IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 395 OF 2015

1. Magnum Developers and Ors. ..Applicants

Vs

1. Lal Shah Baba Dargah Trust and Anr. ..Respondents

Mr. Y. H. Muchhala, Senior Advocate, with Mr. Girish Godbole, Senior Advocate a/w S/Shri Vaibhav Nagvekar, Ajay Panicker and Rashda Ainapore, i/b. Ajay Law Associates for Applicants.

Mr. Sagheer A. Khan a/w Mr.Sharique Nachan and G.D.Shaikh i/b Judicare Law Associates, Advocates for respondent no.1.

CORAM : R.G.KETKAR,J.
RESERVED ON: 14/08/2015
PRONOUNCED ON : 11/09/2015

ORDER:

1. Heard Mr. Y. H. Muchhala, learned senior counsel for the applicants and Mr. Sagheer A. Khan, learned counsel for respondent no.1 at length. Mr. Muchhala orally applies for leave to delete respondent no.2, Maharashtra State Board of Wakfs on the ground that no relief is claimed against it in the present application and is a formal party. On the motion made by Mr. Muchhala, leave to delete respondent no.2 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Khan waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

3. By this Application under Section 83(9) of the Waqf Act, 1995, original defendants no. 1 to 7 have challenged the Judgment and order dated 29.6.2015 passed by the learned Presiding Officer, Maharashtra State Waqf Tribunal, Aurangabad, (for short, 'Tribunal'), below Exhibits 19 and 30 in waqf Suit No.144 of 2014. By that order, the Tribunal partly allowed Application-Exhibit-19 filed by respondent no.1 for grant of ad-interim injunction under Order 39 Rules 1 and 2 read with Sections 151 and 9-A(2) of the Code of Civil Procedure, 1908 (for short, 'C.P.C'). The Tribunal also allowed Application-Exhibit-30 filed by respondent no.1 for amending Plaint. The parties shall, hereinafter, be referred to as per their status before the trial Court.

4. Respondent no.1 instituted waqf Suit No.144 of 2014 before the Tribunal, inter-alia, for perpetual injunction restraining defendants no. 1 to 7 from illegally developing City Survey no. 1/50 to 11/50 and part of C.S.No.50 situate at Tawripada, Lalbagh, Mumbai (for short, 'suit properties'); from raising further construction; creating third party interest; from changing the nature of the suit properties as also from handing over the possession of the flats constructed over the suit properties. The

plaintiff claims that the suit properties are waqf properties and belong to it.

5. During the pendency of the suit, the plaintiff filed application claiming temporary injunction. The Tribunal was pleased to issue summons-cum-notice to defendants 1 to 7. In pursuance thereof, defendants no.1 to 7 appeared on 28.11.2014. The matter was posted on various dates. On 31.3.2015, defendants no. 1 to 7 filed application under Section 9-A of C.P.C. for framing preliminary issue of jurisdiction and maintainability of suit and for dismissal of the suit. The plaintiff filed application dated 10.6.2015 at Exhibit-19 praying for ad-interim order under Order 39, Rules 1 and 2 read with Sections 151 and 9-A(2) of C.P.C. Defendants no.1 to 7 resisted the application by filing reply dated 15.6.2015. By order dated 15.6.2015, the Tribunal framed following preliminary issue:

> "Whether this Court has jurisdiction to entertain and try the suit in respect of the suit properties?"

The plaintiff filed application dated 18.6.2015 at Exhibit 30 for amending the plaint. Defendants no.1 to 7 resisted the application by filing reply dated 18.6.2015. By the impugned order, the Tribunal has allowed applications Exhibits 19 and 30, as indicated earlier. It is against this order, defendants no.1 to 7 have instituted the present application.

6. Mr. Khan submitted that for the first time in this revision

application, defendants no. 1 to 7 have contended that the functioning of the single member of Tribunal constituted under section 83(4) of the Waqf Act, 1995 (for short, 'Principal Act') is contrary to the scheme of a three member Tribunal contemplated under amended section 83(4). The Principal Act was amended by the Waqf (Amendment) Act, 2013 (for short, 'Amendment Act') which came into force with effect from 1.11.2013. The single member Tribunal, therefore, has no jurisdiction to entertain the suit contrary to the scheme and constitution of the Tribunal as contemplated under amended section 83(4). The said contention is raised in ground (j) at page 57 of the Revision Application. The said ground, to say the least, is malicious.

7. He submitted that Section 83(9) lays down that no appeal shall lie against any decision or order, whether interim or otherwise, given or made by the Tribunal. The proviso thereto lays down 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 correctness, legality or propriety of such determination** and **may confirm, reverse or modify such determination or pass such other order as it may think fit.** He submitted that the contention raised in ground (J) of the revision application was not

raised before the Tribunal. The Tribunal consequently did not determine the said question. Defendants no. 1 to 7, therefore, cannot agitate this ground for the first time in the revision application. Even this Court, in exercise of powers under Section 83(9), cannot go into this question.

8. In any case, he submitted that even if the Tribunal is presided over by a single member, that will not vitiate the proceedings before the Tribunal. He submitted that so long as the State Government by notification in the Official Gazette does not constitute Tribunal as per amended section 83(4), the single member Tribunal can continue to determine and decide the matters referred in section 83(1). In support of this submission, he relied upon the following decisions:-

(1) Full Bench decision of Andhra Pradesh High Court in the case of Muslim Minority Front, represented by its Secretary, Sri Mohd. Abdul Muqueet (Khusroo) Vs. The Government of Andhra Pradesh, represented by its Secretary, Minority Welfare Department, 1996 (2) A.L.T. 30.

(2) P. Ramrao Vs High Court of Andhra Pradesh, 2000 (1) A.L.T. 210 = 2000(1) A.L.D. 298.

(3) Mirza Khusru Ali Baig Vs. The Andhra Pradesh State Wakf Board, Writ Petition No.582 of 2014, decided on 28.1.2014 (Coram C.V. Nagarjuna Reddy, J.)

(4) Umar Jusab Munjavar Vs Mohammed Abdul Karim, Spl. Civil Application No.6868 of 2014, decided by learned Single Judge of Gujarat High Court (Coram: Smt. Abhilasha Kumari, J.) on 17.6.2014;

(5) N.V.Ali Akbar Vs Abdul Azeez Mannisseri, I.L.R.

2014(3) Kerala 603;

(6) K.K.Kunhi Mohammed Vs. State of Kerala, Writ Petition (C) No. 5305 of 2014 (R), decided on 15.7.2014, MANU/KE/0872/2014.

9. He submitted that Andhra Pradesh High Court, Gujarat High Court, Kerala High Court have uniformly taken a view that so long as State Government has not constituted Tribunal consisting of three members in terms of amended Section 83(4), a single member Tribunal is competent to decide questions referred in Section 83(1). He, therefore, submitted that the contention raised by defendants no. 1 to 7 that a single member Tribunal has no jurisdiction to entertain and try the suit, is misconceived and is liable to be rejected.

10. On the other hand, Mr. Muchhala submitted that Section 83(1) of the Principal Act laid down that 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 a waqf property, under the Act and define the local limits and jurisdiction under the Act of each of such Tribunals.

11. Section 83(1) of the Principal Act was substituted by Act 27 of 2013 with effect from 1.11.2013, thereby, enlarging the jurisdiction of the Tribunals so as to decide any dispute, question in relation to eviction of a tenant or determination of rights and

obligations of the lessor and the lessee of Waqf property in addition to the determination of any dispute, question or other matter relating to a waqf or a waqf property. He submitted that under section 83(4) of the Principal Act, every Tribunal consisted of one person who shall be a member of the State Judicial Civil Service holding a rank, not below that of a District, Sessions or Civil Judge, Class-I, and the appointment of every such person could be made either by name or by designation.

12. Section 83(4) was substituted by Act 27 of 2013. Amended section 83(4) lays down that every Tribunal shall consist of -

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below 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.

