the Wakf Act.**

15. As held by the Tribunal as well as **the High Court, the property in question does not find place in the gazette notification published under Section 5 of the Wakf Act. In other words, the property in question is not notified in the official gazette as wakf property. If anybody including the Wakf Board or the plaintiff was aggrieved by such non-inclusion of the property in the list notified, the aggrieved person should have raised the dispute under Section 6 within a period of one year from the date of publication of the gazette notification in the matter. The plaintiff has practically questioned the non-inclusion of the property in the list and the validity of the list notified in the official gazette dated 28.06.1962 after the lapse of about 50 years i.e. in the year 2013 by filing the present suit.**

16. As per Section 27 of the 1954: Act (Section 40 of the 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question. The decision of the Board on any question under sub-section (1) of Section 27 of the 1954 Act [or under Section 40(1) of the 1995 Act] shall, unless revoked or modified by the civil Court, be final. The effect of Section 27 of the 1954 Act or Section 40 of the 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for the Wakf Board to take action, as per the said provision. In this context, it is relevant to note the observations made by this.

17. In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the official gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of the 1954 Act and Section 40 of the 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, **the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra.** [emphasis supplied by us]

75. Similarly, in the matter of *State of Andhra Pradesh vs. Andhra Pradesh State Waqf Board & Ors.* (2022) 20 SCC 383, the Supreme Court specifically dealt with the issue as to whether the writ petitions challenging the gazette notifications therein notifying the properties as waqf property are maintainable and not statutorily barred in view of an alternative remedy available under the Waqf Act, 1995. Vide Para 60(III) the issue of maintainability / petition in the face of an alternative remedy was framed. The Supreme Court answered the aforesaid issue of maintainability of writ petition before the High Court and the scope of High Court in examining the claim of property being a waqf property or not, by distinguishing the judgment of *Rashid Wali Beg vs Farid Pindari* (supra). Vide Paras 123 and 124, the judgment of *Rashid Wali Beg* was distinguished, holding that it was in the specific facts and context of the set case, where the question was about invocation of jurisdiction of the Civil Court and not the invocation of the jurisdiction of the Writ Court. Eventually after analyzing a host of precedents on the aspect of maintainability of writ petition and powers of the Writ Court in the face of availability of alternative remedy before the Waqf Tribunal, the Supreme Court held the writ petition to be maintainable with the High Court competent to decide the questions pertaining to the interpretation of statutes and the admitted unimpeachable documents presented before it. Vide Para 136, the Supreme Court in the case of *State of Andhra Pradesh v. Andhra Pradesh State Waqf Board & Ors.* (supra) held that:

136. We find that the High Court has examined the merits of the contention raised including the documents filed so as not to accept the contentions of the State. Though the High Court has expressed the same to be prima facie view, but in fact, nothing was left to suggest that it was not a final order as far as the State is concerned with the order of the dismissal of its writ petition. **Even otherwise, we find that the questions raised before this Court are the interpretation of the statutes, the Farmans issued by Sovereign from time to time and the interpretation of the document to the facts of the present case. It is not a case where any oral evidence would be necessary or is available now. In fact, that was not even the suggestion before this Court. Since the question was in respect of interpretation**

of the statutes and the documents primarily issued by the Sovereign, the matter needs to be examined on merits as detailed arguments have been addressed by the learned counsel for the parties. Thus, we find that the High Court erred in law, in the facts and circumstances of the case, to relegate the parties to the statutory remedy.”

[emphasis supplied by us]

76. The Supreme Court further held that the waqf board is a statutory authority established under the Act and is a "State" under Art. 12 of the Constitution of India and therefore it is duty bound to act fairly and reasonably in compliance of the statutory provisions lawfully and in public interest. The State Government which was the appellant before the Supreme Court was held to be competent to be contesting the dispute before it as a juristic entity for protecting its own property and against the actions of the waqf board. Vide Paras 142 and 143, the Supreme Court observed as follows:

142. Thus, the State Government, as a juristic entity, has a right to protect its property through the writ Court, just as any individual could have invoked the jurisdiction of the High Court. **Therefore, the State Government is competent to invoke the writ jurisdiction against the action of the Waqf Board to declare the land measuring 1654 acres and 32 guntas as waqf property.**

143. An argument was raised that the writ petition should not have been filed by the State Government challenging the publication of a notification in the State gazette and that the dispute between the Revenue Department and Minority Department should be considered by the Secretaries of the State Government. The said argument raised was based upon an order passed by this Court as State of A.P. wherein the reliance was placed on an earlier judgment reported as *ONGC v. CCE*.”

