

Punjab Wakf Board v. Tarlochan Singh (P&H) : Law Finder Doc Id # 658554

PUNJAB AND HARYANA HIGH COURT

Before :- G.S. Sandhawalia, J.

Civil Revision Nos. 7360, 7361, 7365, 7366, 7377, 7521 and 7360 of 2012. D/d. 14.1.2015.

Punjab Wakf Board - Petitioner

Versus

Tarlochan Singh and another - Respondents

For the Petitioner :- Mr. G.N. Malik, Advocate.

For the Respondent in C.R. Nos. 7360 and 7365 of 2012 :- Mr. Vineet Sharma, Advocate.

For the Respondents No. 3 and 4 in C.R. No. 7361 of 2012 :- Mr. Arnav Sood, Advocate for Mr. Kushagra Mahajan, Advocate.

For the Respondents No. 1 to 3 in C.R. No. 7366 of 2012 :- Mr. Prateek Mahajan, Advocate.

For the Respondents in C.R. No. 7377 of 2012 :- Mr. Ashish Aggarwal, Advocate.

For the Respondents in C.R. Nos. 7521 of 2012 :- Mr. Deepak Kumar, Advocate for Mr. B.S. Jaswal, Advocate.

NUTSHELL

Defect of jurisdiction goes to root of the matter - If a decree is found to be nullity at any stage the same could be challenged even at the execution stage and in a collateral proceeding on the ground that the Court lacks inherent jurisdiction.

Wakf Act, 1995 Sections 7, 83 and 85 East Punjab Urban Rent Restriction Act, 1949 - Suit for possession filed by Wakf Board - Wakf Tribunal decreed the suit in favour of board - Execution application filed by Wakf Board before Civil Court was rejected on the ground that Tribunal did not have jurisdiction therefore award was nonest, void ab-initio and not executable - Hence this revision - Held, no fault can be found with well reasoned order passed by Executing Court - Tribunals were constituted for determining disputed question relating to Wakf Property and did not exclude jurisdiction of Civil Court irrespective of other questions - Suit for seeking eviction of tenants from Wakf Property could only be filed before Civil Court - Revision dismissed. 2010(2) R.C.R.(Rent) 266, 2011(2) R.C.R.(Civil) 837, Relied, 2010(1) RCR (Civil) 144, 2011(1) R.C.R.(Civil) 303, 2013(4) R.C.R.(Civil) 758, 2014(1) R.C.R.(Rent) 404, Referred.

[Paras 10 and 11]

Cases Referred :

[Amrit Bhikaji Kale v. Kashinath Janardhan Trade, \(1983\)3 SCC 437.](#)

[Anil Kumar Goel v. Kishan Chand Kaura, 2008\(1\) R.C.R.\(Criminal\) 290 : 2008\(1\) R.C.R.\(Civil\) 357 : 2007\(13\) SCC 492.](#)

[Bhanwar Lal v. Rajasthan Board of Muslim Wakf, 2013\(4\) R.C.R.\(Civil\) 758 : 2013\(5\) Recent Apex Judgments \(R.A.J.\) 601 : 2014 AIR \(SC\) 758.](#)

[Board of Wakf, West Bengal v. Anis Fatma Begum, 2011\(1\) R.C.R.\(Civil\) 303 : 2010\(6\) Recent Apex Judgments \(R.A.J.\) 632 : 2010\(14\) SCC 588.](#)

[Faseela M. v. Munnerul Islam Madrasa Committee, 2014\(1\) R.C.R.\(Rent\) 404 : 2014\(2\) R.C.R.\(Civil\) 890 : 2014\(3\) Recent Apex Judgments \(R.A.J.\) 146 : 2014 AIR \(SC\) 2064.](#)

[Gian Devi Anand v. Jeevan Kumar, 1985\(1\) RCR \(Rent\) 459 \(SC\).](#)

[M/s Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government, 1984\(1\) R.C.R.\(Rent\) 168.](#)

[P.V. George v. State of Kerala, 2007\(1\) S.C.T. 796 : \(2007\)3 SCC 557.](#)