13. He distinguished the judgments relied by Mr. Khan referred herein above and submitted that the Amendment Act was brought into force with effect from 1.11.2013. On and from

1.11.2013, the Tribunal consisting of single member cannot decide and determine the dispute referred in the amended Section 83(1) of the Act. The plaintiff instituted the waqf suit after amendment to Section 83(4). He submitted that when the words of the statute are plain and unambiguous, one cannot resort to a purposive interpretation.

14. Mr. Muchhala submitted that while amending the Principal Act, legislature has not made any transitory provision. Amended Section 85 lays down that 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 the Act to be determined by a Tribunal. He submitted that bar under Section 85 cannot be invoked in the facts and circumstances of the present case as basically the State Government has not issued notification appointing a three member Tribunal in terms of the amended Section 83(4). If the Tribunal consists of a single member and not multi member, the jurisdiction of the civil court is not ousted. The plaintiff can approach civil court and obtain appropriate reliefs so long as Tribunal is not constituted in terms of the amended Section 83(1)(4) of the Act. In support of his submissions, he relied upon the following decisions:

(1) Rajasthan SRTC Vs Bal Mukund Bairwa, (2009) 4 SCC 299 and in particular paragraphs 12 to 14;

(2) Afcons Infrastructure Ltd Vs Cherian Varkey Construction Co. (P) Ltd, (2010) 8 SCC 24 and in particular paragraph 21;

(3) Bhagat Ram Vs Union of India, AIR 1988 SC 740 and in particular paragraphs 17 and 9 thereof.

15. He further submitted that the plaintiff has alleged that City Survey No.1/50 to 11/50 and part of C.S. No.50, situate at Tawripada, Lalbagh, Mumbai are waqf properties and belong to the plaintiff. He submitted that the plaintiff has not, prima facie, established that these are the waqf properties belonging to the plaintiff. In substance, he submitted that the suit properties are not waqf properties and do not belong to the plaintiff. He has exhaustively taken me through the details of the suit properties.

16. He submitted that before granting even ad-interim order, the Court has to consider whether (i) the plaintiff has made out a prima facie case, (ii) balance of convenience lies in its favour and (iii) irreparable injury will be caused to the plaintiff in case injunction is refused. As the plaintiff did not establish prima facie that these are waqf properties belonging to it, the Tribunal was not justified in granting ad-interim order. In support of this submission, he relied upon the decision of the Apex Court in the case of Shanti Kumar Panda Vs. Shakuntala Devi, (2004) SCC 438 and in particular paragraph 22 thereof. Mr. Muchhala also

relied upon the decision in the case of Shiv Shakti Co-op. Housing Society Vs. Swaraj Developers, (2003) 6 SCC 659 which considered the principles to be applied while interpreting statutes and in particular paragraphs 19, 22 to 24.

17. On the other hand, Mr. Khan supported the impugned order. He submitted that the Principal Act came into force with effect from 1.1.1996. He submitted that on 1.12.1997, Government of Maharashtra appointed (a) Settlement Commissioner and Director of Land Records, Maharashtra State, Pune to be a Survey Commissioner of waqfs; and (b) Additional Commissioners of Konkan, Nashik, Pune, Nagpur, Amravati and Aurangabad Revenue Divisions to be a Additional Survey Commissioner for the purpose of making a survey of waqfs existing on the 1st day of January,1996 in the State of Maharashtra. Mr.Khan submitted that whereas the Principal Act came into force with effect from 1.1.1996, the Government issued notification under section 4(1) on 1.12.1997 appointing Survey Officers. This clearly shows that though the Act came into force, the enforcement of the Act was on a subsequent date. It was impossible for the State Government to carry out preliminary survey as contemplated by Section 4 before coming into force of the Act. Equally, it was impossible for the State Government to incorporate waqf Board in terms of Section 13. Section 14 provides for composition of board for a State immediately upon coming into force of the

Principal Act. However, the Board could not be constituted by the State Government immediately upon coming into force of the Principal Act. He has taken me through the provisions of the Principal Act as also Amendment Act dealing with appointment of Chief Executive Officer (Section 23), powers of Chief Executive Officer (Section 26), powers of Chief Executive Officer to inspect records, registers etc (Section 29), removal of encroachment from waqf property (Section 54), Annual contribution payable to Board (Section 72).

18. Mr.Khan submitted that on 30.10.2000 the State Government constituted Tribunal by issuing Notification under section 83(1) of the Principal Act. Though the Principal Act came into force with effect from 1.1.1996, the Tribunal was constituted by issuing Notification on 30.10.2000 and on 6.11.2000, the Government of Maharashtra, with the concurrence of the Hon'ble Chief Justice of the Bombay High Court, appointed Shri S.K.Shinde, in-charge District and Sessions Judge, Amravati, as 'Presiding Officer' on the waqf Tribunal, Aurangabad. Thus, the Tribunal became functional only after 6.11.2000. In view of Section 24 of the General Clauses Act, 1897, a single member Tribunal appointed by a Notification/Order dated 6.11.2000 can decide dispute under Section 83(1) of the Act as the said order is not inconsistent with the provisions of the Amendment Act. In support of this proposition, he relied upon the decision of the

Apex Court in the case of State of Punjab Vs. Harnek Singh, A.I.R 2002 Supreme Court 1074.

19. He submitted that on 4.1.2002, the Board was incorporated under section 13. He further submitted that on 1.11.2013 the Amendment Act was brought into force. Though the Act is a Central Act, under sub-section (1) of Section 83 power is given to the State Government to constitute Tribunals. It cannot be expected from the State Government to issue notification immediately upon coming into force the amended Sections 83(1) and 83(4). The Government can appoint members as per the amended Section 83(4) only with concurrence of Chief Justice of High Court.

20. He submitted that Section 83(4-A) provides that the terms and conditions of appointment including 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. Section 109 empowers the State Government, by notification in the Official Gazette, to make rules to carry out the purposes of the Act, other than those of Chapter III. Clause (xxiia) of sub-section (2) of Section 109 lays down 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 under sub-section (4-A) of Section 83. He submitted that even the rules as contemplated by Section 109(2)

(xxiia) are not framed by the State Government. In short, he submitted that coming into force of the Act is one thing and enforcement of the Act is another thing. Though the Principal Act came into force with effect from 1.1.1996 and the Amendment Act came into force with effect from 1.11.2013, the scheme of the Act itself contemplates that in stage-wise the Act will be enforced. Till such time the Tribunal is constituted in terms of the amended Section 83(4), single member Tribunal can proceed to decide the disputes as contemplated under the amended Section 83(1). Mr. Khan submitted that the principal Act as also Amendment Act contemplate different statutory authorities. Each of such authorities must exercise the functions within the four corners of the statute. In support of this proposition, he relied upon the decision of the Apex Court in the case of M.P.Wakf Board Vs. Subhan Shah, (2006) 10 Supreme Court Cases 696 and in particular paragraphs 27 to 29 thereof.

21. Mr. Khan submitted that so long as multi member Tribunal is not constituted by the State Government, as contemplated by amended Section 83(4) by notification under section 83(1), single member Tribunal is empowered to decide the dispute contemplated by amended Section 83(1). Andhra Pradesh High Court, Kerala High Court, Gujarat High Court have adopted a purposive interpretation by holding that so long as multi member Tribunal is not constituted, single member Tribunal has

jurisdiction to entertain and try the dispute contemplated under the amended Section 83(1). He submitted that the approach in adopting purposive interpretation cannot be faulted. Section 85 of the Amendment Act expressly bars jurisdiction of Civil Court, Revenue Court and any other authority in respect of any dispute, question or other matter relating to any waqf or waqf property or other matter which is required by and under the Act to be determined by Tribunal. Thus, on one hand, the State Government has not constituted multi member Tribunal as per amended Section 83(4) and on the other, Section 85 expressly bars jurisdiction of the Civil Court. The legislature did not intend creation of vacuum or hiatus. The delay in constitution of the Tribunal has not been foreseen by the legislature.

