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W.P.No.20553 of 2023 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2024

DELIVERED ON: 23.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.20553, 22931 of 2023; 6667 of 2013; 6561, 6767 of 2022;
1568 and 8121 of 2024

and

W.M.P.Nos.6669, 6680, 6681, 6846, 6847, 6849 of 2022; 22429,
22431, 19935 of 2023; 1592 and 9068 of 2024

and

W.A.Nos.2865, 2070, 2074, 2076, 2078, 2109, 2195, 2289, 2290 of
2023; 820 and 944 of 2024

and

C.M.P.Nos.23809, 17654, 17681, 17706, 17712, 17710, 17984,
17982, 18940, 18941, 19667, 19665, 19670, 19672 of 2023; 6734,
6736, 5659 and 5661 of 2024

W.P.No.20553 of 2023:

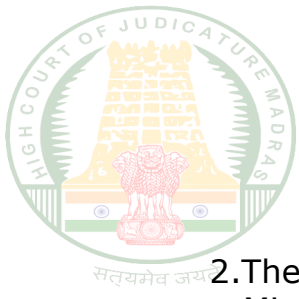
Mohmood Hussain

.. Petitioner

Vs

1.The State of Tamil Nadu,
rep. by its Secretary,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai-600 009.

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2.The Union of India,
Ministry of Minority Affairs,
rep. by its Secretary,
11th Floor, Pandit Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003.

3.The Estate Officer & The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethkathi Street,
Chennai-600 001.

.. Respondents

Prayer in W.P.No.20553 of 2023: Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that Tamil Nadu State Act, Act 33 of 2010 is repugnant to the Waqf Act, 1995, as amendment by Act, 2013 (Act 27 of 2013) and void.

For the Petitioner : Mr.S.R.Raghunathan
in W.P.No.20553 of for M/s.Vigneshwar Elango
2023 and K.V.Karthik Subramanian

For the Respondents : Mr.P.S.Raman
in W.P.No.20553 of Advocate-General
2023 assisted by
Mr.A.Edwin Prabakar
State Government Pleader
for respondent No.1

: Mr.AR.L.Sundaresan
Addl. Solicitor-General
assisted by
Mr.N.K.Nithilavani
for respondent No.2



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: Mr.R.Abdul Mubeen
for respondent No.3

and batch cases

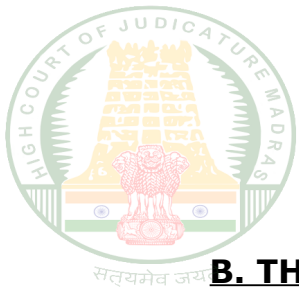
COMMON ORDER

D.BHARATHA CHAKRAVARTHY, J.

A. THE WRIT PETITIONS/WRIT APPEALS:

All these writ petitions are with a prayer to declare the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act (Act No.33 of 2010) as void, *ultra vires* the Constitution, being repugnant to the Waqf Act, 1995, as amended by the Act No.27 of 2023. The writ appeals are filed to set aside the common order dated 03.07.2023 passed by the learned Single Judge in W.P.Nos.17331, 13506, 13510, 13514, 144224, 14426, 14428, 14432, 16963, 17164, 17399, 17371, 18475 and 18479 of 2023.

1.1 All these petitioners and appellants are either tenants whose lease has expired/determined or are treated as encroachers in respect of the properties/premises belonging to the Waqf.



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B. THE STATUTORY FRAMEWORK:

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2. The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Act 1 of 1976) was enacted by the State of Tamil Nadu and it also received the assent of the President on 3rd January, 1976. The Act is to provide for eviction of unauthorised occupants from public premises and for matters incidental thereto.

Section 2(d) defines “premises” as follows:

“2(d) “premises” means any land or any building or hut or part of a building or hut and includes,-

(i) gardens, grounds and outhouses, if any, appertaining to such building or hut or part of a building or hut; and

(ii) any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof.”

2.1 Section 2(e) originally defined “public premises” as follows:

“2(e) “public premises” means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes -

(1) any premises belonging to, or taken on lease by, or on behalf of-



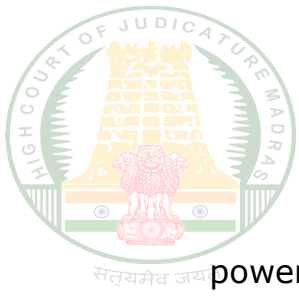
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- (i) *any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the Government; and*
- (ii) *any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government; and*
- (2) *any premises belonging to, or vested in, a local authority or any Board constituted under any law."*

2.2 Section 3 enables the Government by notification to appoint Estate Officers. Section 4 enables the Estate Officer, if he is of the opinion that any person is in unauthorised occupation of any public premises and that they should be evicted, to issue a notice in writing and, thereafter, pass an order under Section 5 ordering eviction of the unauthorised occupants. An appeal is provided to the District Judge under Section 9 of the Act as against the order of eviction. Section 15 of the Act bars the jurisdiction of a civil court to entertain any proceeding in respect of eviction of unauthorised persons under the Act. Under Section 20, the State Government is also vested with the



powers to frame rules to carry out the purposes of the Act.
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(II) THE WAQF ACT, 1995:

3. In the year 1995, the Parliament enacted the Waqf Act, 1995 (Act No.43 of 1995), [for short, "*the Waqf Act, 1995*"] which is to provide for the better administration of the Waqf and for matters connected therewith or incidental thereto. The said Act repealed the Waqf Act, 1954 (Act No.29 of 1954), as amended, while saving the actions taken under the erstwhile Act. The Act defines "*waqf*" under Section 3(r) as follows:

"3(r) "waqf" means the permanent dedication of 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



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(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 "waqf" means any person making such dedication."

3.1 Chapter-II of the Waqf Act, 1995 contains provisions for survey of the Waqf and publication of list of Waqfs and the manner as to settling of disputes regarding the question as to whether a particular property is a waqf property or not. Section 7 provides for a Tribunal, namely, Waqf Tribunal, to determine the disputes.

3.2 Chapter-III of the Waqf Act, 1995 provides for constitution of a Central Waqf Council and the manner of its administration.

3.3 Chapter-IV of the Waqf Act, 1995 provides for establishment of Waqf Boards in respect of each States, their composition, their term of office, qualifications and disqualifications for being appointed as members, procedure for appointment and removal, appointment of



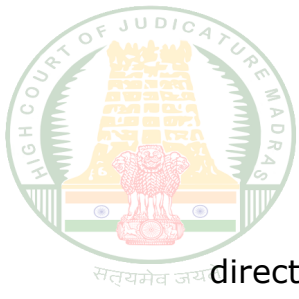
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Chief Executive Officer, duties and powers of the Chief Executive Officer. It further provides the powers of the Chief Executive Officer to inspect the registers, records and the Waqf etc. Section 32 of the Act defines powers and functions of the Waqf Board. The general superintendence of all the Waqfs in the State is vested with the Waqf Board.

3.4 Chapter-V of the Waqf Act, 1995 provides for registration of the Waqf, maintenance of registers of the Waqf, power to appoint an Executive Officer and the duties of the Waqf Board when Wakf ceases to exist etc.

3.5 Chapter-VI of the Waqf Act, 1995 relates to the maintenance of accounts, including budgeting, submission of accounts, auditing of accounts, duties of Mutawalli and alienation of waqf property. Section 52 of the Act provides for recovery of waqf property, which is transferred in contravention of Section 51. Section 54 provides for removal of encroachment from waqf properties. This Chapter provides for restriction of leasing out the waqf properties and penalties, including power to appoint and remove Mutawallis, assumption of



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direct management by the Waqf Board, power of the Waqf Board to frame scheme in respect of the administration of the waqf etc.

3.6 Chapter-VII of the Waqf Act, 1995 deals with finances of the Waqf Board, such as creation of waqf fund, budgeting of Waqf Board etc.

3.7 Chapter-VIII of the Waqf Act, 1995 provides for constitution of Tribunals. The Tribunal consisting of a member of the State Judicial Service is entitled to determine any disputed question and other matters relating to a waqf or waqf property. Section 85 of the Act bars the jurisdiction of the civil court.

3.8 Chapter-IX of the Waqf Act, 1995 provides for powers of the Central Government and State Government in respect of the waqf and other miscellaneous provisions, including the power of the State Government to make rules and the Waqf Board is conferred with the power to make Regulations to carry out the purposes of the Act. Section 112 repealed the existing Waqf Act, 1954 and Section 113 of the Act provided that the Central Government, may by order, remove



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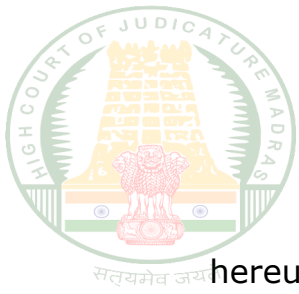
any difficulties in giving effect to the provisions of the Act.

