

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 1<sup>ST</sup> DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

**WRIT PETITION NO.733/2021 (GM-WAKF)**

**C/W**

**WRIT PETITION NOS.701/2021, 713/2021, 754/2021,  
760/2021, 776/2021(GM-WAKF)**

**IN W.P.NO.733/2021:**

**BETWEEN:**

SMT. SHANAZ BEGUM,  
(DEAD) HER LRS SON,  
SRI.SHABBIR AHMED,  
S/O NASER SHARIFF  
AGED ABOUT 47 YEARS,  
SHOP NO. 01, A BLOCK,  
RIFAH COMPLEX,  
SAYAJI ROAD, MANDI MHALLA,  
MYSURU DISRICT, MYSURU – 560 001.

... PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

**AND:**

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU,  
THROUGH ITS SECRETARY – 560 001.

2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU – 560 052. ... RESPONDENTS

(BY SMT. S.R.ANURADHA, ADVOCATE FOR R2;  
R2 –SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
ISSUE WRIT OF CERTIORARI AGAINST R-2 AND  
CONSEQUENTLY DECLARE THE PROCEEDING  
ADJUDICATED BY R-2 NULL AND VOID

**IN W.P.NO.701/2021:**

**BETWEEN:**

SRI. DILIP KUMAR GHERA,  
S/O LEELA RAM,  
AGED ABOUT 66 YEARS  
SHOP NO. 04, A BLOCK,  
RIFAH COMPLEX, SAYAJI ROAD,  
MANDI MOHALLA, MYSURU DISTRICT,  
MYSURU - 560 001.  
(BENEFIT OF SENIOR CITIZEN NOT CLAIMED)

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

**AND:**

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU - 560 001.  
THROUGH ITS SECRETARY.

2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU - 560 052. ...RESPONDENTS  
(BY SMT. S.R.ANURADHA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
ISSUE A WRIT OF CERIORARI AGAINST R-2 AND  
CONSEQUENTLY DECLARE THE PROCEEDINGS  
ADJUDICATED BY R-2 ANNEXURE-A DTD 14.12.2020 NULL  
AND VOID IN THE INTEREST OF JUSTICE.

**IN W.P.NO.713/2021:**

**BETWEEN:**

SRI. H. ABDUL HAMID,  
S/O ABDUL KAREEM,  
AGED ABOUT 65 YEARS,  
SHOP NO. 01, D BLOCK,  
RIFAH COMPLEX, SAYAJI ROAD,  
MANDI MOHALLA MYSURU  
DISTRICT MYSURU - 560 001.

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

AND:

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU – 560 001.  
THROUGH ITS SECRETARY.
2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU – 560 052.

...RESPONDENTS

(BY SRI. HANEEF, ADVOCATE FOR R2;  
R1 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
ISSUE WRIT AGAINST R-2 AND CONSEQUENTLY DECLARE  
THE PROCEEDING ADJUDICATED BY R-2 IN CASE NULL AND  
VOID.

**IN W.P.NO.754/2021:**

BETWEEN:

SRI. SHABBIR AHMED,  
S/O NASER SHARIFF,  
AGED ABOUT 47 YEARS,  
SHOP NO.6, A BLOCK,  
RIFAH COMPLEX, SAYAJI ROAD,  
MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU -560 001.

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

AND:

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU – 560 001.  
THROUGH ITS SECRETARY.
2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU – 560 052.

...RESPONDENTS

(BY SRI. HANEEF, ADVOCATE FOR R2;  
R1 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT AGAINST R-2 AND CONSEQUENTLY DECLARE THE PROCEEDING ADJUDICATED BY R-2 ANNEXURE-B IN CASE NULL AND VOID.

**IN W.P.NO.760/2021:**

**BETWEEN:**

SRI. DILIP KUMAR GHERA,  
S/O LEELA RAM,  
AGED ABOUT 66 YEARS,  
SHOP NO.03, A BLOCK, RIFAH COMPLEX,  
SAYAJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT MYSURU-560 001.

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

**AND:**

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU -- 560 001.  
THROUGH ITS SECRETARY.
2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU – 560 052.