22. Mr. Khan submitted that the intention of the legislature is abundantly clear from Section 85. The Civil Court's jurisdiction is expressly barred. Under sub-section (5) of Section 83, the Tribunal is deemed to have been a Civil Court and has the same powers as may be exercised by the Civil Court under C.P.C. while trying a suit or executing a decree or order. Under sub-section (7) the decision of the Tribunal is final and binding upon the parties to the application and it shall have force of a decree made by Civil Court. Sub section (8) provides that 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 provisions

of C.P.C. In other words, the Tribunal is a substitute for Civil Court. He, therefore, submitted that jurisdiction of the Civil Court is expressly barred. So long as multi member Tribunal is not constituted under amended Section 83(4) by issuing Notification under section 83 (1) by the State government, a single member Tribunal is empowered to entertain and try the dispute covered by amended Section 83 (1) of the Act. He relied upon the decisions referred in paragraph 8.

23. Mr. Khan lastly submitted that in paragraph 32 of the impugned order, the Tribunal has considered Schedule of public trust registration Exhibit 3/2 and order of Assistant/Deputy Charity Commissioner Exhibit 3/1 and observed that at this stage it can be safely said that the above lands were part of Inam and Inam Takka and the same may belong to the plaintiff. There is a serious and substantial question of fact and law for determination of the suit properties as waqf properties. The plaintiff has triable and prima facie case and balance of convenience lies in its favour. It was further observed that if the defendants 1 to 7 after completing the construction transfer or alienate flats to others, then the possibility and probability of loosing all the lands of the plaintiff cannot be ruled out and in that case irreparable loss would be caused to the plaintiff.

24. In paragraph 34, the Tribunal orally directed defendants 1 to 7 to file undertaking on affidavit to demolish the construction

on the suit properties if, after the trial, it is found that the suit properties are the waqf properties. Accordingly, power of attorney holder of defendants no.1 to 7 filed the undertaking at Exhibit-33. Defendants no.1 to 7 undertook to rehabilitate the slum dwellers in the constructed building for the residence. If defendants no.1 to 7 transferred the constructed building to the flat owners, then the complications will arise and the plaintiff will be required to file suits against different persons for recovery of possession which will lead to multiplicity of proceedings. The Tribunal accordingly accepted the undertaking of defendants no.1 to 7 to the extent of removing the constructed building if after the trial it is found that the construction is made on the waqf properties belonging to the plaintiff, as also not to cause obstruction or disturbance to the Dargah structure and its boundary wall and its egress and ingress as mentioned in paragraphs no. 1 and 2 of the undertaking Exhibit-33. The Tribunal issued ad-interim order restraining defendants no.1 to 7 from transferring flats or handing over possession of the flats constructed on the suit properties till determination of preliminary issue as to jurisdiction of the Tribunal to entertain and try the suit in respect of the suit properties. He, therefore, submitted that no case is made out for invocation of powers under section 83(9) of the Act.

25. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. The respondent-plaintiff instituted Waqf Suit No.144 of 2014 before the Tribunal, inter-alia, for perpetual injunction restraining defendants no. 1 to 7 from illegally developing the suit properties; from raising further construction, creating third party interest, from changing the nature of the suit properties as also from handing over possession of flats constructed over the suit properties. The plaintiff claims that the suit properties are waqf properties and belong to the plaintiff. Admittedly, the suit is instituted in the year 2014, that is to say, after coming into force of the Amendment Act with effect from 1.11.2013.

26. The Waqf Act, 1954 received the assent of the President of India on 21.5.1954 and published in the Gazette of India, Extra ordinary Part-II, Section (I) on 24.5.1954. The said Act was amended by the Waqf (Amendment) Act, 1984 (69 of 1984). The Principal Act received the assent of the President and has been brought into effect in the State of Maharashtra on and from 1.1.1996.

27. The Wakf (Amendment) Bill, 2010 (Bill No.53 of 2010) dated 16.4.2010 was introduced in Lok Sabha. Perusal of the Statement of Objects and Reasons shows that it was observed that over the years of the working of the Act, there has been a

widespread feeling that the Act has not proved effective enough in improving the administration of auqaf.

28. In paragraph 2 thereof, it was noted that the Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on the 17th November, 2006 considered the aforementioned issue and suggested certain amendments to the Act. It also recommended, among other things, to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint Parliamentary Committee on Waqf presented its Third Report on 4th March, 2008 and Ninth Report on 23rd October, 2008 to the Rajya Sabha. The recommendations of the Joint Parliamentary Committee on Waqf were considered by the Central Waqf Council. The various issues and the need for amendments to the Act were also considered in consultation with other stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairmen and the Chief Executive Officers of State Waqf Boards.

29. The major issues which required to be addressed urgently were:

(i) Inadequacy of date on waqf properties;

(ii) Encroachments on waqf properties;

(iii) Development of waqf properties;

(iv) Absence of statutory obligation to ensure flow of information from the State Waqf Boards and State Government to the Central Waqf Council.

30. In view of the above, it was proposed to amend the Wakf Act, 1995 to provide, among others, (vii) for constituting the Tribunals, for the determination of all disputes, questions and other matters relating to waqf or waqf properties, **as a three member body consisting of a person not below the rank of District, Session or Civil Judge Class I as the Chairman and two other members, namely, an officer from the State Civil Service equivalent in rank to that of Additional District Magistrate and another person having knowledge of Muslim law and jurisprudence.**

31. As far as present controversy is concerned, by clause 40 of the Bill, Section 83 of the Principal Act was substituted by sub-section (4) and sub-section (4-A). By clause 41, Section 85 of the Principal Act was amended. For the words "Civil Court", the words "Civil Court, revenue Court and any other authority" were substituted. By clause 49, Section 109 of the Principal Act was amended. In sub-section (2) after clause (xxii), clause (xxiia) was added. By clause 44 of the Amendment Act, for sub-section (1) of Section 83, the following sub-section was substituted, namely:-

"(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 a waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals."

32. Learned counsel appearing for the parties conceded that no reasons are assigned in (1) Sachar Committee Report, (2) Third and Ninth Reports presented by the Joint Parliamentary Committee on waqf to Rajya Sabha on 4.3.2008 and 23.10.2008 respectively as also (3) the Statement of Objects and Reasons for substituting one member Tribunal by a three member Tribunal. In my opinion, the reasons are not far to seek. Under section 83(4) of the Principal Act, the member was appointed from one source only, namely, judiciary. Under section 83(4) of the Amendment Act, now members are appointed from difference sources, namely:

(1) Chairman from judiciary,

(2) Member from the State Civil Services (Bureaucracy) and

(3) Member having knowledge of Muslim law and jurisprudence.

33. The Legislature thought it appropriate for having wide deliberations and consultations and, therefore, substituted one member Tribunal by multi member Tribunal. Each member of the

Tribunal has his own role to play drawing from his experience and knowledge and it is the interaction with all three members that will decide the fate of the proceedings before the Tribunal.

34. Section 83(1) and 83(4) of the Principal Act and Section 83(1) and 83(4) of the Amendment Act are reproduced in juxtaposition as under.

Principal Act S. 83.	Amendment Act S. 83
"(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."	(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 a waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under the Act and define the local limits and jurisdiction under the Act of each of such Tribunals.
"(4) Every Tribunal shall consist of 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, and the appointment of every such person may be made either by name or by designation."	(4) Every Tribunal shall consist of - (a) one person, who shall be a member of the State Judicial Service holding a rank, not below 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."

Perusal of Section 83(1) of the Principal Act shows that the Tribunal constituted by the State government by issuing notification in the Official Gazette was empowered to determine any dispute, question or other matter relating to a waqf or waqf property under the Act. As against this, perusal of amended section 83(1) shows that the Tribunal constituted by the State Government by issuing notification in the Official Gazette is empowered to determine any dispute, question or other matter relating to eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, in addition to dispute relating to a waqf or waqf property. In other words, width and amplitude of the Tribunal's power is enlarged by amended Section 83(1).

35. Perusal of Section 83(4) of the Principal Act, the Tribunal consisted of one person who shall be a member of the State Judicial Service holding rank, not below that of a District, Sessions or Civil Judge, Class-I and the appointment of every such person may be made either by name or by designation. Perusal of section 83(4) of the Amended Act shows that Tribunal

shall consist of (a) one person, who shall be a member of the State Judicial Service holding a rank, not below 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. It is not in dispute that by Notification dated 29.10.2013 published in the Gazette of India, Extraordinary, Part II-Section 3- sub-section (ii), in exercise of the powers conferred by sub-section (2) of Section 1 of the Amendment Act, Central Government appointed the 1st day of November, 2013 as the date on which the provisions of the Amendment Act shall come into force.