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3.9 Thus, it can be seen that the Waqf Act, 1995 is traceable to the legislative power of the Parliament under Entry 18 of List III of the Seventh Schedule of the Constitution of India, which is a legislation governing waqfs, pious, religious or charitable institutions recognised by Muslim law and the management of waqf properties, the role of Mutawallis, the rôle of Waqf Board and the Chief Executive Officer, the Waqf Tribunal and its jurisdiction thereof.

(III) THE TAMIL NADU PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) AMENDMENT ACT, 2010:

4. The Tamil Nadu Legislative Assembly enacted the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2010 (Act No.33 of 2010) [for brevity, "*the Amendment Act, 2010*"] with a view to amend the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. It received the assent of the Governor on 26.11.2010 and came into force with effect from 7.1.2011 on which date the Government of Tamil Nadu notified the same. The Act contains two Sections and, as such, is re-produced



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hereunder for ready reference:

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"1. (1) *This Act may be called the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2010.*

(2) *It shall come into force on such date as the State Government may, by notification, appoint.*

2. *In section 2 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, in clause (3e). -*

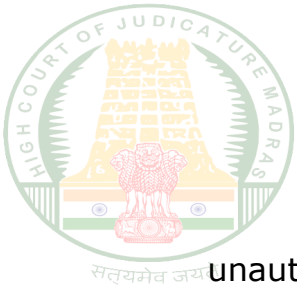
(1) *in sub-clause (1), in item (ii), the word "and" occurring at the end shall be omitted;*

(2) *in sub-clause (2), the word "and" shall be added at the end,*

(3) *after sub-clause (2), the following sub-clause shall be added, namely:-*

"(3) any premises belonging to a wakf, registered with the Tamil Nadu Wakf Board."

4.1 It can be seen that, by the Amendment Act, 2010, in the definition of "public premises" under Section 2(e), sub-section 3 is added, by which, any premises belonging to a Waqf, registered with the Tamil Nadu Waqf Board, was also added to the definition of "public premises". The effect of the Act is that the Estate Officer, who would be notified under the Act, was entitled to pass orders evicting the



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unauthorised occupants in respect of the waqf properties. It is pertinent to state here that the State of Tamil Nadu subsequently notified the Chief Executive Officer of the Waqf Board itself as the Estate Officer in respect of the waqf properties.

IV. THE WAKF (AMENDMENT) ACT, 2013:

5. The background in which the amendment to the Wakf Act, 1995 was brought into has to be noted. The original provisions in the Wakf Act, 1995 were not stringent enough to deal with the encroachment or illegal occupation of waqf properties. Therefore, the Sachar Committee recommended that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 should be applied to waqf properties as these properties are for the benefit of the public and not for any individual. The Joint Parliamentary Committee on Waqf in its Third Report also requested all the State Governments to bring the waqf properties under the State Public Premises (Eviction of Unauthorised Occupant) Act. However, only a few states amended their respective Public Premises Acts. Therefore, the Parliament decided to bring in an amendment to the Waqf Act, 1995.



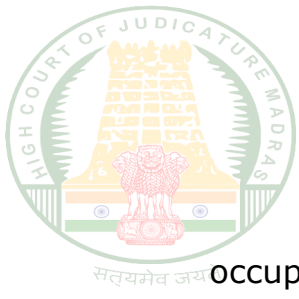
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5.1 Accordingly, the Act No.27 of 2013 was enacted by the Parliament, which received the assent of the President on 20.9.2013 and was published in the Government of India Extraordinary Gazette, Part-II, Section 1, No.37, dated 23.09.2013. As per the same, the Act has to come into force from the date to be notified by the Central Government. The Central Government appointed 1.11.2013 as the date from which the Act came into force. The Amendment Act contained 57 Sections, by which, it amended various provisions of the Waqf Act, 1995. In the Principal Act, a new Section 3(ee) was included, which defines "encroacher", and the same is extracted hereunder for ready reference:

"(ee) "encroacher" means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board."

5.2 Section 7 of the Principal Act was amended so as to enable the Tribunal to decide any question or dispute and the Tribunal was also vested powers for assessment of damages of unauthorised



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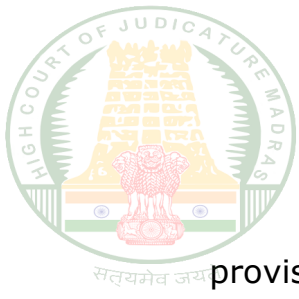
occupation of the waqf property as arrears of land revenue.
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5.3 Section 14 of the Principal Act was amended empowering the Chief Executive Officer to make an application to the Tribunal for grant of an order of eviction for removing the encroachers.

5.4 New sub-sections (4) and (5) were added to Section 54 empowering the Tribunal to make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof. Sub-section (5) of Section 54 provides for the manner of taking possession of the property after the order is passed.

5.5 Section 55 of the Principal Act is also amended and a new Section 55A, regarding disposal of the property left with the unauthorised occupants, was included.

5.6 Section 83 of the Principal Act relating to the Wakf Tribunal was amended by replacing Section 83(1) by making a specific



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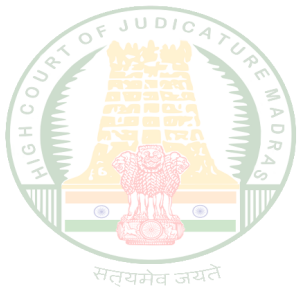
provision for the State Government to constitute Tribunals for the determination of any dispute, question or other matters relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the leasee of such property under the Act and define the local limits and jurisdiction of such Tribunals.

5.7 Section 85 of the Principal Act was amended to substitute the words "civil court" with "*civil court, revenue court and any other authority*".

5.8 A new Section 108A was also introduced to provide that the Act to have overriding effect over other laws.

5.9 It is essential to extract the amended Sections 7, 54, 55, 83, 85 and 108A, which are relevant to deal with the issue on hand:

"7. Power of Tribunal to determine disputes regarding auqaf. — (1) *If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia*



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waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

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

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

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

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf



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shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

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

(4) The list of auqaf 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.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of



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assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector: Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

54. Removal of encroachment from waqf property.— (1) *Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is waqf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.*



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(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on any such waqf property, he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the waqf.

(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property: Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by



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the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.

55. Enforcement of orders made under section 54.—Where the person, ordered under sub-section (4) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may refer the order of the Tribunal to the Executive Magistrate within the local limits of whose jurisdiction the land, building, space or other property, is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to



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the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

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.*

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



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(3) *Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:*

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where



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the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

(4) Every Tribunal shall consist of—

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

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

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

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

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



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decree or order.

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

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

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

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or



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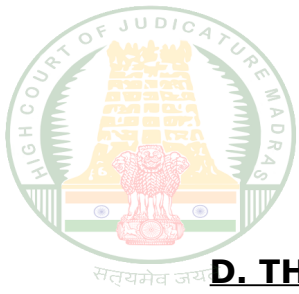
propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

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.*

108A. Act to have overriding effect.— *The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

C. NO PRESIDENTIAL ASSENT TO THE STATE ENACTMENT:

6. It is pertinent to state here that, after the above amendments came into force with effect from 1.11.2013, no Presidential assent has been obtained in respect of the Tamil Nadu Act No.33 of 2010.



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D. THE ORDER OF THE LEARNED SINGLE JUDGE:

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7. In the background, the Chief Executive Officer, being the Estate Officer notified under the Tamil Nadu Act, issued show cause notices as against various persons, who according to him, were unauthorised occupants of the waqf property either being tenants whose leases have expired/determined or encroachers of the property. These persons have challenged the respective notices/orders passed by the Chief Executive Officer by filing writ petitions in W.P.Nos.17331, 13506, 13510, 13514, 144224, 14426, 14428, 14432, 16963, 17164, 17399, 17371, 18475 and 18479 of 2023 essentially contending that after coming into force of the Waqf Amendment Act, 2013 since the provisions of the Tamil Nadu Public Premises (Unauthorised Occupants) Amendment Act (Act No.33 of 2010) are deemed to be void being repugnant to the Central Act as per Article 254 of the Constitution of India, the Chief Executive Officer had no authority to issue show cause notice under the Tamil Nadu Act. When the said writ petitions were pending, independently, W.P.No.6767 of 2022 and other connected writ petitions were filed before this Court challenging the *vires* of Act No.33 of 2010, which were pending before this Court.



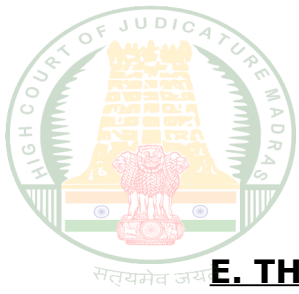
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7.1 Pending the same, the learned Single Judge took up the aforementioned W.P.No.17331 of 2023 etc. batch and, by a common order dated 3.7.2023, dismissed the writ petitions on the ground that unless and until the Act No.33 of 2010 is challenged and repugnancy determined by a Division Bench of this Court, it cannot be declared unconstitutional in collateral proceedings without express challenge to the Act, which would lie only before the Division Bench of this Court and since the other questions relating to the merits of the matter are to be raised only before the Estate Officer in response to the show cause notices, dismissed all the writ petitions.