...RESPONDENTS

(BY SRI. HANEEF, ADVOCATE FOR R2;  
R1 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSITUTION OF INDIA, PARYING TO ISSUE WRIT AGAINST R2 AND CONSEQUENTLY DECLARE THE PROCEEDING ADJUDICATED BY R2 IN CASE NULL AND VOID.

**IN W.P.NO.776/2021:**

**BETWEEN:**

SRI. B. PARVEEN PATWARI,  
S/O P BABULAL JAIN,  
AGED ABOUT 48 YEARS,  
SHOP NO 2, III STAGE,  
RIFAH COMPLEX, SAYAJI ROAD,

MANDI MOHALLA, MYSURU DISTRICT,  
MYSURU 560 001.

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

AND:

1. THE MUSLIM BOYS ORPHANAGE,  
SAYAJJI ROAD, MANDI MOHALLA,  
MYSURU DISTRICT, MYSURU - 560 001.  
THROUGH ITS SECRETARY.

2. THE COMPETENT OFFICER AND  
CHIEF EXECUTIVE OFFICER,  
KARNATAKA STATE BOARD OF AUQAF,  
BENGALURU - 560 052.

...RESPONDENTS

(BY SRI. HANEEF, ADVOCATE FOR R2;  
R1 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT AGAINST R2 AND CONSEQUENTLY DECLARE THE PROCEEDINGS ADJUDICATED BY R-2 IN CASE NO.KSBA/PP/04/MYS/2018 ANNEXURE-B NULL AND VOID.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

A short but a very significant question of law as to the invocability if not validity of section 2(e)(v) of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974, (hereafter '1974 Act') qua the waqf properties arises for consideration in the following fact matrix:

(a) All the petitioners happen to be the tenants of the structures that admittedly belong to waqf; they have

suffered eviction orders made under the provisions of 1974 Act, their contention as to non-invocability of the said Act having been negated; these orders are called in question in the writ jurisdiction of this Court.

(b) After service of notice, respondent-WAQF Board having entered appearance through its Senior Panel Counsel, vehemently resists the Writ Petitions making submission in justification of the impugned orders and the reasons on which they have been constructed; the essence of the contention is that: the 1974 Act is a special legislation qua the relative provisions of the Waqf Act, 1995 (hereafter '1995 Act') ; the State Act having been assented to by the President of India in terms of Article 254 of the Constitution, over-rides the law enacted *inter alia* in Sections 83 & 85 of the 1995 Act, if at all there is any conflict.

2. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant relief to the petitioners as under and for the following reasons:

(a) More than half a century ago, in *Dhulabhai Vs. State of Madhya Pradesh*, **AIR 1969 SC 78**, a Constitution

Bench of the ‘ouster of jurisdiction’, has laid down the fundamental principles of judicial procedure to be followed in matters of the kind; these principles having been well established and being animated by decision after decision, (M. Hariharasudhan Vs. R. Karmegam, **(2019) 10 SCC 94**) do hardly need reproduction; the question as to the jurisdiction of the Waqf Tribunal *vis-a-vis* that of the civil courts was examined by the Apex Court in Ramesh Gobindram Vs. Sugra Humayum Mirza Wakf, **AIR 2010 SC 2897**, in the light of Dhulabhai supra; however, it was a case that arose under pre-2013 amendment to the 1995 Act; though it does come to the aid in treating the question raised in these petitions, but not much.

(b) Section 2 of the 1974 Act is its dictionary clause; clause (e) of this section defines the term “Public premises”; it is a “means and includes” definition; sub-Clause (v) of Clause (e) includes waqf and consequently, the waqf properties fall within the definition of “Public premises”; this was by virtue of the Karnataka Act No.28 of 1981 with retrospective effect from 30.09.1980; it needs to be mentioned that this amendment was made to the State Act in the light of the erstwhile Waqf Act, 1954.

(c) The above having been said, one has to hasten to add that the Waqf Act, 1995 repealed the Waqf Act 1954 and the Waqf (Amendment) Act, 1984; presumably, in view of this legislative development, the Karnataka Act No.22 of 1999 was enacted for correspondingly amending the 1974 Act so that the subject matter of eviction from waqf properties continued to be governed by the State Act only; this is not the end of the story, inasmuch as the Parliament enacted Act 27 of 2013 w.e.f. 1.11.2013 *inter alia* amending Chapter VIII of the 1995 Act which will have a bearing on the question arising in these cases; sections 83 & 85 figure in this Chapter.