36. Section 112 of the Act provides for repeal and savings and reads thus :

> "112. Repeal and savings.— (1) The Waqf Act, 1954 (29 of 1954) and the Waqf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.
>
> (2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.
>
> (3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:
>
> Provided that such repeal shall not affect the previous

operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken."

37. Perusal of sub-section (1) of Section 112 shows that the Waqf Act, 1954 (29 of 1954) and the Waqf (Amendment) Act, 1984 (69 of 1984) are repealed. Sub-section (2) thereof lays down that notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the Act. Sub section (3) thereof lays down that if, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act, that corresponding law shall stand repealed: provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed have been done or taken in the exercise of the powers conferred by or under the Act as if the Act was in force on the day on which such things were done or action was taken.

38. Section 113 deals with power to remove difficulties and reads thus:

"113. Power to remove difficulties.— (1) If any difficulty arises in giving effect to the provisions of this Act, the

Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

39. It is also not in dispute that there is no transitional provision empowering a single member Tribunal as per section 83(4) of the Principal Act to continue with the proceedings till such time, the Tribunal is constituted as per amended Section 83(4). Section 6 of the General Clauses Act, 1897 deals with effect of repeal and reads as under:

"6. Effect of repeal. - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may

be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

40. Section 24 thereof provides for continuation of orders issued under enactments repealed and reenacted and reads thus:

"24 Continuation of orders, etc., issued under enactments repealed and re-enacted. - Where any [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section]".

41. Mr. Khan relied upon Full Bench decision of Andhra Pradesh High Court in the case of Muslim Minority Front (supra) and in particulars paragraphs 10 to 13. In that case, the Government of Andhra Pradesh issued G.O.M. No. 74 on 26.8.1994 and G.O.M. No.75 on 30.8.1994 constituting the Board under the Waqf Act, No.29 of 1954 comprising respondents no.4 to 13. Writ Petitions were instituted challenging the appointments on various

grounds. A learned Single Judge allowed the writ petitions and respondents no.4 to 13 ceased to hold office with effect from 10.4.1995. On the same day, Minorities Welfare (Waqf-I) Department issued G.O.M. No.41 and appointed Special Officer under section 64(2)(b) of the Waqf Act, 1954. The Special Officer assumed charge on 10.4.1995 itself. The Government of India, vide Gazette No.65, Extraordinary Part-II, dated 22.11.1995, promulgated Act No.43 of 1995 (Principal Act), which repealed the Waqf Act, 1954 and the 1984 Amendment Act but saved, however, anything done or any action taken under the said Acts. The Principal Act came into force in the State of Andhra Pradesh with effect from 1.1.1996. Aggrieved by the decision of the learned Single Judge, Writ Appeals were filed. The same were decided on 17.1.1996, that is to say, after coming into force of the Principal Act on 1.1.1996. It appears that the parties before the Division Bench did not bring to the notice of the court that the Waqf Act, 1954 was replaced by Waqf Act of 1995 which received the assent of the President of India on 22.11.1995 and was brought into force with effect from 1.1.1996.

42. Section 10(1) of the Waqf Act, 1954 contemplated establishment Boards consisting of eleven Members with a Chairman elected by the members from amongst themselves. Section 11 provided for appointment of members by the State Government by notification in the Official Gazette from any one

or more persons from categories (a) to (d). Section 12 laid down that the members of the Board shall hold office for five years provided that a member shall, notwithstanding the expiration of his term of office, continue to hold office until the appointment of his successor is notified in the Official Gazette. Section 11 of the Waqf Act, 1954, however, was sought to be omitted and substituted by a new provision by Act 69 of 1984 which Act, however, although received the assent of the President of India, was not brought into force in all the aspects in the State of Andhra Pradesh. Section 11 of the Waqf Act, 1954 continued to hold field notwithstanding the amendment by Act 69 of 1984 in the State. The Principal Act was brought into effect in the State on and from 1.1.1996. Section 13 provided for incorporation of the Board of Waqfs. On 6.3.1996, notification was issued by the State Government establishing Andhra Pradesh Waqf Board with effect from 6.3.1996. The Full Bench observed in paragraph 7 that the Board under the Waqf Act, 1995 has a different composition from the Board under the Waqf Act, 1954. In paragraph 10, the Full Bench posed a question as to what is the date of the enforcement of the Waqf Act, 1995? Is it the date when the Act is notified after receiving the assent of the President for being enforced in the State? or is it the date when notification under Section 13 of the New Act is issued? or will it be a later still when notification under section 14(9) of the New

Act is issued?

43. In paragraph 11, the Full Bench observed that Notification Under Section 1(3) of the Wakf Act, 1995 is the beginning of the enforcement of the Act in the State. Establishment of the Board of Wakf under such name as may be specified in the notification in the official gazette by the State Government is the expression of intention to have the Board established. The Board cannot, merely because the notification is issued in this behalf Under Section 13 of the Wakf Act, 1995, function unless such individuals who constitute the Board as members are appointed. Members can be officially appointed by the notification in the official gazette by the State Government under Section 14(9) only after they are elected or nominated, as the case may be, in accordance with the provisions under Section 14(1) of the Wakf Act, 1995. The process, thus, started by the notification Under Section 13 of the Act has to be completed by the elections and nominations of the members of the Board and once they are elected or nominated the Board will stand fully ready to function.

44. In paragraph 12, it was observed that since the Act has come into force and the State Government has made its intentions clear by issuing the notification Under Section 13 thereof that the Wakf Board shall be one as envisaged under it and it alone shall be regularizing the administration of the properties and other religious affairs attendant to the wakf, the

Full Bench observed that it has no reason to think that the State Government is not serious and it shall not proceed to complete the composition of the Board under Section 14(1) of the Act and no sooner the composition is complete, appoint the members by issuing necessary notification under Section 14(9) of the Act.

45. In paragraph 13 the Full Bench noted that the assurance given by the learned Advocate-General that the process of the composition of the Board will be completed by June, 1996 and the new Board will be in a position to function from July, 1996. Learned counsel for respondents no. 4 to 13 stated that respondents no. 4 to 13 will co-operate and in no manner do anything which will defeat or delay the appointment of the members of the Board under the new Act.

46. The Full Bench further observed in paragraph 13 that unless notification under section 14(9) is issued and members of the Board are appointed, the Board appointed under the Waqf Act,1954 shall survive the notification under section 1(3) of the Act and the notification under section 13 of the Waqf Act, 1995 but shall cease and all members of the Board appointed under Section 11 of the Waqf Act, 1954 shall vacate their office the moment notification under section 14(9) of the Waqf Act, 1995 is issued. They can hold the office,thus, pursuant to the judgment in Writ Appeal No.401 of 1995 and batch until the composition of the Board under the Waqf Act, 1995 is completed, but not a day

more. The new Board shall assume office on the appointment of the members thereof and the members appointed under section 11 of the Waqf Act,1954 shall have no claim whatsoever for any office in the Board. The Full Bench issued the direction to State Government to complete the formalities as contemplated under section 14(9) of the new Act by 30.6.1996. Further direction was issued to the effect that consequent upon the notification under section 14(9) of the Waqf Act,1995, respondents 4 to 13 shall vacate their office. In my humble opinion, the decision of the Full Bench of the Andhra Pradesh High Court, with very great respect, is in tune with Section 12 of the Waqf Act, 1954 that laid down that the members of Board shall hold office for five years provided that a member shall, notwithstanding the expiration of his term of office, continue to hold office until the appointment of his successor is notified in the Official Gazette. The said decision has no application to the facts of the present case.