7.2 Aggrieved by the same, writ appeals in W.A.Nos.2865, 2080, 2074, 2076, 2078, 2109, 2195, 2289, 2290 of 2023, 820 and 944 of 2024 are filed.

7.3 As such, all the writ petitions challenging the *vires* of Act No.33 of 2010 and the writ appeals arising out of the order of the learned Single Judge are being clubbed together and are heard and disposed of by this common judgment.



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E. THE SUBMISSIONS:

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8. We have heard Mr.V.Raghavachari, learned Senior Counsel; Mr.S.R.Raghunathan; Mr.H.Mohamed Ghouse; Mr.A.Mohammed Ismail; Mr.N.Manoharan; Mr.S.M.Loganathan, learned counsels appearing on behalf of the petitioners/appellants. We have also heard Mr.P.S.Raman, learned Advocate-General, assisted by Mr.A.Edwin Prabakar, learned State Government Pleader appearing on behalf of the State of Tamil Nadu; Mr.AR.L.Sundaresan, learned Additional Solicitor-General of India, assisted by Mr.Rajesh Vivekananthan, Dy. Solicitor-General of India and Mr.K.Srinivasa Murthy, learned Sr. Panel Central Government Counsel appearing on behalf of the Union of India and learned Senior Counsels Mr.S.Silambannan for Mr.S.Haja Mohideen Gisthi; Mr.Srinath Sridevan for Mr.Avinash Wadhvani; Mr.N.A.Nissar Ahamed for Mr.L.Kowsar Nissar; Mr.Mohammed Fayaz and Mr.R.Abdul Mubeen, learned counsel appearing on behalf of the Wakf Board and Waqfs respectively.

8.1 Since the arguments of all learned counsels appearing on behalf of the petitioners/appellants as also the Waqf Board and Waqfs overlap, their arguments are summarised hereunder in general.



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8.2 On behalf of the petitioners/appellants, it is contended that the Parliament, through Act No.27 of 2013, introduced amendments specifically to deal with the unauthorised occupation of the waqf properties and eviction thereof. The statement of objects and reasons for introducing the amendments itself clearly states so. The amended Section 54 clearly and categorically provides the procedure to deal with such encroachments or unauthorised occupation. The jurisdiction of the civil court, revenue court and any other authority has been barred as per the amended Section 85 that would include the authority of the Estate Officer under the Tamil Nadu enactment also. Section 108A has a non-obstante clause providing for overriding effect of the Waqf Act. As such, once the Central enactment intends to occupy the entire field by providing for a comprehensive mechanism for eviction of the unauthorised occupants/tenants from waqf properties, the impugned Tamil Nadu Act No.33 of 2010 is superseded in the sense that the State Legislation which is repugnant to the Central Act shall be void.

8.3 It is contended that the repugnancy arises on account of

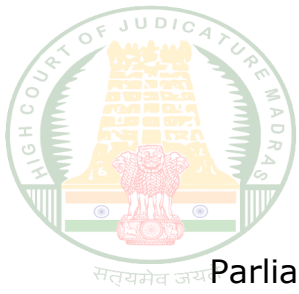


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direct conflict as different procedures are prescribed. Under Section 54, the Chief Executive Officer of the Waqf Board is required to make an application before the Waqf Tribunal for eviction of unauthorised occupants, but, as per the Tamil Nadu enactment, the Chief Executive Officer, being the Estate Officer, is entitled to pass eviction orders himself. As such, there is a direct conflict as both legislations are inherently contradictory and oppose each other and cannot be given effect to by any construction whatsoever.

8.4 Secondly, the repugnancy also arises on account of the fact that the Parliament intends to occupy the entire field that is to say the removal of encroachments in respect of the waqf and waqf properties. When the Waqf Act, 1995 as amended in the year 2013 is a comprehensive legislation dealing with every aspect and waqf and waqf property, including the eviction of unauthorised occupants/tenants, the repugnancy arises as Parliament legislation occupies the entire field. Moreover, by amending Section 85 of the Waqf Act to expressly ensure that no civil court, revenue court or any other authority has power and jurisdiction in respect of the disputes relating to the waqf which are determinable by the Waqf Board, the



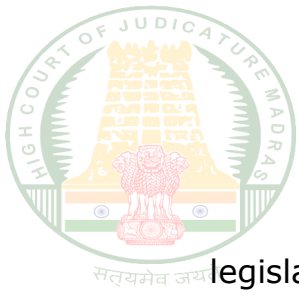
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Parliament has made its intention very clear that the Central Act alone is to occupy the field. Therefore, the repugnancy arises on account of the field being occupied by the Central legislation.

8.5 Learned counsels would rely upon the judgment of the Hon'ble Supreme Court of India in ***Rashid Wali Beg v. Farid Pindari and others, reported in (2022) 4 SCC 414***, more specifically, paragraphs 22, 24, 26, 28, 32,34, 42, 42.4, 45, 47, 54.11, 56 and 64 to contend that the Hon'ble Supreme Court of India after considering the amendments to the Waqf Act in the year 2013 has held that the jurisdiction of the Waqf Tribunal is absolute and all pervasive in respect or disputes relating to the waqf; the bar with reference to the civil court or any other authority is complete and no matter is left out. On the strength of the said judgment, it is contended that the Central legislation occupies the entire field.

8.6 The judgment in the case of ***G.Mohan Rao and others v. State of Tamil Nadu and others, reported in (2022) 12 SCC 696*** is relied upon for the proposition that even if the Parliamentary



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legislation is subsequent, unless the State enactment receives the assent of the President after the Parliamentary enactment, the repugnancy would arise and the said law would become void under Article 254 of the Constitution of India.

8.7 For the proposition that the State enactment, namely, Public Premises (Eviction of Unauthorised Occupants) Act and also amendments in pith and substance would be traceable to the legislative power under Entries 6, 7, 13 of List III of the Seventh Schedule to the Constitution of India, reliance is placed on the judgment of the Constitutional Bench in the case of ***Indu Bhushan Bose v. Rama Sundari Debi and another, reported in (1969) 2 SCC 289***, more specifically, paragraphs 13 and 14 of the said judgment.

8.8 Further reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***Accountant and Secretarial Services Private Limited and another v. Union of India and others, reported in (1988) 4 SCC 324***, more specifically, paragraphs 16 and 17 to contend that Entry 18 of List II would not apply and the



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legislation would fall under Entries 6, 7 and 13 of List III in the Seventh Schedule to the Constitution. Paragraphs 18 to 23 are relevant to contend that the view taken by the Constitutional Bench in **Indu Bhushan Bose**, supra, would be the law laid down by the Hon'ble Supreme Court of India.

8.9 Reliance is placed on the Constitutional Bench judgment of the Hon'ble Supreme Court of India in the case of **Ashoka Marketing Limited and another v. Punjab National Bank and others, reported in (1990) 4 SCC 406**, more specifically relying upon paragraphs 25, 36, 48, 50, 54, 56, to contend that the legislative power in respect of the impugned enactment is traceable only to the Entries in the Concurrent List and not Entry 18 of the State List II.

8.10 The judgment of the Hon'ble Supreme Court of India in the case of **Forum for People's Collective Efforts (FPCE) and another v. State of West Bengal and another, reported in (2021) 8 SCC 599** is relied upon to drive home the point as to how this Court has to apply the three tests of repugnancy as enunciated by the Hon'ble Supreme Court of India and re-stated in the above judgment so as to



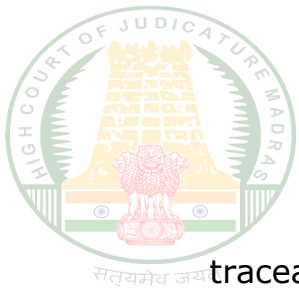
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determine whether the impugned enactment is repugnant to the Central Act or not. Specific reliance is made to paragraphs 116, 120, 129 to 132 of the said judgment.

8.11 Learned Additional Solicitor-General of India appearing on behalf of the Union of India pointing to the fact that the Union has not filed any affidavit either supporting or opposing the petitioners/ appellants would submit that the Union is not necessarily called upon to take a stand as the challenge is made to the State legislation.

8.12 Learned Advocate-General appearing on behalf of the State would submit that repugnancy or the obligation to obtain presidential assent as per Article 254 of the Constitution of India would arise if only the legislation of the State in pith and substance is traceable to the legislative power under the Entries in the Concurrent List III of the Seventh Schedule of the Constitution of India. A Constitution Bench of the Hon'ble Supreme Court of India in the case ***Rajendra Diwan Vs. Pradeep Kumar Ranibala, reported in (2019) 20 SCC 143***, while considering the similar enactment relating to the Rent Control Act made by the State of Chhattishgarh has held that the power is



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traceable to Entry 28 of List II i.e. the State list. This Court is bound by the authoritative pronouncement of the Constitutional Bench of the Hon'ble Supreme Court of India. The judgments submitted by the petitioners are earlier to the same and, therefore, no longer would be good law. Thus, the plea of repugnancy should fail.