[emphasis supplied by us]

77. The Supreme Court vide Para 150, also held that official gazette publication at the instance of waqf board will not simply lead to presumption of knowledge to the general public as an advertisement published in a newspaper. It will not bind the State Government. The Supreme Court relying upon the Division Bench judgment of this High Court itself in the matter of *Ezhome Sunni Valiya Juma Masjid vs. Kerala Waqf Board* 2019 (3) KLT 1064, held that inquiry to be convened by waqf board before declaring any property as a waqf is a ‘quasi-judicial function’. Eventually the Court held that since the function was a quasi judicial function, therefore, no unilateral decision could have been taken without recording any reason as to how, when and why the property came to be included as a waqf property. We find it condign to quote Paras 162-165 held thus:

162. In respect to the provisions of Section 32 of the 1995 Act, a Division Bench of the Kerala High Court in a judgment reported as *Ezhome Sunni Valiya Juma Masjid v. Kerala Waqf Board* held that when the Wakf Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far-reaching repercussion on the rights of the parties, it is a quasi-judicial function. It was held as under: (SCC OnLine Ker. Para 10).

“10. The aforementioned provisions dealing with the powers and duties of the waqf board and other related provisions under the Act would reveal there may be many acts which may be done by the Board. Among them, some

are obviously administrative in nature. But, when the Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far-reaching repercussion on the rights of the parties, it has a quasi-judicial function. (See the decision in *Puthucode Juma Ath Committee v. Abdul Rahiman*). A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial, It is subject to some measure of judicial procedure. As regards quasi-judicial functions, they cannot be delegated unless the authority concerned is enabled to do so expressly or by necessary implication. The general principle is that where any kind of a decision on lis has to be made, it must be made by the authority empowered by the statute concerned and by no one else. We will deal with the same further a little later."

163. Thus, we find that the power of the Board to investigate and determine the nature and extent of wakf is not purely an administrative function. Such power has to be read along with Section 40 of the Act which enjoins "a wakf board to collect information regarding any property which it has reason to believe to be wakf property and to decide the the question about the nature of the property after making such inquiry it may deem fit". The power to determine under Section 32(2)(n) is the source of power but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of information collected finds that the property in question is a wakf property. An order passed thereon is subject to appeal before the Waqf Tribunal, after an inquiry required is conducted in terms of sub-section (1) of Section 40. Therefore, there cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property. The finding of the Wakf Board is final, subject to the right of appeal under sub-section (2). Thus, any decision of the Board is required to be as a reasoned order which could be tested in appeal before the Waqf Tribunal.

164. Therefore, the wakf board has power to determine the nature of the property as wakf under Section 32(2)(g) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry be conducted. The conduct of inquiry presupposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. The proceedings produced by the wakf board do not show any inquiry conducted or any notice issued to either of the affected parties. Primarily, two factors had led the Wakf Board to issue the errata notification, that is, order of the Nazim Atiyat and the second survey report. Both may be considered as material available with the wakf board but in the absence of an inquiry conducted, it cannot be said to be in accordance with the procedure prescribed under Section 40 of the 1995 Act.

165. Since there is no determination of the fact whether the property in question is a wakf property after conducting an inquiry in terms of Section 40(1) of the 1995 Act, the errata notification cannot be deemed to be issued in terms of Section 32 read with Section 40 of the 1995 Act. Such determination alone could have conferred right on the affected parties to avail the remedy of appeal under Section 40 of the 1995 Act."

[emphasis supplied by us]

78. This Court also finds that unjustified and unexplained delay of 69 years (around 7 decades) in declaring the property as a wakf property itself makes the decision unreasonable and resultantly arbitrary. Though the Waqf Act 1954, 1984, and 1995 clearly provided for timelines of registration of the waqfs, even then the KWB failed to act in time. The exercise of statutory power must be resorted to and executed within a reasonable time and what would be the reasonable time is to be decided in the facts and circumstances of the act under challenge. The Court will also examine the effect and impact third party rights created in the interregnum owing to delay on the part of the