47. In the case of P. Rama Rao (supra), the suit was instituted on 6.11.1996 for ejectment and recovery of mesne profits in the city Civil Court. The trial had commenced and PW 1 was examined. At that stage, petitioners-defendants raised an objection that the suit cannot be continued in the civil Court in as much as the civil Court has no jurisdiction to deal with the matter falling within the purview of Waqf Tribunal constituted under the Act. The learned trial Judge rejected the objection on the basis of

circular of the High Court dated 13.7.1999 which provided that suits or other proceedings involving determination of disputes or question relating to waqf or waqf property or other matters filling within the purview of the waqf Tribunal cannot be entertained by the civil courts, when once the waqf Tribunal is constituted. The High Court of Andhra Pradesh directed all the civil Courts in the State to return the plaints/petitions instituted on or after 1.7.1997, so as to enable the parties to present them before the Andhra Pradesh Waqf Tribunal,Hyderabad, after giving notice to counsel and heard them if there is any dispute as regards the maintainability of the suit and then take appropriate steps. In that case, the State government constituted Tribunal vide order dated 20.6.1997 with effect from 1.7.1997. A Judicial Officer of the rank of District Judge was posted sometime later and the Tribunal started functioning. The question that was posed before the Division Bench was as regards the position of the suits or other proceedings instituted between 1.1.1996 and 30.6.1997. In paragraphs 5 and 6 of that report, it was observed thus:

> "5. It is true as pointed out by the learned Additional Advocate-General and also the learned Counsel for the petitioners, on the plain language of Section 85, the bar against the entertainment of suit seems to arise on and from the date of the commencement of the Act. The moment the Act came into force, the bar operates, prim facie. The fundamental postulate of Section 85 read with the other relevant provisions is that the Wakf Tribunal shall be a substitute for the civil Courts in respect of matters required to be dealt with by the Tribunal under the Act. The Scheme of the Actcontemplates and unfolds the intention of the

Legislature in clearest terms that the obliteration of the jurisdiction of the civil Court and the creation of the Tribunal to take over the exclusive jurisdiction confided to it is a simultaneous process. No vacuum or hiatus could have been intended by the Legislature. The delay in the constitution of the Tribunal just as it has happened in this State, would not have been foreseen by the Legislature. Surely, it could not have been the intention of the legislature that the existing remedy or recourse to civil Court should be extinguished as a first step and that remedy should be made available only when the Wakf Tribunal is set up. What should be the remedy of the aggrieved party or Institutions of Wakf during the intervening period? Should they indefinitely wait in order to pursue their remedy till the State Government issues a notification constituting the Tribunal? In the instant case, the Tribunal was constituted 1 1/2 years after the Act came into force which is fairly a long period. If the aggrieved persons or Institutions are left without any remedy to move the Court or a judicial body during this period, absurd and unintended results would follow. Such consequences are manifestly contrary to the legislative intention. Not only that, even the provision i.e.. Section 85would be vulnerable to attack on the ground of infringement of Article 14 inasmuch as a particular class of litigants would be left without remedy to prevent invasion of their rights recognised by law on account of sheer delay in constitution the Tribunal. Obviously, such construction should be avoided. Literal interpretation should yield to purposive construction and a construction which preserves the Constitutionality of the provision. The fact that the provision for transfer of cases from the civil Court to the Wakf Tribunal is not provided for in the Act is also a pointer to the legislative intention that the suits filed earlier to the constitution of the Tribunal shall continue to be dealt with by the civil Court. We are therefore of the view that in the interests of imparting rationality to the provision and accomplishing the Legislative object, Section 85 has to be qualified by the words "after the constitution of the Tribunal" immediately after the words "should lie". No doubt by doing so, the literal construction is eschewed and certain words which are really implicit are read into the section. But such reading and interpretation is not an impermissible exercise. As long back as in 1955, the Supreme Court in Tirath Singh v. Bachittar Singh, (1955) 2 SCR 457, laid down that in order to avoid absurd and anomalous consequences, there could be addition or modification of the words.

6. The addition of qualifying words as mentioned supra

> would result in reading down the wide sweep of the embargo laid down in Section 85. Reading down a legal provision to save it from unconstitutionality or unjust or absurd consequences or even to make it sub-serve its avowed purpose has now come to be recognised as an effective tool of statutory interpretation. To cite a few recent examples of such reading down, we may refer to the decisions in Dy CTO v. Coromandal Pharmaceuticals, (1997) 2SCR 1026, B.R. Enterprises v. State of Uttar Pradesh, (1999) 2SCR 1111, Madan Sigh v. Union of India,AIR 1999 SC 3378. In Sunil Batra v. Delhi Administration, AIR 1978 SC 1675, the rule of reading down and reading wide was acclaimed as an integral part of interpretational engineering.

I will deal with this judgment a little later. Suffice it to say, at this stage, that the controversy raised therein is similar to the controversy raised in the present Application. It also supports the contention of Mr. Muchhala. I respectfully agree, albeit for different reasons, with the view expressed by the Division Bench that so long as the Tribunal is not constituted in terms of amended section 83(4), notwithstanding Section 85, Civil Court will have jurisdiction to entertain and try the suit till such time the Tribunal is constituted in terms of amended Section 83(4).

48. In the case of Mirza Khusru Ali Baig (supra), the learned Single Judge of Andhra Pradesh High Court considered the amended Sections 83(4) and 85 as also the decision of Division Bench of Andhra Pradesh High Court in the case of P. Ramrao (supra). The learned Single Judge reproduced paragraphs 5 and 6. The learned Single Judge also considered the decision of Full Bench of Andhra Pradesh in Badarla Suryakumari Vs. Badarla Vamana Murthy, A.I.R. 2010 Andhra Pradesh 209 (F.B.). The Full

Bench opined that the Division Bench in P. Rama Rao (supra) has laid down the correct law and that it requires no reconsideration. After considering these decisions, the learned Single Judge noted that after that decision, a significant change took place, namely that the Waqf Tribunal, as envisaged under section 83(4) of the Principal Act, has come in place and the Civil Court's jurisdiction has been excluded since then and it was observed thus :

> "In the instant case, an analogous situation has been repeated with the only difference that the one-man Wakf Tribunal created under the principal Act stands in the place of civil court. In P. Rama Rao (3-supra), the Division Bench, in unequivocal terms held that till such time as the Wakf Tribunal is constituted, the Civil Court must be allowed to entertain disputes as there can be no void in the matter of availment of remedies by aggrieved parties. After the said decision, a significant change has taken place, namely, that the Wakf Tribunal, as envisaged under Section 83(4) of the parent Act, has come in place and the Civil Court's jurisdiction has been excluded since then. Drawing the analogy of the case in P. Rama Rao (3-supra), the Tribunal which was constituted under the parent Act shall be permitted to deal with the disputes till the Wakf Tribunal is reconstituted under the provisions of the Amendment Act. **It will be anomalous to revert to the Civil Court's jurisdiction to decide the disputes falling under the parent Act once again at this length of time**. The Parliament would not have visualised repetition of the same situation as prevailed for nearly 1½ years after coming into force of the parent Act, during which period no Tribunal was constituted. Unfortunately, the State Government has not, so far, constituted the Wakf Tribunal in accordance with the Amendment Act. As held by the Division Bench in P. Rama Rao (3-supra), no vacuum or hiatus would have been intended by the Legislature. The Division Bench has relied upon the Judgment in Deputy C.T.O. Vs. Coromandal Pharmaceuticals, B.R.Enterprises Vs. State of Uttar Pradesh, and Madan Singh Vs. Union of India wherein it was held that a statutory provision needs to be read down in order to save it from being unconstitutional or unjust or resulting in absurd consequence or even to make it sub-serve its avowed

purpose. **As noted hereinbefore, to hold that an aggrieved party has to approach the civil court till reconstitution of the Wakf Tribunal, would be to act contrary to the object with which Sections 83(4) and 85 of the Parent Act have been envisaged.**

For the above mentioned reasons, I have no hesitation to hold that even in the absence of a transitional provision, the existing Tribunal under the parent Act shall continue to have jurisdiction to decide the disputes till reconstitution of the Wakf Tribunal in accordance with the provisions of the Amendment Act."

The learned Single Judge observed that even in the absence of a transitional provision, the existing Tribunal under the Principal Act shall continue to have jurisdiction to decide the disputes till reconstitution of the Waqf Tribunal in accordance with the provisions of the Amendment Act. With very great respect, I do not subscribe to the view expressed therein. I respectfully differ with that view for the reasons to be stated shortly hereinafter.