8.13 Alternatively, learned Advocate-General would submit that the State enactment merely provides yet another remedy in respect of eviction of unauthorised occupants and does not in any other manner deal with the waqf properties or its administration thereof. The Waqf Act, 1995 is only a legislation with respect to the administration of the waqf though now after the amendment also provides for eviction of unauthorised occupants. The Tamil Nadu enactment does not in any manner run contradictory to the said statute. The doctrine of election applies. Two statutes providing more than one remedy is held to be valid. The Constitution Bench of the Hon'ble Supreme Court of India in ***Pandia Nadar and others v. The State of Tamil Nadu and others (1974) 2 SCC 539*** while dealing with the remedy of providing summary eviction under the Tamil Nadu Land Encroachment Act, 1906 has specifically held that the provision of more than one remedy is



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perfectly in order. The amendment to the Waqf Act would only mean that if the resort is taken under the Central Act, then the proceedings under the State Act can no longer continue. For instance, any unauthorised occupant, even after receipt of notice from the Estate Officer, approaches the Waqf Tribunal to declare a particular property as his personal property, then in that particular circumstance, the proceedings under the Tamil Nadu enactment has to be stopped. In that manner both statutes can operate harmoniously. Hence, there would be no repugnancy whatsoever.

8.14 On behalf of the Waqf Board and Waqfs, it is submitted that the legislative power relating to the State enactment i.e. eviction of unauthorised occupants would be more appropriately traceable to Entry 1 of List II, namely, "*public order*". Even assuming that the legislative power is traceable to Entries in the Concurrent List, the law relating to the repugnancy makes it incumbent upon the Court exercising judicial review to make every effort to harmoniously read and give effect to both enactments and only if such exercise becomes impossible, the State enactment has to be declared as repugnant and void.

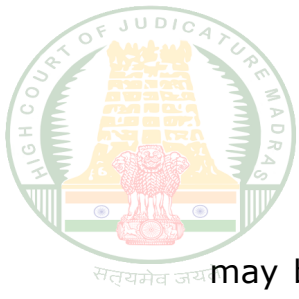


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8.15 It is submitted that after the amendment, two courses would be open for the Chief Executive Officer. He can either file an application to the Waqf Tribunal for eviction of the unauthorised occupants or issue show cause notice under the State enactment and proceed to pass an order of eviction by himself. From a reading of Section 85 of the Waqf Act, 1995, as amended, it would be clear that the jurisdiction of the civil court or any other authorities would be barred, if only the question is determinable by the Waqf Tribunal. The question becomes determinable by the Waqf Tribunal only upon filing of the application. Until the same, there is no bar on the other authorities, namely, the Estate Officer, to proceed in the manner known to law. As such, there is no repugnancy between both statutes.

8.16 The waqf properties are being encroached upon rampantly. If the person is a rank encroacher, there is no necessity for the Chief Executive Officer to apply to the Tribunal to decide the dispute. It would be appropriate for him to choose the remedy under the State enactment. On the other hand, if the fact situation involves the contention relating to title etc., by the unauthorised occupant, that

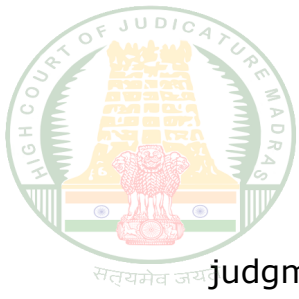


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may be a fit case to approach the Waqf Tribunal for eviction. Thus, it can be seen that the provision of an alternative efficacy remedy so as to restore and secure possession of the waqf properties by any other enactment of the State can never be repugnant to the Waqf Act. In support of their submissions, learned counsels would also rely upon certain observations made by the Hon'ble Supreme Court of India in **Rashid Wali Beg**, supra.

8.17 Learned counsels would rely upon the judgment of the Hon'ble Supreme Court in the case of **Jabbar Baig v. Darga H.A. Ulla Sha and N. Sha & N. Sha and another** [Civil Appeal No.3095 of 2005, decided on 29.3.2006] to contend that the Hon'ble Supreme Court of India while considering the very Waqf Act and the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1994 has held that the Parliament Act is a general Act and the Act of 1994 passed by the Karnataka is a Special Act and further held that the general act cannot override the Special Act and, therefore, no repugnancy would arise. For the purpose of the principles to be adopted by this Court while considering the repugnancy between two enactments, the learned counsels would rely upon the following



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judgments:

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(i)M.Karunanidhi v. Union of India, reported in (1979) 3 SCC 431.

(ii)Hoechst Pharmaceuticals Limited and others v. State of Bihar and others, reported in (1983) 4 SCC 45.

(iii)Bondu Ramaswamy and others v. Bangalore Development Authority and others, (2010) 7 SCC 129.

(iv)Offshore Holdings Private Limited v. Bangalore Development Authority, reported in (2011) 3 SCC 139.

(v)Rajiv Sarin and others v. State of Uttarakhand and others, reported in (2011) 8 SCC 708.

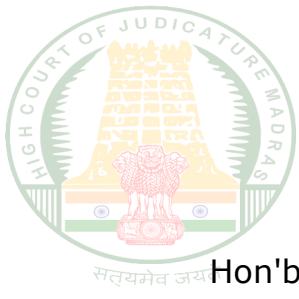
(vi)K.T.Plantation Private Limited and others v. State of Karnataka, reported in (2011) 9 SCC 1.

(vii)State of Kerala and others v. Mar Appraem Kuri Company Limited and others, reported in (2012) 7 SCC 106.

(viii)Innoventive Industries Limited v. ICICI Bank and others, reported in (2018) 1 SCC 407.

(ix)Forum for People's Collective Efforts (FPCE) and others v. State of West Bengal and others, reported in (2021) 8 SCC 599.

8.18 For the proposition that the provision of additional and more than one remedy in law would be legal, the judgment of the



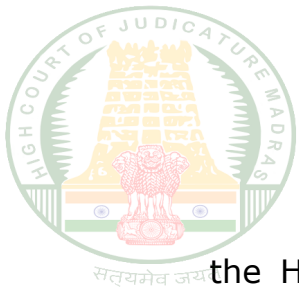
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Hon'ble Supreme Court of India in ***Raja Bhairebendra Narayan Bhup v. State of Assam, reported in AIR 1956 SC 503***, more particularly, paragraph 10 is relied upon. For the same proposition, the judgment in ***Manganlal Chhaganlal Private Limited v. Municipal Corporation of Greater Bombay and others, reported in (1974) 2 SCC 402***, more specifically, paragraph 40 is relied upon. To contend that there is presumption of constitutionality in respect of statutes, the Constitutional Bench judgment in the case of ***R.S.Joshi, Sales Tax Officer, Gujarat and others v. Ajit Mills Limited and another, reported in (1977) 4 SCC 98*** is relied upon.

8.19 By placing reliance upon paragraphs 10 to 13 of the judgment of the Hon'ble Supreme Court of India in the case of ***State of Maharashtra v. Kamal Sukumar Durgule and others, reported in (1985) 1 SCC 234***, it is contended that if the rights of encroachers are determined as per the statutes, the same would be binding on them.

8.20 To contend that the impugned legislation would fall under Entry 18 of List II reliance is made on paragraph 10 of the judgment of



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the Hon'ble Supreme Court of India in ***Jilubhai Nanbhai Khachar and others v. State of Gujarat and another, reported in 1995 Supp (1) SCC 596***, whereunder, it is held that the words "rights in" or "over land" confer very wide power which are not limited by rights between the landholders *inter se* or the landholder or the State or the landholder or the tenant and it may include the resumption of the estate and extinguishment of the rights.

8.21 To contend that if the legislative power is traceable to Entry 1 or 18 of List II repugnancy would not arise, reliance is place on paragraph 65 of the judgment of the Hon'ble Supreme Court of India in ***Naga People's Movement of Human Rights v. Union of India, reported in (1998) 2 SCC 109***.

8.22 To contend that the proceedings which are initiated prior to the year 2013 can continue, the judgment of the Karnataka High Court in ***Shanaz Begum and others v. Muslim Boys Orphanage and others*** (W.P.Nos.733, 701, 713, 754, 760 and 776 of 2021, decided on 1.10.2021) is relied upon.



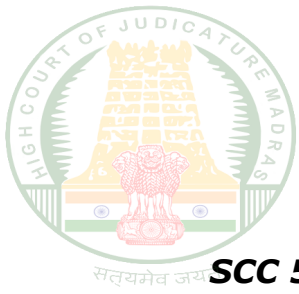
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8.23 Pointing out the judgment of the Hon'ble Supreme Court of India in the case of ***P.V.Nidhish and others v. Kerala State Wakf Board and another, 2023 SCC OnLine SC 519***, it is submitted that the definition of "encroachers" under Section 3(ee) by the Amendment Act of the Central legislation would not by itself affect the tenants by holding over whose possession are traceable much prior to the amendment came into force and, therefore, in such cases, it may be necessary to resort to the Tamil Nadu enactment.