[Ramesh Gobindram \(dead\) through L.Rs. v. Sugra Humayun Mirza Wakf, 2010\(2\) R.C.R.\(Rent\) 266 : 2010\(5\) Recent Apex Judgments \(R.A.J.\) 171 : 2010\(3\) SCC \(Civil\) 553.](#)

[Sarup Singh v. Union of India, 2011\(2\) R.C.R.\(Civil\) 837 : 2011\(2\) Recent Apex Judgments \(R.A.J.\) 576 : 2011 AIR \(SC\) 514.](#)

[Sarwan Kumar v. Madan Lal Aggarwal, 2003\(1\) R.C.R.\(Rent\) 347 : 2003\(4\) SCC 147.](#)

[Shyam Sunder v. Ram Kumar, 2001\(3\) R.C.R.\(Civil\) 754 : \(2001\)8 SCC 24.](#)

[State of Punjab v. Krishan Dayal Sharma, AIR 1990 SC 2177.](#)

[Surinder Singh v. Punjab Wakf Board, 2010\(1\) R.C.R. \(Civil\) 144.](#)

[Union of India v. Raghubir Singh \(Dead\) by L.Rs., 1989\(1\) R.R.R. 552 : \(1989\)2 SCC 754.](#)

[Union of India v. Sube Ram, 1997\(1\) R.C.R.\(Civil\) 564 : \(1997\)9 SCC 69.](#)

[Zile Singh v. State of Haryana, 2005\(2\) R.C.R \(Civil\) 744 : 2004\(8\) SCC 1.](#)

JUDGMENT

G.S. Sandhwalia, J. - This order shall dispose of Civil Revision Nos. 7360, 7361, 7365, 7366, 7377 & 7521 of 2012 as common questions of facts and law are involved in these petitions. However, for dictating this judgment, the facts have been taken from Civil Revision No. 7360 of 2012.

2. Challenge in the present revision petition is to the order dated 12.9.2012 (Annexure P/2) passed by the Civil Judge (Senior Division), Amritsar whereby the Execution Petition filed by the Punjab Wakf Board (hereinafter referred to as "the Board") has been held to be not maintainable on the ground that the award dated 22.4.2008 passed by the Wakf Tribunal

was without jurisdiction. The Executing Court has placed reliance upon the judgment of the Apex Court in **Ramesh Gobindram (dead) through L.Rs. v. Sugra Humayun Mirza Wakf, 2010(2) R.C.R.(Rent) 266 : 2010(5) Recent Apex Judgments (R.A.J.) 171 : 2010(3) SCC (Civil) 553** and **Sarup Singh and another v. Union of India and another, 2011(2) R.C.R.(Civil) 837 : 2011(2) Recent Apex Judgments (R.A.J.) 576 : 2011 AIR (SC) 514.**

3. The petitioner Board had filed a suit for possession on 20.1.2003 for recovery of possession against the present respondents regarding shop bearing No. 2176/V-13 situated in the Chowk Manna Singh, Amritsar and for recovery of ₹ 7650/- as rent upto 31.12.2002 before the Wakf Tribunal. The case of the Board was that the shop in dispute was the wakf property and the rent was ₹ 50/- per month with effect from 1.4.1987 as per allotment letter dated 6.1.1988 and the rent had been paid upto 31.3.1990 by the respondents and there was default thereafter which had not been made good inspite of demands. The respondents had made certain additions and alterations without written consent and respondent No. 1 had sublet the premises to respondent No. 2 without permission. The property was exempted from the provisions of the East Punjab Urban Rent Restriction Act, 1949 and notice dated 18.11.2002 had also been served upon the respondents to avoid any technical objection. Respondent No. 1 did not appear before the Tribunal despite service and respondent No. 2 challenged the maintainability of the suit taking the plea that he was inducted in March, 1991 at a monthly rent of ₹ 50/- and since then he was in possession and regularly paying the rent. He was ready to tender the rent but the Board was not ready to accept the same and demand of ₹ 50,000/- was made illegally on account of donation. No receipt for payment of rent had been issued and he was paying the rent from March, 1991 till the filing of the suit. The factum of alteration and addition had been denied. Respondent No. 1 had no concern with the disputed shop and neither the Board had approached him for delivery of vacant possession.