49. In the case of N.V.Ali Akbar (supra), Division Bench of Kerala High Court, somewhat came to similar conclusion. It was held that it is clear legislative material to infer that the constitution of the Tribunal by notifications under the parent Act (Principal Act) shall continue to be in vigour notwithstanding the amendments, and, modifications if any, to the constitution of Tribunal in terms of the amendments to the parent Act by the amending Act, would become operational only if and when such compositions are notified in conformity with the amended section 83(4). In other words, the Division Bench of Kerala High Court

held that the single member Tribunal constituted under Section 83(4) of the Principal Act will have jurisdiction to entertain and try the disputes under section 83(1) even after Amendment Act came into force with effect from 1.11.2013 as the notification as per amended Section 83(4) of the Act is not issued constituting a three member Tribunal. In paragraph 8 of that report, it was observed thus:

> "8. We now proceed to notice as to what is happening as of now, as regards the Wakf Tribunals. In 2012, a question arose as to whether an officer who is put in charge of a Tribunal by the High Court or who is covered by general transfer orders issued by the High Court and posted to man the Tribunal has to be further energised by a notification of the State Government to act, function and discharge the functions of the Tribunal. The situation was one of stalemate owing to the delay in issuing government notifications. The constitutional and statutory situation therefore became focal issues and it was held that government notifications were not necessary in such situations. It was therefore declared by this Court that following general transfers and other transfer orders of judicial officers of the subordinate judiciary from time to time, the person manning any Wakf Tribunal, on transfer, will hand over charge as may be ordered by the High Court in its proceedings on the administrative side and such handing over charge is sufficient to clothe the person put in charge of the Tribunal to discharge all functions and powers of the Tribunal in terms of the provisions of the Act. See - Abdulla Shahul Hameed v. State of Kerala [2012 (3) KLT 324]."

I respectfully agree with the Division Bench in so far as paragraph 8 is concerned. However, in paragraphs 9 and 12, the Division Bench observed thus:

> "9. The amending Act has changed only the composition of the Tribunal as provided in sub-section 4 of section 83 of the parent Act. The amendment made to sub-section 1 of

section 83 only enlarges the subject matter jurisdiction. For all other purposes, it continues to be what it was before the amendment. Though the amending Act has enlarged the subject matter jurisdiction of the Tribunal and has modified the composition of the Tribunal by the amendment to sub-section 4 of section 83, there is no transitory or other provision in the amending Act which deals with matters pending before the Tribunal as it stands under the parent Act, until the composition of the Tribunal gets modified, through statutory notifications, in terms of the amended provisions. This is clear legislative material to infer that the constitution the Tribunal by notifications issued under the parent Act shall continue to be in vigour notwithstanding the amendments, and, modifications if any to the constitution of the Tribunal in terms of the amendments to the parent Act by the amending Act, would become operational only if and when such compositions are notified in conformity with the amended section 83(4). As already noted, this can be done only after the rules are prescribed and made in accordance with law, by the State Government and infrastructure is provided, without tinkering with the existing judicial establishment, and, to the satisfaction of the High Court, since any modification of the constitution in terms of the amended section 83 (4) would call for the deputation of a judicial officer from the State Judicial Service. Therefore, any Tribunal already notified under the provisions of the parent Act would continue to stand with authority, and, with enlarged subject matter jurisdiction in terms of the amendment to sub-section 1 of Section 83, however that, the composition of the Tribunal cannot be modified except by a notification in terms of the amended sub-section 4 of that section.

12.The conclusion of the aforesaid discussion is that all Tribunals exercising functions under the Act before its amendment will continue to do so, taking it that their subject matter jurisdiction has been enlarged in terms of what is provided as per the amended sub-section 1 section 83 of the Act. They have to necessarily follow the declaration and directions contained in Abdulla Shahul Hameed's case (supra) for all intents and purposes. They shall not wait for any recomposition of the Tribunal in terms of subsection 4 of section 83 of the Act, as amended, unless they are notified by the High Court to do so, on fulfilment of the conditions precedent for operating any composition of Tribunal in terms of the amended provisions, as explained above and declared hereby."

I respectfully disagree with the view expressed therein for the reasons to be indicated shortly hereinafter. The decision in the case of N.V.Ali Akbar (supra) was followed by Division Bench of Kerala High Court in the case of K.K.Kunhi Muhammed Vs. State of Kerala, MANU/KE/0872/2014.

50. In the case of Umar Jusuf Munjawat (supra), the learned Single Judge of Gujarat High Court referred to the decision of the Andhra Pradesh High Court in Mirza Khusru Ali Baig (supra). In paragraph 33, the learned Single Judge held that it cannot be considered that the Tribunal functioning under the unamended provisions of section 83(4) is a Tribunal without jurisdiction, even though its constitution was legal and valid at the relevant point of time. In other words, the learned Single Judge held that the order passed by the single member Tribunal cannot be faulted on that ground.

51. In that case, the petitioner-appellant had instituted Regular Civil Suit No.270 of 2006 in the Court of Civil Judge, Sr Dn., Jamner for determination of disputed questions relating to waqf property. The suit was converted as Waqf Appeal no.1 of 2012 vide order dated 28.12.2006 passed in Spl. Civil Application No.26010 of 2006. The petitioner filed application dated 25.3.2014 at Exhibit 89 and contended that as the Tribunal is not constituted a s per amended Section 83(4) any order made by

the learned Judge would be an order without jurisdiction as a Tribunal as not constituted as per the amendment. It was therefore prayed that the proceedings of the appeal be stayed until the constitution of the Tribunal as per the amended section 83(4). The application was rejected on 15.4.2014 giving rise to filing of the petition. The learned Single Judge considered the provisions of the principal Act as also Amendment Act. In paragraph 17, it was observed that the application dated 25.3.2014 was moved after amendment came into effect and the impugned order was passed on 15.4.2014 after the amended provisions had became applicable. In paragraph 18, the learned Single Judge posed a question as to whether an order passed by the Tribunal constituted under provision in the appeal preferred can be said to be an order without jurisdiction pending its reconstitution as per the amendment.

52 In my humble opinion, the attention of the learned Single judge was not invited to Section 6 of the General Clauses Act, 1897 and in particular clause (e) thereof. Section 6(e) lays down that where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hereto made or hereafter made, unless different intention appears, repeal shall not affect any investigation, legal proceedings or remedy in respect of any right, obligation, liability, penalty, forfeiture, punishment aforesaid and any such investigation,

proceedings, may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if repealing Act or Regulation has not been passed. As also noted earlier in that case, the suit was instituted in the year 2006, that is to say, prior to coming into force the Amendment Act in the State of Gujarat. In the State of Gujarat the Amendment act appears to have come into force with effect from 23.9.2013. In my humble opinion, Section 6 of the General Clauses Act, 1897 was complete answer to the controversy raised before the learned Single Judge. I, therefore, respectfully differ from the view expressed by the learned Single Judge of Gujarat High Court in the case of Umar Jusab Munjavar (supra)

53. The moot question is whether the single member Tribunal has jurisdiction to entertain and try the dispute and whether the jurisdiction of the Civil Court is barred in view of Section 85. In my opinion, so long as the State Government does not issue notification under section 83(1) and constitutes a three member Tribunal under the amended Section 83(4) of the Act, the Civil Court's jurisdiction is not excluded for the following reasons.

54. Somewhat similar question was considered by the Full Bench of this Court in the case of Raje Vyankatrao Jagjivanrao Deshmukh Vs Shitalprasad, LXVII (1965) Bombay Law Reporter 868. In that case, one Raje Vyankatrao Jagjivanram Deshmukh had instituted suits against (1) Ratan Soba in regard to survey

no. 17/1 and (2) Sitalprasad Sivnath in respect of survey no.23/7, situate at Mouza Darati. The suits were instituted for possession of these lands and eviction on the basis of the plaintiff's title to them. The plaintiff alleged that defendants in the two suits were trespassers and had taken possession forcibly. The defendants contended that each of them was a tenant and had acquired protected status by virtue of the Berar Regulation of Agricultural of Leases Act,1951. Both the defendants set up plea of an oral agreement of lease alleged to have been entered into with the plaintiff in the year 1952-53. The defendants raised plea that the civil court had no jurisdiction to decide the suit until the question whether they were lessees, was decided by the Revenue Officers.