8.24 Reliance is also placed on the report of the Select Committee of the ***Wakf (Amendment) Bill, 2010*** and the recommendations made therein.

8.25 To contend that even otherwise, in pith and substance the Tamil Nadu enactment would operate only under Entries 6, 7 and 13 of List III and not under Entry 18 of List III and, if the legislative powers are traceable to different Entries in the Concurrent List, there cannot be any repugnancy, reliance is placed on the judgment of the Hon'ble Supreme Court of India in the case of ***Vijaya Kumar Sharma and others v. State of Karnataka and others, reported in (1990) 2***



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8.26 The judgment of the Hon'ble Supreme Court of India in the ***State of Bihar and another v. Kedar Sao and another, reported in (2004) 9 SCC 344*** is relied upon to contend that if more than one enactment confers the same power to different authorities to be exercised in the same or different circumstances, it cannot be construed that the legislature is denuded of its power.

8.27 The judgment of the Hon'ble Supreme Court of India in ***Power Machines India Limited v. State of Madhya Pradesh and others, reported in (2017) 7 SCC 323*** is pressed into service for the proposition that election of the remedy would be a choice of the right holder and when a statute provides for more drastic procedure different from the ordinary procedure, the same would not lead to the presumption of repugnancy and neither the statute would be hit by Article 14 of the Constitution of India.

8.28 The judgment of the Hon'ble Supreme Court of India in ***Jay Engineering Works Limited v. Industry Facilitation Council and another, reported in (2006) 8 SCC 677*** is relied upon to contend



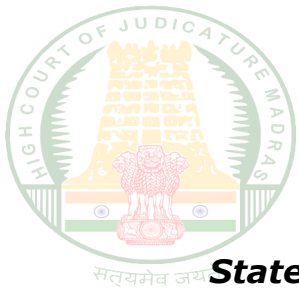
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that there can be a situation where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation and as far as the eviction is concerned, the State enactment should be treated as a special legislation.

8.29 The judgment of the Hon'ble Supreme Court of India in ***P.N.Krishan Lal v. Government of Kerala, reported in 1995 (Sup2) SCC 187***, more specifically, paragraphs 12 to 14 is relied upon to contend that it is not incumbent or necessary on the part of the State to seek the assent of the President under Article 254 of the Constitution of India in respect of each and every provision of the Central Act, of which there would be inconsistency or repugnancy. If the assent of the President is given to the State statute, for every amendment it need not be obtained. Therefore, when the original Act had the assent of the President, it was not necessary to obtain the assent of the President once again. Therefore, no repugnancy would arise.

8.30 Further reference is made to the judgment of the Hon'ble Supreme Court of India in ***Sri Sri Sri K.C.Gajapathi Narayan Deo v.***



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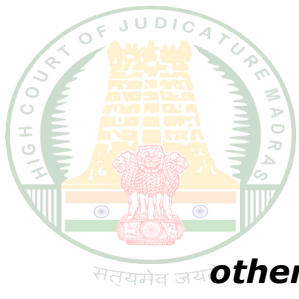
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State of Orissa, reported in AIR 1953 SC 375 to contend that the assent which is given by the President initially would protect the legislation.

8.31 The judgment in **Dwarkadas Shrinivas of Bombay v. Sholapur Spinning and Weaving Company Limited and others, reported in AIR 1954 SC 119** is relied upon to contend that provision of more summary effective remedy would not violate the fundamental rights of the petitioners.

8.32 Reference is made to the judgment of the Hon'ble Supreme Court in **Dharam Dutt and others v. Union of India and others, reported in (2004) 1 SCC 712** to contend that when possession is sought to be secured from the encroachers by the impugned enactment, the same is under the authority of law and, therefore, would not violate Article 300A of the Constitution of India.

8.33 The judgment in the case of **State of Kerala and another v. Peoples Union for Civil Liberties, Kerala State Unit and**



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others, reported in (2009) 8 SCC 46 is relied upon to contend that if the power of the State is traceable to a statute which came within the purview of List II, there was no necessity to obtain the Presidential assent.

F. THE POINTS FOR CONSIDERATION:

9. We have considered the rival submissions and perused the material records. Upon consideration thereof, the following questions arise for our consideration:-

- (1) To what Entry the legislative power in respect of the impugned enactment is to be traced?
- (2) If the legislative power is traceable to the Concurrent List, then whether Presidential assent obtained in respect of the original enactment would save the impugned amendment?
- (3) If it has to be assumed that there is no Presidential assent, whether or not the impugned enactment would be repugnant to the Central legislation, namely the Waqf Act, 1995, as amended in 2013?



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G. QUESTION NO.1:

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To what Entry the legislative power in respect of the impugned enactment is to be traced?

10. To answer this question, at the outset, it is necessary to extract Entry I and Entry 18 of List II, which read thus:

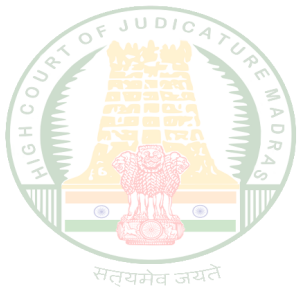
"1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof) in aid of the civil power.

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural lands; colonization."

10.1 The relevant Entries, namely, Entry 6, Entry 7, Entry 13 and Entry 28 of List III of the Seventh Schedule are extracted hereunder for ready reference:

"6. Transfer of property other than agricultural land, registration of deeds and documents.

7. Contracts, including partnership, agency, contracts



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of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.”

10.2 It is true that while dealing with the Chattisgarh Rent Control Act, the Constitutional Bench of the Hon'ble Supreme Court of India in ***Rajendra Diwan (Cited supra)*** has held as follows in paragraphs 42, 46, 52 and 53, which are extracted hereunder for ready reference:

“42. Entry 18 of the State List enables the State Legislature to enact law with respect to land, including rights in and over land, land tenures including relation of landlord and tenant and the collection of rent. The State Legislature being clothed with power to enact law in respect of land tenures, including the relation of landlord and tenant and the collection of rent, it had legislative competence to enact the Rent Control Act, insofar as the same



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regulates the relationship of landlord and tenant and the collection of rent.

....

46. On a conjoint reading of Article 323-B and Articles 245 and 246 of the Constitution of India with Entry 18 of the State List in the Seventh Schedule, there can be no doubt that the State Legislature was competent to enact law to provide for adjudication and trial of all disputes, complaints and offences relating to tenancy and rent, by a Tribunal.

.....

52. Entry 18 of the State List only enables the State Legislature to legislate with regard to landlord-tenant relationship, collection of rents, etc. This Entry does not enable the State Legislature to circumvent Entry 65 of the State List or Entry 46 of the Concurrent List which enable the State Legislature to enact laws with respect to the jurisdiction and powers of Courts, except the Supreme Court, or to render otiose, Entry 77 of the Union List, which expressly confers law-making power in respect of the jurisdiction of the Supreme Court, exclusively to Parliament.

53. Entry 18 of the State List, which only enables the



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State Legislature to legislate with regard to land, land tenures, landlord-tenant relationship, collection of rents, etc. does not enable the State Legislature to enact law conferring appellate jurisdiction to the Supreme Court in respect of orders passed by an Appellate Rent Control Tribunal, constituted under a State law.”

10.3 Firstly, it can be seen that the question whether these encasements relating to Buildings would fall under Entry 18 or under Entries 6,7,13 of the Concurrent list was not a question which was considered and answered in **Rajendra Diwan**. The Hon'ble Supreme Court of India in The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Shah Faesal and Ors. Vs. Union of India and Anr., (2020) 4 SCC 1** had restated the purpose and importance of the law of precedents and elucidated the nature of a binding precedent. Paragraph 25 needs to be extracted :

“25.In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio



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decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9)

*“9. ... It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. ... A decision is only an authority for what it actually decides. ... The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.”
(emphasis supplied)”*

10.4 However, we must hasten to add that as far as the High Courts are concerned, even the obiter and observations of the Hon'ble Supreme Court of India would also be binding. It is essential to extract the relevant portion in paragraph No.11 of the Judgment of the Hon'ble Supreme Court of India in **Peerless General Finance &**



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Investment Co. Ltd. v. Commissioner of Income Tax, (2020) 18

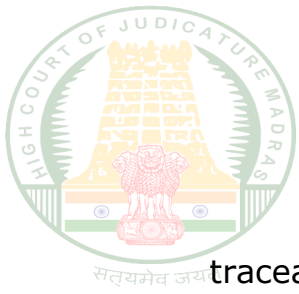
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SCC 625:-

“11. ... It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in Peerless General Finance & Investment Co. Ltd. [Peerless General Finance & Investment Co. Ltd. v. RBI, (1992) 2 SCC 343 : (1992) 75 Comp Case 12] must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court.”