(d) Section 83(1) of the 1995 Act prior to 2013 Amendment had the following text:

*“The State Government shall, by notification in the official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals”.*

A Co-ordinate Bench of this Court having analyzed the provisions of 1974 Act *vis-a-vis* un-amended sections 83 & 85 of the 1995 Act, held that the Waqf Tribunal had no jurisdiction to treat in appeal the matters arising under



the 1974 Act though they related to the waqf properties vide Darga Hazarat Ataulla Shah and Nabhi Shah (Bada Makhan), Bangalore Vs. The Karnataka Wakf Tribunal, **2003 (4) Kar.L.J.274**; obviously, this was prior to 2013 Amendment.

(e) Section 83(1) of the 1995 Act prior to 2013 Amendment had the following text:

*“83(1) The State Government shall, by notification in the official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals”.*

However, the 2013 Amendment altered the text of this provision as under:

*“83. Constitution of Tribunals, etc.- (1) The State Government shall, by notification in the official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals”.*

The employment of the term "eviction of a tenant or determination of rights and obligations of the lesser and the lessee of such property" in section 83(1) takes the disputes of the kind to the portals of the Waqf Tribunal, which

otherwise were being dealt with under the provisions of 1974 Act.

(f) The Parliamentary intention of putting these disputes exclusively at the hands of the Waqf Tribunal is obviated by the following text of section 85 as amended by 2013 Act:

*“85. Bar of jurisdiction of civil courts - No suit or other legal proceeding shall lie in any (civil court, revenue court and any other authority) in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal”.*

The plain language of this provision unequivocally indicates that the jurisdiction of "*civil court, revenue court and any other authority*" is excluded in respect of any dispute, question or other matter *inter alia* relating to any waqf property; thus, it is an all pervasive bar and everything now falls within the province of the Waqf Tribunal; if the Parliament intended that the State enactments such as the 1974 Act should continue to apply, it would not have employed a broader sweep language of specifically mentioning "**any other authority**".

(g) The vehement contention of learned Sr. Panel Counsel for the respondent-Board that the 1974 Act

having been assented to by the President of India, would over-ride the provisions of sections 83 & 85 as amended by 2013 Act, does not merit countenance; apparently, this contention is built up on the basis of Art. 254(2) of the Constitution over-looking the proviso which reads as under:

*"Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

The contention that there is no conflict between 1974 Act and 1995 Act even after 2013 Amendment, is difficult to agree with.

It is worth mentioning what D.D. Basu's "Shorter Constitution of India, 15th Edition, LexisNexis at Page 1391" succinctly states:

*"The question of repugnancy between the parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Art. 246(1), in the second, by reason of Art. 254(1). Art. 254(2) deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in*

*that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."*

The above *opinio juris* founded on a catena of decisions of the Apex Court is a complete answer to the contention raised by the Panel Counsel, in her inimitable style; the contention as to special law i.e., the 1974 Act overriding the less special law i.e., 1995 Act does not merit much consideration in the light of 2013 Amendment.

(h) The learned Sr. Panel Counsel appearing for the Waqf Board is more than justified in contending that if at all the 2013 Amendment takes away the jurisdiction of the authorities and the courts under 1974 Act, it is only from the date the said amendment is brought into force i.e., 01.11.2013 and therefore, the proceedings instituted anterior to the said date would continue under the 1974 Act itself; it hardly needs to be mentioned that the proceedings instituted prior to 2013 Amendment though concluded subsequently do not stand re-opened, there being no statutory indication to the contra.

In the above circumstances, these writ petitions succeed; a Writ of Certiorari issues quashing the impugned orders; it is open to the respondents to take appropriate

proceedings before the jurisdictional Waqf Tribunal; in such proceedings, it shall not be open to the petitioners to contend that the Tribunal has no jurisdiction; all other contentions are kept open.

Before parting with these cases, this Court needs to place on record the assistance rendered by Mr.Nitin Ramesh, a prominent member of Bangalore Bar.

Costs made easy.

**Sd/-  
JUDGE**

Snb/cbc