authorities and the consequences which might accrue on the fundamental and constitutional rights of other persons/ entities if the delayed action of authority is affirmed. Refer to *Meher Rusi Dalal v. Union of India* (2004) 7 SCC 362; *P.K. Sreekantan v. P. Sreekumaran Nair* (2006) 13 SCC 574 and *K.B. Nagur v. Union of India* (2012) 4 SCC 483. The Supreme Court in the *State of Andhra Pradesh v. A.P. State Wakf Board* (supra), disapproved the action of the waqf board in issuing the errata issued after 17 years, vide its observations recorded at Para 171 of the judgement, holding that issuance of notification declaring waqf property after unjustified inaction of 17 long years speaks volumes about the bonafides of the waqf board in initiating the process of inclusion of large area of land as waqf. The aforesaid view of the Supreme Court on lack of bonafides on the ground of delay and inaction of the waqf board finds resonance also in the recent most judgement of Division Bench of the Telangana High Court in the matter of *Viceroy Hotels Limited and others v. Telangana State Wakf Board & Ors.* 2024 SCC OnLine TS 689. In the aforesaid case, action of the waqf board was laid challenge to of including large tracts of land additionally after a period of around 24 years. Vide Paras 31 to 33, the Telangana High Court in the matter of *Viceroy Hotels Limited and others v. Telangana State Wakf Board & Ors.*(supra) held thus:

30. "In the instant case, the gazette notification under the provisions of the 1995 Act was issued on 12.07.1984, wherein the description of the property reads as under:

"Mosque Sultan with Graveyard and Land in Survey No. 182/2"

31. Thereafter, **an addendum to the gazette notification dated 12.07.1984 was issued on 23.08.2007 i.e., after a period of 24 years, by which notification dated 12.07.1984 was amended to read as follows:**

"Masjid Bagh Kawadiguda, Hyderabad, Old Correspondent No. 140 -New Sy. No. 181, with extent Acs.1.24 guntas, and Sy. No. 182 with extent Ac.2.20 guntas, total acres 4.04 guntas".

32. Thus, on conjoint reading of the notification dated 12.07.1984 and addendum dated 23.08.2007, **it is evident that it is not in the nature of clarification of the previous notification but rather a substitution of the original notification which is not permissible in law after a long lapse of 24 years.**

33. So far as submissions on behalf of the respondents are concerned, suffice it to say that the petitioners cannot be allowed to suffer legal injury merely because they have a statutory remedy available under the 1995 Act, especially in a case where the initiation of proceeding itself is vitiated in law. For the reasons assigned supra, we have already held that the requirement of issue of prohibition in obtaining factual matrix is fulfilled. Therefore, the decision of the Supreme Court in *Tirumala Tirupati Devasthanams* (supra) is of no assistance to the respondents."

[emphasis supplied by us]

79. In the case at hand, the delay and inaction on the part of KWB is far more glaring of initiating the action of declaring the disputed land as waqf after 69 years, when admittedly large number of third party ownership and occupancy rights had already been created by the R5 Committee. The action of KWB clearly smacks of a foul action lacking bonafides, in the backdrop of land having assumed high commercial and business value. On the ground of delay and indolent conduct of the KWB itself, we are convinced that the declaration of property as a waqf is a desperate attempt to somehow rest control, management and ownership of the entire subject property.

80. The Supreme Court in yet another case of *Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu* (supra) had an occasion to test the conversion of a private property into a waqf property by the waqf board treating it as a burial ground. The challenge to the conversion of property as a waqf mounted on the ground of non-compliance of procedure so statutorily prescribed under the Waqf Acts of 1954 or 1995 reached the Supreme Court. After examining comprehensively the scheme of both the Acts of 1954 and 1995, the Supreme Court categorically held that mere notification in the official gazette is not enough, but the notification must be preceded by a preliminary survey followed by submission of report to the State Government about the exact status of the land proposed to be notified as waqf. Conducting of the survey before declaring any property as a waqf property along with quasi-judicial inquiry is sine qua non, in the absence of which notification under Section 5 of the Waqf Act stands vitiated and would carry no legal recognition. The Supreme Court further held that such a notification published in the official gazette at the instance of waqf board shall not bind the State Government at all especially when the mandatory procedure preceding inclusion of property as a waqf under Sections 4 and 5 of the Act of 1954 has not been followed. This judgement of *Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu* (supra) followed the afore-quoted judgement of *State of Andhra Pradesh v. A.P. State Wakf Board* (supra). Vide Paras 32 to 36, the Supreme Court observed thus:

32. "A plain reading of the provisions of the above two Acts would reveal that the notification under Section 5 of both the Acts declaring the gist of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. **Therefore, conducting of the surveys before declaring a property a wakf property is a sine qua non. In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the Wakf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act. In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land. Therefore, the Notification dated 29-4-1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999.**

33. In *T.N. Wakf Board v. Hathija Ammal* (2001) 8 SCC 528, it was observed that the Wakf Board should follow the procedure as required under Sections 4, 5 and 6 or Section 27 of the Wakf Act before notifying the wakfs under Section 5 of the Act.