(Emphasis supplied)

10.5 In this regard, it is essential to trace the march of law. The earlier Constitution Bench of the Hon'ble Supreme Court of India, in **Indu Bhushan Bose** (cited supra), while considering the West Bengal Premises Tenancy Act, 1956, considered the very Entry 18 of List II as also Entries 6, 7 and 13 of List III and held that the power would be



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traceable only to Entries 6, 7 and 13 and not to Entry 18 of List II. The

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relevant portion of paragraph 13 would read thus:

"13. We have felt considerable doubt whether the power of legislating on relationship between landlord and tenant in respect of house accommodation or buildings would appropriately fall in Entry 21 of List II of the Seventh Schedule to the Government of India Act, or in the corresponding Entry 18 of List II of the Seventh Schedule to the Constitution. These entries permit legislation in respect of land and explain the scope by equating it with rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents. It is to be noted that the relation of landlord and tenant is mentioned as being included in land tenures and the expression "land tenures" would not, in our opinion, appropriately cover tenancy of buildings or of house accommodation. That expression is only used with reference to relationship between landlord and tenant in respect of vacant lands. In fact, leases in respect of non-agricultural property are dealt within the Transfer of Property Act and would much more appropriately fall within the scope of Entry 8 of List III in the Seventh Schedule to the Government of India Act read with Entry 10 in the same list, or



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within the scope of Entry 6 of List III in the Seventh Schedule to the Constitution read with Entry 7 in the same list. Leases and all rights governed by leases, including the termination of leases and eviction from property leased, would be covered by the field of transfer of property and contracts relating thereto. However, it is not necessary for us to express any definite opinion in this case on this point because of our view that the relationship of landlord and tenant in respect of house accommodation situated in cantonment areas is clearly covered by the entries in List I.”

10.6 Thus, it can be seen that a caveat was also added that the Court need not express any definite opinion in that regard. But, however, it should also be noted that thereafter once again in paragraph 14, it was held that the judgment of the Calcutta High Court taking a view that the legislative power is traceable to Entries 6, 7 and 13 is correct and the relevant portion of paragraph 14 is extracted hereunder:

“14. On the other hand, the Rajasthan High Court in Nawal Mal v. Nathu Lal, ILR 11 Raj 421 held that the power of the State Legislature to legislate in



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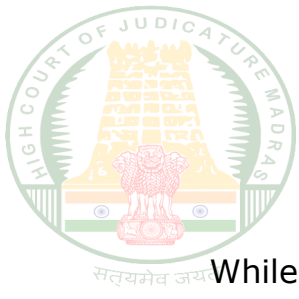


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respect of landlord and tenant of buildings is to be found in Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and not in Entry 18 of List II, and that the power was circumscribed by the exclusive power of Parliament to legislate on the same subject under Entry 3 of List I. That is also the view which the Calcutta High Court has taken in the judgment in appeal before us. We think that the decision given by the Calcutta High Court is correct and must be upheld.”

10.7 A Division Bench of the Madhya Pradesh High Court in ***L.S.Nair v. Hindustan Steel Limited, Bhilal and others, reported in 1980 M.P.L.J. 429***, has considered the very Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held that it would not be correct to say that the legislative power would be under Entry 18 of List II, but would be traceable under Entries 6, 7 and 13 of List-III.

10.8 The Hon'ble Supreme Court of India in ***Accountant and Secretarial Services Private Limited***, supra, had thereafter considered both Entry 18 of List II and Entries 6, 7 and 13 of List III.



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While considering the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Hon'ble Supreme Court, specifically held that Entry could be traceable only to the Concurrent List and not to Entry 18 of the State List. It is further held in paragraphs 19 and 23 that the Constitution Bench in **Indu Bhushan Bose**, supra, had laid down the law and it cannot be considered as observations.

10.9 The Constitutional Bench of the Hon'ble Supreme Court of India in **Ashoka Marketing Limited**(*cited supra*), considered all the previous pronouncements and categorically held that the legislative power in respect of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as also the rent control legislations, would be traceable only to the Concurrent List. It is essential to quote paragraph 46, which reads as under:

"46. As regards rent control legislation enacted by the State legislatures the position is well settled that such legislation falls within the ambit of Entries 6, 7, and 13 of List III of the Seventh Schedule to the Constitution (See : Indu Bhushan Bose v. Rama Sundari Devi, (1969) 2 SCC 289, V.Dhanpal Chettiar case, (1979) 4 SCC 214, Jai Singh Jairam Tyagi v.



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Mamanchand Ratilal Agarwal, (1980) 3 SCC 162 and Accountant and Secretarial Services Pvt. Ltd. v. Union of India, (1988) 4 SCC 324.”

(Emphasis supplied)

10.10 When the High Court is faced with situations where there are conflicting views in respect of the judgments of the Hon'ble Supreme Court of India of equal Bench strength, the course to be adopted by the High Court is no longer *res integra*. A Constitution Bench of the Hon'ble Supreme Court of India in ***National Insurance Co. Ltd. v. Pranay Sethi and others, reported in (2017) 16 SCC 680***, more specifically, in paragraphs 15 to 19 held as under:

"15. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

16. In State of Bihar v. Kalika Kuer [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448] , it has been held : (SCC p. 454, para 10)

"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam



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and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

The Court has further ruled : (SCC p. 454, para 10)

"10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

17. In G.L. Batra v. State of Haryana [G.L. Batra v. State of Haryana, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575] , the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India v. Godfrey Philips India Ltd. [Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369 : 1986 SCC (Tax) 11] , Sundarjas Kanyalal Bhatija v. Collector, Thane [Sundarjas Kanyalal Bhatija v. Collector, Thane, (1989) 3 SCC 396] and Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel [Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel, AIR 1968 SC 372] . It may be noted here that the Constitution Bench in Madras Bar Assn. v. Union of India [Madras Bar Assn. v. Union of India, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench



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judgment in Union of India v. Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by the later Constitution Bench.

18. In this regard, we may refer to a passage from Jaisri Sahu v. Rajdewan Dubey [Jaisri Sahu v. Rajdewan Dubey, AIR 1962 SC 83] : (AIR p. 88, para 10)

"10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [Dasrath Singh v. Damri Singh, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [Ram Asre Singh v. Ambica Lal, AIR 1929 Pat 216] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the



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Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Gundavarupu Seshamma v. Kornepati Venkata Narasimharao* [*Gundavarupu Seshamma v. Kornepati Venkata Narasimharao*, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, Para 1687, pp. 799-800:

'1687. ... the court is not bound to follow a decision of its own if given *per incuriam*. A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.'

In *Katragadda Virayya v. Katragadda Venkata Subbayya* [*Katragadda Virayya v. Katragadda Venkata Subbayya*, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High



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Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in D.D. Bilimoria v. Central Bank of India [D.D. Bilimoria v. Central Bank of India, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340] . The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court.”

19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.”

(Emphasis supplied)



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10.11 The Hon'ble Supreme Court of India, in the latest judgment of the ***Union Territory of Ladakh and others Vs. Jammu & Kashmir National Conference and another, reported in 2023 SCC OnLine SC 1140***, had reiterated the same position and it is essential to extract paragraph 35, which reads as follows:

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength.



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of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

(Emphasis supplied)

10.12 Therefore, the High Court has to carefully consider the facts and circumstances of the case and has to follow the view taken by the earlier Bench. Upon considering of the instant situation where we are called upon to consider the source of legislative power, we deem it appropriate to the follow the dictum laid down in **Ashoka Marketing (Cited Supra)**.

10.13 We draw further support to take such a view given the latest judgment of the Hon'ble Supreme Court of India in **Ram Krishan Grover and others -Vs- Union of India and others 2020 12 SCC 506**, in which the same has been expressly considered. It is essential to extract paragraph 35 of the said judgment :

"28. In Accountant & Secretarial Services (P) Ltd. v. Union of India [Accountant & Secretarial



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Services (P) Ltd. v. Union of India, (1988) 4 SCC 324], this Court had examined the question of repugnancy and interplay between the Central enactment viz. the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 based on the pattern of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Premises Tenancy Act, 1956 and the question which of these enactments would prevail. The Court had interpreted Entries 3, 32, 43 and 44 of List I, Entry 18 of List II and Entries 5, 6 and 7 of the List III and the corresponding entries in the Government of India Act, 1935 to hold that all the three legislations were passed in exercise of powers conferred with respect to matters contained in the Concurrent List. In view of the repugnancy and conflict between the Central enactment on one hand and the State law on the other, in terms of Article 254, the Central enactment shall prevail. Further, notwithstanding the earlier precedents, the Court had examined the question of the relevant entry applicable to the tenancy legislation and rejected the contention that Entry 18 of List II should be interpreted as encompassing within its ambit legislation on the relationship of landlord and tenant in regard to housing and buildings. Setting out



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several reasons it was observed that the power to legislate in respect of tenanted premises would fall within the ambit and scope of Entries 6, 7 and 13 of the Concurrent List and would not be referable to Entry 18 of List II. The expression "land" in Entry 18 of List II should be given as wide a construction as possible, but has to be read with the relevant entries in other Lists to give meaning and content to all of them. Inclusion of buildings and housing in the Concurrent List is appropriate and to place buildings and housing within the ambit of the expression "land" in Entry 18 of List II would denude other entries in Lists I and III concerning transfer of property, devolution and succession of land and buildings, etc. of their vigour and would render them otiose."