55. On 15.11.1951, by virtue of Section 1(3), the Berar Regulation of Agricultural Leases Act, 1951 was brought into force. In that Act, as originally enacted, Section 16 provided thus:

> "No civil Court shall entertain any suit instituted to obtain a decision on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of".

Section 2(j) defines the expression "Revenue Officer" which reads thus:

> "Revenue Officer in any provision of this Act means such Revenue Officer appointed under the Barer Land Regulation Code,1958, as the State Government may, by notification, direct or discharge the functions of a Revenue Officer under

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that provision".

56. On 29.1.1952, the State Government issued notification directing Revenue Officers specified in column (1) of the table below shall discharge the functions of a Revenue Officer under the provisions of sections specified in the corresponding entries in column no.2 thereof.

TABLE

Revenue Officers (1)	Section (2)
Deputy Commissioners and Sub-Divisional Officers.	4(2) and (4) 8(1), (2) and (3); 9(3), (4) and (6); 10(2),(3),(5) and (6); 11(1) and(2); 14;19(1), (2) and (3),
Deputy Commissioners.	15(1) and (5)

By order of the Governor, Madhya Pradesh,
B.L.PANDEY,Secy.

57. Perusal of the notification indicates that Section 16 was not mentioned. On 28.12.1953, Section 16 was amended. Amended Sections 16-A and 16-B read thus:-

"16-A. (1) Whenever any question as is referred to in section 16 arises before a Civil Court in any suit or proceeding, the Court shall, unless such question has already been determined by a Revenue Officer, refer the question to the Revenue Officer for decision and shall stay the suit or proceeding so far as it relates to the decision of such question.

(2) The Civil Court shall accept the decision of the Revenue Officer on the question and decide the suit or proceeding before it accordingly.

16-B. Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of."

58. The Full Bench dealt with argument of the defendants that the words "under that provision" appearing in Section 2(j) mean "under the Berar Land Revenue Code". The Full Bench held that the argument that the words "under that provision" mean the Land Revenue Code, is devoid of any merit. The definition contained in Section 2(j) is also clear and unambiguous. A plain reading of it leaves no doubt that the words 'under that provision' refer to the opening words in the definition "in any provision of this Act". In other words, reference to a Revenue Officer in any provision of the Act is in reference to that officer who is directed by the State Government to discharge the functions of a Revenue Officer under that particular provision. It follows that before a Revenue Officer appointed under the Code can discharge functions under any provisions of the Act, it is necessary that he must be empowered by the State Government to discharge those functions.

59. The Full Bench noted that no officer was empowered to discharge the functions of a Revenue Officer under section 16 by issuing a notification. There was, therefore, no revenue officer who can decide any question as is referred to in Section 16. In

the absence of such an officer, there is no one to whom the Civil Court can refer the question for a decision under subsection (1) of Section 16-A. The legislature has, no doubt, provided for a special tribunal to decide the questions as are referred to in Section 16. Having made provision for a special Tribunal, the legislature has deprived the Civil Court of its jurisdiction to decide such questions. But where no such Tribunal has been constituted, the special remedy provided is not available and cannot be resorted to. There being no Revenue Officer to whom the Civil Court can refer question, sub-section (1) of section 16-A cannot be given effect to. The Full Bench observed that legislature could not possibly have intended that a person should be left without any means of obtaining relief to which he may be lawfully entitled. In such a case, therefore, the Civil Court, before which suit is proceeding, being unable to obtain decision from a competent Revenue Officer, is not required to stay the suit. It must proceed to decide the issue itself and give relief and redress to the person aggrieved. This is on the principle that if a civil court is deprived of its jurisdiction, because the legislature has provided for trial of the matter by a special tribunal, then if the tribunal is not constituted, the provisions made for referring the matter to the tribunal having become ineffective, the aggrieved person has the right to proceed in an ordinary civil court and the civil court will be competent to decide the matter.

60. In my opinion, if a provision is made thereby jurisdiction of the civil court is ousted and the matter is to be referred to an authority or tribunal and if it be found that there is no such authority or tribunal appointed or is in existence, the jurisdiction of the Civil Court is continued. The Full Bench referred the following decisions:

1. Tulsiram Vs Ramsingh, (1961) 64 B.L.R. 41;
2. Paika Vs Rajeshwar, (1957) N.L.J. 344 (FB). In that case, Full Bench of this Court held that if an issue arises between the parties whether there was a transaction which resulted in one of the parties becoming a lessee and the lease is a lease which falls within the Act, then that issue could only be tried by the Revenue Officer and not by the civil Court. The argument that no officer had been empowered to discharge the functions of Revenue Officer under sub-section (1) of section 16 was not advanced before the Full Bench. Consequently, the Full Bench did not consider the question which fell for consideration int his case.;
3. Bhima Balu Vs Basantgounda Mamggounda, 1954 (56) Bom.L.R. 520;
4. Bharat Chandra Malti Vs. Gour Chandra Adak, A.I.R. 1953 Cal 95;
5. Krishna Chandra Vs Panchu Ghosh, AIR 1953 Cal 720;
6. Lachmi Chand Suchati Vs. Ram Pratap Chaudhry, (1934

I.L.R. 14, Patna, 24 (FB);

7. Sat Narain Gurwala Vs. Hanuman Prashad, A.I.R. 1946 Lahore 85.

61. Apart from this, Section 9 of C.PC. lays down that Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred. It is well settled that where statutory enactments only create right or liability without providing forum for remedy, any person having a grievance that he has been wronged, or his right is being affected, can approach a Civil Court on the principle that 'where there is right, there is remedy' (ubi jus ibi remedium). After the commencement of the Act and before the Constitution of Tribunal, the Civil Court will definitely have jurisdiction, since the aggrieved party in the absence of forum, will be rendered remediless and this is not object of the Act. It is to be noticed that when all the litigants under common law and also under special enactments are having fora to ventilate their grievances and only the litigants of waqf property are left with no forum, it amounts to violation of their fundamental rights and Section 85, which bars the jurisdiction of Civil Courts, will be vulnerable to attack, as observed by the Full Bench in the case of Badarla Suryakumari (supra).

62. It is also material to note that Section 3 (q) defines the

expression 'Tribunal' and reads thus:

"3. In this Act, unless the context otherwise requires,-

(q) "Tribunal", in relation to any area, **means the Tribunal constituted under sub-section (1) of Section 83** having jurisdiction in relation to that area. "

Section 85 reads thus:

"85. Bar of jurisdiction of civil courts revenue Court and any other authority.—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 wakf, wakf property 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."**

(emphasis supplied)

63. As noted earlier, amended Section 83(1) empowers the State Government to constitute as many Tribunals as it may think fit for determination of any dispute, question or other matter specified therein. Amended Section 83(4) lays down that the Tribunal shall consist of Chairman and two members as specified in clauses (a) to (e). Admittedly, the State Government has not constituted Tribunal consisting of three members as per amended section 83(4). Thus, as of today, State Government has not constituted Tribunal as contemplated by Section 3(q) read with amended Section 83(1) and (4). I find substance in the submission of Mr. Muchhala that bar under section 85 of the Act cannot be invoked in the facts and circumstances of the present case as basically State Government has not issued notification

appointing a three member Tribunal in terms of the amended Section 83(4). The Civil Court will have requisite jurisdiction to entertain and try the suit. In my opinion, the single member Tribunal does not have jurisdiction to entertain and try suits or other proceedings instituted on and after 1.11.2013. It will be a case of lack of inherent jurisdiction.