34. In *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (supra), it was observed as under: (SCC p. 185, Para 16) "16. Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the waqf board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the gazette."

35. It may be noted that Wakf Board is a statutory authority under the Wakf Act. **Therefore, the official gazette is bound to carry any notification at the instance of the Wakf Board but nonetheless, the State Government is not bound by such a publication of the notification published in the official gazette merely for the reason that it has**

been so published. In State of Andhra Pradesh v. Andhra Pradesh Wakf Board (supra), this Court consisting of one of us (V. Ramasubramanian, J. as a Member) held that the publication of a notification in the official gazette has a presumption of knowledge to the general public just like an advertisement published in the newspaper, but such a notification published at the instance of the Wakf Board in the State gazette is not binding upon the State Government. It means that the notification, if any, published in the official gazette at the behest of the Wakf Act giving the lists of the wakfs is not a conclusive proof that a particular property is a wakf property especially, when no procedure as prescribed under Section 4 of the Wakf Act has been followed in issuing the same.

36. In view of the aforesaid facts and circumstances, we do not find any substance in the argument that the suit land was a wakf property and as such would continue to be a wakf always. In the absence of any evidence of valid creation of a wakf in respect of the suit property, it cannot be recognised as a wakf so as to allow it to be continued as a wakf property irrespective of its use or disuse as a burial ground.”

[emphasis supplied by us]

The Supreme Court accordingly affirmed the view taken by Division Bench of the Madras High Court which had set aside the order declaring the property as a waqf.

81. The upshot of the above discussion is that this Court is not precluded from examining the sustainability of the declaration/registration of the subject property as a waqf in writ proceedings, especially when the State Government itself as the custodian of the fundamental and constitutional rights of its citizens has come in appeal before us. Though we have held the action of KWB declaring/registering the subject property as waqf as illegal and unsustainable on very many grounds, however we restrain ourselves from quashing the same, since the solitary purpose of undertaking the whole discussion and returning the findings as afore stated was to hold simply that such a legally unsound declaration will not be binding upon the State Government, nor would it create any hindrance for the State in constituting an IC for hearing and suggesting measures about redressal of affected and aggrieved bona fide purchasers and occupants on the subject property. The validity of the impugned notification is accordingly affirmed, while setting aside the judgement of the learned Single Bench as being erroneous and having been passed in ignorance of admitted documents and material on record before this Court. We also whilst making the interim order dated 07.04.2025 permanent, direct the State to proceed with and act upon the report, if any, filed by the Sole Member IC constituted in pursuance of the impugned notification. The State Government shall be at liberty to issue necessary directions under Section 97 of the Act of 1995, as also in the capacity of custodian of the fundamental rights of its citizens, who are prejudicially affected by the declaration of the subject property as a waqf by the KWB.

J. IN RE: ISSUE (V) - LIKELY OUTCOME OF THE IMPUGNED NOTIFICATION & THE INQUIRY COMMISSION

82. It has been strenuously argued by the AG that the IC is constituted simply to indulge into fact finding, suggest measures and provide solutions to the conundrum that has arisen in view of the declaration of the subject property as waqf by the KWB. The report of the IC is clearly not binding on the State Government and is being collected for the purposes of collecting the necessary facts, documents, and understanding the magnitude of families and persons likely to be affected by the

decision and action of the KWB in declaring the property as a waqf.

83. On behalf of the interveners, who are the third-party bona fide purchasers, it was submitted that the Inquiry Commission report may become the basis for the State Government to issue directions under Section 97 of the Waqf Act, 1995 at a later stage, whatever necessity may be felt for doing so in public interest. Section 97 of the Waqf Act, 1995 reads thus:

97. 'Directions by State Government.-Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions: 3
[Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.]
[Inserted by Act 27 of 2013 s. 50 (w.e.f. 1-11-2013).] [emphasis supplied by us]

84. From the above, it is crystal clear that the State Government possesses ample powers to issue directions pertaining to the management and administration of any waqf, which are very necessary. We do not intend to delve into the question as to what directions may later be issued, however suffice to observe that the State Government has recourse available after submission of the final report by the IC. Therefore, it cannot be argued that a toothless paper tiger has been set up by the State Government by constitution of the IC, which eventually may not be able to do anything. Having held that the declaration of the subject property is not at all binding on the State Government, the Inquiry Commission's report may actually enable the State Government to decide finally whether to acknowledge the declaration/registration of the subject property as a waqf or not.