(Emphasis supplied)

10.14 Therefore, we reject the submissions to the contrary that the legislative power is traceable to Entry 18 or Entry 1 of the State list. We hold that, in pith and substance, the legislative power of the State in respect of the impugned enactment, as amended, is traceable only to Entries 6, 7, 13 and 28 of List III, the Concurrent List.



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H. QUESTION NO.2:

If the legislative power is traceable to the Concurrent List, then whether Presidential assent obtained in respect of the original enactment would save the impugned amendment?

11. In this case, originally, when the assent of the President was obtained for the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act in the year 1976, it can be seen that the same was not applicable in respect of waqf properties. The present Wakf Act, 1995 itself came to be enacted later. The amendments to the Wakf Act, due which repugnancy is pleaded, was enacted only in the year 2013. The definition of "encroachers" so as to include the tenants and other occupants whose lease have been expired/determined etc. and enabling provision to make application to the Waqf Tribunal and more specifically the bar in respect of the civil court, revenue court or any other authority were introduced only in the year 2013. Therefore, the requirement to receive the assent of the President itself would arise only after 2013 and, therefore, the assent given in the year 1976 can never be material.



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11.1 It is clear that the Presidential Assent has to be with reference to the repugnancy. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in **G.Mohan Rao and others v. State of Tamil Nadu and others, reported in (2022) 12 SCC 696** and the relevant portion of paragraph 68 reads thus:

"68. The petitioners' argument stemmed from the decision in Kaiser-I-Hind [Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., (2002) 8 SCC 182] . However, upon closer examination, we find that the reliance is misplaced. In that case, the Court was considering a requisition of assent by the State Government without specifying the exact law made by Parliament which is purportedly repugnant to the State law. In that light, the Court observed that the mandate of Article 254 requires placing the State law before the President for his/her consideration for permitting the State law to prevail over a specific law made by Parliament. In other words, there can be no general assent against all laws made by Parliament operating on the subject."

(Emphasis supplied)



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11.2 In such view of the matter, we hold that for the State legislation to prevail over the Central legislation, the subsequent assent of the President is mandatory. As a sequitur, we answer the question raised to the effect that obtaining of the assent in the year 1976 to the unamended Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1976 would not be sufficient to validate the statute under Article 254 of the Constitution of India after the amendments to the Wakf Act, 1995 in the year 2013.

I. QUESTION NO.3:

If there is no Presidential assent, whether or not the impugned enactment would be repugnant to the Central legislation, namely the Waqf Act, 1995, as amended in 2013?

12. This Court has to consider the issue of repugnancy of the impugned enactment with the Central Legislation, taking into account the scope of judicial review.

12.1 The Hon'ble Supreme Court in the case of ***M.Karunanidhi v. Union of India and another, (1979) 3 SCC 431***, held as follows:

"8.It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that



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where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures alone are competent to



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legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of



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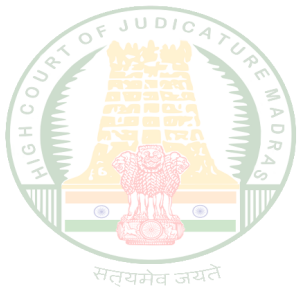
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the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.”

12.2 Thus, it can be seen that the legislative power of both legislations should be traceable to the Concurrent List III. The Court should apply three tests, namely (i) *direct conflict test*; (ii) *occupied field test*; and (iii) *the subject matter test*, as enunciated by the Hon'ble Supreme Court of India in **Forum for People's Collective Efforts (Cited Supra)** in paragraph 132.1 to 132.3 which are extracted hereunder for ready reference:

"132.1. The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both



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the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behaviour or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other.

132.2. The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a parliamentary enactment not because of an actual conflict with the absolute terms of a parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject.

132.3. The third test of repugnancy is where the law enacted by Parliament and by the State Legislature regulate the same subject. In such a case, the repugnancy does not arise because of a conflict



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between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.”

12.3 In the instant case, our primary consideration is as to whether the Parliament has intended to occupy the entire field. The statement of objects and reasons in respect of the Amendment Act, 2013 of the Waqf Act, 2013 was extracted supra. The Waqf Act, 1995, is a complete code in itself. Section 54 read with Section 83 of the Waqf Act, 1995 provides for a complete mechanism for eviction of an unauthorized occupation, including the tenants. The scheme of the Waqf Act, 1995, read in its entirety, would lead to the only conclusion that in case, the person against whom action is initiated for eviction on the ground of unauthorized occupation of a Waqf property and raises the question of the property being a Waqf property, it is only the Waqf Tribunal that has the jurisdiction to decide the nature of the property. The Estate Officer, under the Act 1 of 1976, would not possess the jurisdiction and/or the authority to decide the dispute with regard to the nature of the property.

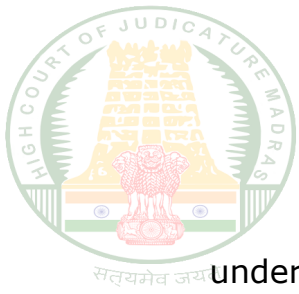


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12.4 Moreover, as observed above, Section 85 of the Waqf Act, 1995, succinctly phrased in a negative language, states that no suit or other legal proceedings shall lie in any (civil court, revenue court, any other authority) in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter, which is required by or under the Waqf Act, 1995, to be determined by a Tribunal.

12.5 Whenever a language is couched in negative terms, the same has the attributes of being in a mandatory form. In view of Section 85 of the Waqf Act, 1995, the Estate Officer, under the Act 1 of 1976, cannot exercise his jurisdiction in respect of a Waqf property. The ambit and scope of Section 85 of the Waqf Act, 1995, has been enlarged by 2013 amendment. Section 85 of the Waqf Act, 1995, prior to the amended Act of 2013, did not contain the words "revenue court or any other authority" nor contained the word "Waqf". However, while amending Sections 54 and 83 of the Waqf Act, 1995, thereby giving powers and jurisdiction to the Tribunal for eviction of unauthorized occupants, Section 85 of the Waqf Act, 1995, has been consciously amended and the jurisdiction of even the revenue court or any other authority is barred, thereby barring the jurisdiction of the Estate Officer



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under the Act 1 of 1976. The overriding effect of Section 85 of the Waqf Act, 1995, would not permit the Estate Officer under the Act 1 of 1976 to exercise his jurisdiction in respect of the Waqf property.

12.6 The amendment of the year 2013 under the Waqf Act, 1995, is subsequent to the amendment introducing Waqf property in the Act 1 of 1976. The Act 1 of 1976 was amended in the year 2010, bringing the Waqf property within its fold. The Central enactment is subsequent in point of time. It would be presumed that the Parliament was aware of the amendment carried out in the said Act, thereafter, has consciously amended the Waqf Act, 1995 (Central Act).

12.7 Thus, It can be seen that the Parliament wanted to deal with all kinds of encroachments and to provide for effective mechanisms with respect to the recovery of possession thereof. In this regard, the Hon'ble Supreme Court of India in **Rashid Wali Beg**, supra, while considering the effect of Section 83 and 85 of the Waqf Act held as follows:

"42. A conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of civil court



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contained in Section 6(5) and Section 7(2) is confined to Chapter II, but the bar of jurisdiction under Section 85 is all pervasive. This can be seen from the following distinguishing features:

42.1.

42.2.

42.3.

42.4. A major distinguishing feature between Sections 6(1) and 7(1) on the one hand and Section 83 on the other hand is that the dispute, question or other matter referred to in Sections 6 and 7 are confined only to what is included in the list of waqfs prepared under Section 4 and published under Section 5. The words "specified in the list of waqfs" found in Sections 6(1) and 7(1), are conspicuous by their absence in Section 83(1). Therefore, it is clear that Sections 6 and 7 speak only about two categories of cases, but Section 83 covers the entire gamut of possible disputes in relation to any waqf or waqf property.

43. It is seen that there are 2 limbs to Section 85. The words, "any dispute, question or other matter relating to any waqf or waqf property" used in the first limb of Section 85, provide a clear indication that the Tribunal would have jurisdiction to



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adjudicate upon any dispute and answer any question relating to a waqf or waqf property, including the two questions mentioned in Sections 6(1) and 7(1). The words in the second limb of Section 85, namely, "other matter which is required by or under this Act to be determined by a Tribunal", seek to cover matters which have no relevance to the two questions covered by Sections 6(1) and 7(1).