64. In my opinion, the decision of the Full Bench of this Court in Raje Vyankatrao Jagjivanrao Deshmukh applies on all fours to the facts of the present case. At the costs of repetition, under section 83(1) of the Act, the State Government constituted one member Tribunal. Under the amendment Section 83(4), now the Tribunal consists of multi members. Admittedly, the State Government has not issued notification appointing a three member Tribunal. There is also no transitional provision laying down that so long as Tribunal is not constituted as per amended Section 83(4), the single member Tribunal can decide the dispute. At the same time, section 85 expressly bars the jurisdiction of the Civil Court. In the case of P. Ramrao (supra), the Division Bench of Andhra Pradesh High Court qualified Section 85 by the words "after the constitution of the Tribunal" immediately after the words "should lie". Mr. Muchhala submitted that when the words of statute are plain and unambiguous, one need not have recourse to a purposive interpretation. On the other hand, Mr. Khan submitted that High

Courts of Kerala, Andhra Pradesh and Gujarat were right in adopting a purposive interpretation.

65. In the case of Shiv Shakti Co-op Housing Society (supra), the Apex Court observed in paragraphs 19, 22 to 24 thus;

> "19. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The Language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stipulate mental references to reference. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse and Anr., (1997) 6 SCC 312) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, (1846) 6 Moo PCC 1 : 4 MIA 179, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction take up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr., JT[1998] 2SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 943 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 444 (HL), quoted in Jamma Masjid, (SIC) v. Kodimaniaudra Deviah and Ors. AIR 1962 SC 847.
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> 22. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular

Trading Company, Ujjain, 2000(5) SCC 511 . The legislative casus omissus cannot be supplied by judicial interpretative process.

23. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou 1966 1 QB 878 (All ER p 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC, 1963 AC 557 where at AC p. 557 (All ER p 664) he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

24. It is then true that, "When the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand," it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton (1858)11 Moo P.C. 347). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis exist it proetereunt legislatores, the rule is that the particular case, this left

> unprovided for, must be disposed of according to the law as it existed before such statute Casus omissus et oblivion dates disposition communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (I.T.R. 44,52), "can in no case be supplied by a court of law, for that would be to make laws."

66. In my humble opinion, in view of the above decision as also the decision of the Full Bench in the case of Raje Vyankatrao Jagjivanrao Deshmukh (supra) as also Section 9 of C.P.C, it is not necessary to qualify Section 85. In view thereof, I do not find it necessary to adopt a purposive interpretation.

67. Mr. Khan submitted that coming into force of the Act is one thing and enforcement of the Act is another thing. The scheme of the Act itself contemplates that in stage-wise the Act will be enforced. Perusal of the scheme of the Act also indicates that it was not possible for the State Government to enforce the Act immediately upon coming into force of the Act. But it is not possible to accept the submission of Mr. Khan that till such time the Tribunal is constituted in terms of the amended Section 83(4), a single member Tribunal can proceed to decide disputes as contemplated under the amended Section 83(1). I have already dealt with the Judgments relied upon by Mr. Khan in support of his contentions. These judgments laid down that a single member Tribunal can proceed to decide disputes till such time a three member Tribunal is constituted as aggrieved party will have no remedy. I have already held that if the Tribunal is

not constituted as per the amended Section 83(4), aggrieved party can approach Civil Court for obtaining appropriate reliefs. I am, therefore, of the opinion that the reliance placed by Mr. Khan on the decisions, referred to in paragraph 8, does not advance the case of the plaintiff.

68. In the case of Mirza Khusru Ali Baig (supra), the learned Single Judge of Andhra Pradesh High Court held that the Tribunal constituted under the parent Act has to be permitted to deal with the disputes till the Waqf Tribunal is reconstituted under the provisions of the Amendment Act. It will be anomalous to revert to the Civil Court's jurisdiction to decide the disputes falling under the parent Act once again at this length of time. It was further held that to hold that an aggrieved party has to approach the civil court till reconstitution of the Waqf Tribunal, would be to act contrary to the object with which Sections 83(4) and 85 of the parent Act have been envisaged.

69. In the case of Umar Jusab Munjavar (supra), the learned Single Judge of Gujarat High Court observed in paragraph 23(a) that if it is held that the existing Tribunal duly constituted under the parent Act has no power or jurisdiction to entertain and adjudicate cases under the Waqf Act, until and unless it is reconstituted, as per the amended provisions of Section 83(4), the result that would ensure is that a large number of litigants would be left without any remedy, as Section 85 of the Waqf Act

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 propriety of such determination. He submitted that since this contention was not raised by defendants no. 1 to 7 before the Tribunal, the Tribunal did not determine the said issue. Defendants no. 1 to 7, therefore, cannot agitate this ground for the first time in this revision application. Even this Court, in exercise of powers under section 83(9) cannot go into this question. I do not find any merit in this submission. The question raised by defendants no. 1 to 7 is pure question of law for which no evidence is necessary. From the material on record, it is evident that the State government has not issued notification under amended Section 83 (1) constituting a three member Tribunal as per amended Section 83(4). This is a clear case of lack of inherent jurisdiction.

72. Mr. Khan submitted that the Tribunal has granted ad-interim order and, therefore, no case is made out for invocation of revisional powers. I have already referred to findings recorded by the Tribunal in paragraphs 32 and 34. I have also held that a single member Tribunal has no jurisdiction to entertain and try the dispute after coming into force of the Amendment Act with effect from 1.11.2013. Assuming that I am wrong in holding that a single member Tribunal has no jurisdiction and as the contention is raised before me by Mr. Muchhala about the

correctness of the impugned order, I have dealt with this only for the sake of completeness.

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

74. Now it is also necessary to consider the fate of suits or other proceedings which are instituted prior to coming into force of the Amendment Act with effect from 1.11.2013. The legislature has not made any transitory provision. The legislature has also not provided for transfer of suits/proceedings which are instituted prior to 1.11.2013. In view of Section 6(e) of the General Clauses Act, 1897, suits/proceedings instituted before a single member Tribunal prior to 1.11.2013 shall be continued as if Section 83(4) is not amended. In view thereof, it has to be held that the waqf suit instituted by the plaintiff after 1.11.2013 before a single member Tribunal is not maintainable and consequently Plaint is liable to be returned along with

Applications Exhibit-19 and 30. Parties shall appear before the Tribunal when the Tribunal will pass further orders for return of Plaint along with Applications-Exhibit 19 and 30 for presentation before appropriate Civil Court in the light of observations made herein. The impugned order will have to be quashed and set aside on the ground that it is without jurisdiction and Applications-Exhibit-19 and Exhibit-30 filed by the plaintiff are liable to be restored to the file. The said Applications will have to be decided by the Civil Court after return of Plaint along with Applications Exhibit 19 and 30, on their own merits and in accordance with law uninfluenced by the observations made herein.

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

1. The waqf suit instituted by the plaintiff before a single member Tribunal is not maintainable and consequently Plaint along with Applications-Exhibit 19 and 30 are liable to be returned for presentation before appropriate Civil Court. Parties shall appear before the Tribunal on 15.9.15 and the Tribunal will pass necessary orders within two weeks from the date of appearance of the parties.
2. Impugned order passed by the Tribunal is quashed and set aside on the ground that the said order is without jurisdiction and Applications-Exhibit-19 and 30 filed by the

plaintiff are restored to the file. The said Applications shall be decided by the Civil Court after return of Plaint on their own merits on the basis of material on record and in accordance with law uninfluenced by the observations made herein.

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

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

5. Civil Courts will have jurisdiction to entertain and try suits or any other proceedings instituted on and after 1.11.2013 despite bar of Section 85 till such time the State Government issues notification appointing a three member Tribunal as per the amended Section 83(4).

6. As there is no provision for transfer of pending suits in the Amendment Act, suits or any other proceedings, so instituted on or after 1.11.2013, shall continue to be tried by Civil Courts even after the State Government issues

notification constituting a three member Tribunal as per the Amended Section 83(4) unless the Central Government intervenes as per Section 113 or the Act is suitably amended.

7. Notwithstanding setting aside the impugned order, Clauses (2) and (3) of operative part of the impugned order shall remain in force for a period of six weeks from today so as to enable the plaintiff to obtain appropriate ad-interim, interim order from Civil Court. Continuation of the ad-interim order shall not be treated as expression of merits of the case either way. All the contentions in that regard are expressly kept open.

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

(R.G.Ketkar, J.)