85. We must also be conscious of the fact that the IC is headed by no one else but a revered former Judge of this Court and not any administrative officer or a technical member. The inquiry being convened by the IC is therefore bound to be a judiciously fair exercise by giving opportunity to all the stakeholders and aggrieved parties to present their views; The very purpose of constitution of such an IC with a former Judge is to ensure that the principles of natural justice shall be observed by the Commission in its endeavour to prepare a comprehensively worded wholistic report touching all the dimensions of the controversy. At the same time, the Court cannot lose sight of the submission of the learned AG representing none else but the mighty State itself that the IC was necessitated owing to large-scale protests, dharnas, agitations and a sound apprehension of the State that it may assume communal flavour as well. Inquiry of the constitution of IC by the GOK has assuaged the concerns of hundreds of such aggrieved persons and entities, who have developed faith in the action of the State Government of devising some solution to the whole problem instead of sitting as a mute spectator to their agitations.

86. In the fitness of things, therefore it would not be appropriate to interfere with the constitution of the IC at the threshold, when it is yet to furnish a final report which is to be acted upon and taken to a logical conclusion by the State Government. We expect and hope that the Sole Member Inquiry Commission shall respect the expectations placed upon it by us in the preceding paragraphs and provide a room for consideration of grievances of all the aggrieved parties.

Therefore, we accede to the submissions of the learned AG that without letting the IC complete the responsibility assigned to it, its constitution could not have been scuttled at the threshold. On this ground also we are inclined to observe that the learned Writ Court ought not to have interfered with the constitution of the IC.

K. CONCLUSIONS AND DIRECTIONS:-

87. In view of the discussion and the findings recorded above, this Court, therefore, returns the following conclusions:

- a. The judgment of the learned Single Judge is set aside, whilst affirming the legality and validity of the impugned notification issued under the provisions of the COI Act, being notification dated 27.11.2024 issued by the GOK/State Government, if it deems so would be at liberty to proceed with the implementation of the recommendations and report of the said IC in accordance with law;
- b. The OWP's do not possess the locus standi to have instituted the writ petition before the Single Bench, which clearly ought not to have been entertained at their instance.
- c. The endowment deed of 1950 never intended to create any 'permanent dedication in favour of the Almighty God', but was simpliciter a gift deed in favour of R5 Farooq Management and therefore could have never qualified as a 'waqf deed' under any of the enactments of the Waqf Act 1954, 1984, or 1995.
- d. The Writ Court can always examine on the basis of unimpeachable and admitted documents as to whether a deed/document or a property classifies as a waqf deed or not on the basis of its recitals and clauses. Merely because the nomenclature of the subject deed of 1950 was a waqf endowment, will not clothe it with the said character, in view of the express authorization of absolute transfer and ownership; and in view of the absolute vesting of rights of transfer/sale and ownership in the hands of R5 Farooq Management;
- e. The Writ Court can go into the questions of ascertaining whether the KWB has as a statutory body acted fairly, reasonably, and in compliance of the statutory provisions and even hold its action illegal, despite the availability of an alternative remedy before the Waqf Tribunal under the provisions of the **Waqf Act, 1995 in the application moved by the State Government for surcharge purposes**; with the rider that no disputed facts are on record which are to be proved only on the basis of evidence.
- f. The action of the KWB of declaring/registering the subject property as a waqf property through its declarations and orders issued in September and October 2019 are bad in law on the grounds of being unreasonably delayed and having been issued in palpable violation of the provisions of the Waqf Acts 1954, 1984, and 1995 and resultantly non-enforceable. However, we restrain ourselves from issuing a formal order of quashing them, since the purpose of returning all the above findings is just to hold that the State Government is not bound by such highly belatedly issued declaration by the KWB after 7 decades (69 years);
- g. For want of compliance with mandatory procedure and provisions of the Waqf Act, 1954 and 1995, especially the carrying out of a survey, the conducting of quasi-judicial inquiry, followed by a reasoned comprehensive report being forwarded to the State Government and for want of publication in the official gazette clearly, the subject property could never have been classified as a waqf property and it cannot bind the State Government restraining it from constituting any IC for

conducting inquiry and submitting a report;

Both the appeals are accordingly allowed in terms of the aforesaid conclusions and directions.