....

64. We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of Section 83 into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2023, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal.

....

.....



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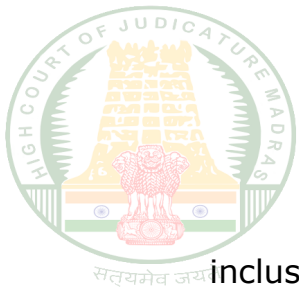


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68. *The dichotomy created in some decisions of this Court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in Sections 6(1) and 7(1) to the whole of the Act including Section 83. At the cost of repetition we should point out that section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property."*

(Emphasis Supplied)

12.8 It can be seen that there are comprehensive provisions which are made in the form of Section 3(ee), the definition of "encroachers"; Section 54 providing for a method of eviction of encroachers; and Section 85 postulating the intention of the Parliament to occupy the field by itself by employing negative language that no civil court, revenue court or any other authority shall exercise the jurisdiction. The intention of the Parliament is further fortified by



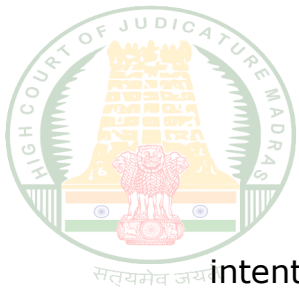
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inclusion of Section 108A, which contains a provision as to the overriding effect of the Waqf Act, 1995.

12.9 The contention on behalf of the Waqf Board/Waqfs that, if only an application is made to the Tribunal, the issue becomes determinable by the Tribunal cannot be accepted, as the Hon'ble Supreme Court itself has in **Rashid Wali Beg (Cited Supra)** categorically held that Section 85 contained two limbs i.e. (i) *any dispute relating to the waqf property; and (ii) any dispute which is determinable by the Waqf Tribunal*. Therefore, the power of the civil court, revenue court or any other authority to evict unauthorised occupants in respect of the waqf property is specifically excluded.

12.10 The Hon'ble Supreme Court of India in **Rashid Wali Beg**, supra, has held that such bar is all pervasive. In that event, we cannot but hold that the Parliamentary law categorically and unequivocally occupies the entire field and the State enactment which provides for the Estate Officer to evict the encroachers in the waqf property directly runs into Section 85. In accordance with the dictum in **Forum of Peoples Collective Efforts (Cited Supra)** in this case, we see the

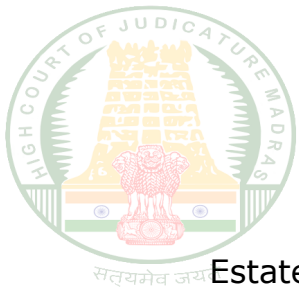


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intent of Parliament in enacting an exhaustive code on a subject in the Concurrent List. After finding that some states have carried amendments in their Public Premises Act and many have not, to promote uniformity and standardisation of the legislative scheme as a matter of public interest the amendments were made to the Wakf Act in 2013. The parliamentary law intends to secure the protection of wakf properties which requires uniformity of law and consistency of its application all over the country. The Central Act is thus made as an exhaustive code on the subject. Thus, the State enactment is repugnant to the Waqf Act, 1995, as amended in the year 2013.

12.11 Applying the direct conflict test also, it can be seen that the State Act, that is to say, Clause 3 of Section 2(e) of the State enactment, is in direct conflict with Section 85 as well as Section 54. Further, while the State Enactment empowers the Chief Executive Officer(Estate Officer) to pass orders of eviction, the Central Enactment requires him to file an application before the Tribunal. Without disobeying Section 85, no application can be laid before the



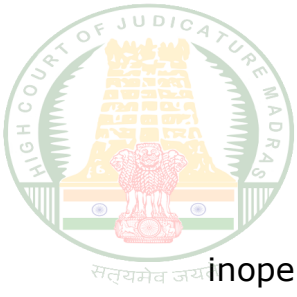
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Estate Officer under the impugned enactment.

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12.12 The person in occupation of the Waqf property can also file a civil suit seeking injunction under Section 85 of the Waqf Act, 1995, in that event also, the Estate Officer, under the Act 1 of 1976, cannot exercise his jurisdiction. It would result in two parallel proceedings. It may result in conflicting orders. The same cannot be the intent of the Legislature.

12.13 There can be no quarrel over the proposition that the statute providing additional remedy or an alternative speedy or summary remedy by itself would not be illegal. But because of the negative language contained in Section 85 of the Central legislation, when the Parliament has expressly prohibited the Jurisdiction of such other authorities and the Central Act is expressly made to override other enactments, the contention of the additional remedy cannot be accepted. Thus the additional remedy is in derogation of Section 85. On this count also, 2010 amendment to the Act 1 of 1976 is repugnant and the amendment to the Act 1 of 1976 in the year 2010, bringing within its realm the Waqf properties, would be a dead letter,

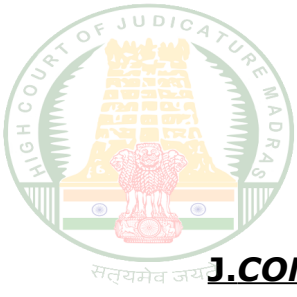


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inoperative and *non est*. Any action taken by the Estate Officer in respect of the Waqf property, resorting to the Act 1 of 1976, would be *coram non judice, non est* and void.

12.14 The elementary rule of interpretation is to read the provisions harmoniously, so that the provisions of one statute do not become a dead letter. Viewing the matter from any perspective, there is no possibility to harmonise. Having left with no choice, we are declaring the State Legislation as repugnant and void and accordingly this question is answered.



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J.CONCLUSION:

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13. In the result,

13.1 ***W.P.Nos.6667 of 2013; 6561 and 6767 of 2022; 20553 and 22931 of 2023 and 1568 and 8121 of 2024*** are allowed on the following terms:

(i) The Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act 33 of 2010 is declared to be void qua the Waqf Act and hence *ultra vires* the Constitution;

(ii) It is made clear that on application by the respective Wakf(s) or otherwise, the Chief Executive Officer will be entitled to move such application before the Wakf Tribunal under the Wakf Act, 1995 (as amended) against the petitioners or such encroachers and the Tribunal shall consider the same in accordance with the law.

(iii) There shall be no order as to costs.



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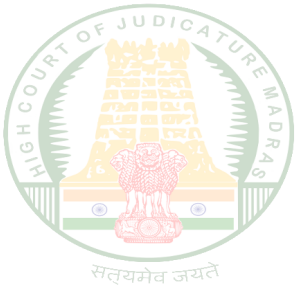


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Consequently, all connected miscellaneous petitions are closed. W.M.P.No.6667 of 2022 in W.P.No.6561 of 2022 filed to permit the petitioners to file a single writ petition is allowed and disposed of.

13.2. **W.A.Nos.2865, 2070, 2074, 2076, 2078, 2109, 2195, 2289 and 2290 of 2023; 820 and 944 of 2024** are allowed on the following terms:

(i) In view of our decision holding the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Amendment Act 33 of 2010 as repugnant, void and *ultra vires* the Constitution, the proceedings initiated against the appellants by issuance of show cause notices in exercise of the power of such enactment are unsustainable and, as such, the common order of the learned Single Judge dated 3.7.2023 in W.P.Nos.17331, 13507, 13510, 13514, 14424, 14426, 14428, 14432, 16963, 17164, 17399, 17371, 18475 and 18479 of 2023 is set aside.



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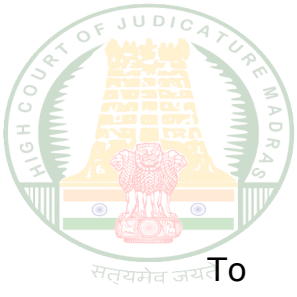
(ii) The respective show cause notices/orders issued against the appellants shall stand quashed. However, the respondent authorities will be at liberty to initiate fresh proceedings under the Waqf Act, 1995, as amended, in accordance with law.

(iii) There shall be no order as to costs. Consequently, all connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)
23.04.2024

Index : Yes
Neutral Citation : Yes
bbr



W.P.No.20553 of 2023 etc., batch

To

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- 1.The Secretary,
State of Tamil Nadu,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai-600 009.
- 2.The Secretary,
Union of India,
Ministry of Minority Affairs,
11th Floor, Pandit Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi-110 003.
- 3.The Estate Officer & The Chief Executive Officer,
Tamil Nadu Waqf Board, No.1, Jaffer Syrang Street,
Vallal Seethkathi Street,
Chennai-600 001.



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W.P.No.20553 of 2023 etc., batch

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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W.P.Nos.20553, 22931 of 2023; 6667 of
2013; 6561, 6767 of 2022; 1568 and
8121 of 2024

AND

W.A.Nos.2865, 2070, 2074, 2076, 2078,
2109, 2195, 2289, 2290 of 2023; 820
and 944 of 2024

23.04.2024