4. The Wakf Tribunal framed the following issues :-

- 1) Whether the plaintiff is entitled for possession by way of ejection of the defendants as prayed for? OPP
- 2) Whether the plaintiff is entitled to recover amount of ₹ 7650/- as rent upto 31.12.2002 as prayed for?OPP
- 3) Whether the suit is not maintainable in the present form? OPD
- 4) Relief.

5. Since respondent No. 1 was proceeded against exparte and therefore respondent No. 2 examined two witnesses in support of his claim whereas Estate Officer Mohd. Ismail Zubairy was examined as by the Board as PW-1.

6. The Wakf Tribunal on the basis of allotment letter dated 6.1.1988 came to the conclusion that respondent No. 1 was the tenant. The partnership deed dated 8.1.1996 set up by respondent No. 2 to take the defence that M/s Khalsa Tent House was running business was not accepted since no document was produced by respondent No. 2 as the plea taken was that he was tenant since March, 1991 and he had failed to show in what capacity he was in possession prior to 1996. The arrears were liable to be paid by respondent No. 1 and since he had not come forth the Board was entitled to recover the arrears. Accordingly, issues regarding the right of possession and ejection of the respondents were decided in favour of the Board and the right to recover the arrears under issue No. 2 since ownership being not disputed was decided in favour of the Board and resultantly the suit was decreed on 22.4.2008.

7. The Execution Application thereafter came to be filed in the Court of Civil Judge (Senior Division), Amritsar on 12.4.2010 seeking physical possession of the property in question with the police help and by breaking open the locks. As noticed the Execution Application was decided in favour of the judgment debtors on the ground that award passed was nonest, void ab-initio and not executable since the Tribunal did not have jurisdiction. Resultantly, the impugned order dated 12.9.2012 (Annexure P/2) has been passed for the reasons noticed above.

8. Counsel for the Board has submitted that since the decision of the Tribunal was dated 22.4.2008 and the judgment in Ramesh Gobindram's case (supra) was delivered on 1.9.2010 and no issue regarding the maintainability was ever raised before the Wakf Tribunal, the Executing Court was not justified in dismissing the execution application and the Executing Court was not to go beyond the decree in question. It has been further submitted that after 1.11.2013 amendment had been made in the Wakf Act, 1995 which clarified that only the Tribunal would have jurisdiction even pertaining to disputes pertaining to the tenants and the Wakf Board.

9. Counsel for the respondents/tenants has submitted that the law had been settled by the Apex Court that once there is no dispute regarding the nature of the property only the Civil Court would have jurisdiction. The Executing Court was well justified in dismissing the execution application for possession of the property as the order passed by the Wakf Tribunal was without jurisdiction. It is submitted that the Apex Court only laid down the position of law and it cannot be said that the judgment in Ramesh Gobindram's case (supra) was prospective in nature and that all earlier decisions of the Wakf Tribunal could be validly executed on the ground that they have been passed earlier to the aforesaid judgment. Reliance has been placed upon the judgment of the Apex Court in **Sarwan Kumar and another v. Madan Lal Aggarwal, 2003(1) R.C.R.(Rent) 347 : 2003(4) SCC 147** to submit that the law regarding the jurisdiction was as per the Wakf Act, 1995 and the law stood right from the date the Act was passed and not from the date of judgment as contended by the Counsel for the Board.

10. After hearing counsel for the parties, this Court is of the opinion that no fault can be found with the well reasoned order passed by the Executing Court. This Court initially had taken a view that the Wakf Tribunal under Section [83](#) of the Wakf Act, 1995 could adjudicate all kinds of dispute as long as they related to any wakf property in **Surinder Singh v. Punjab Wakf Board, 2010(1) R.C.R. (Civil) 144**.

11. As noticed, the Apex Court in Ramesh Gobindram's case (supra) has held that the Wakf Tribunal before whom the suits for eviction of tenants had been filed and allowed were not maintainable and the orders of the Wakf Tribunal were set aside including the orders of the High Court which had upheld the findings of the Tribunal. The provisions of Sections 7, 83 and 85 were examined to hold that the Tribunals were constituted for determining the disputed question relating to wakf property and that did not exclude the jurisdiction of the Civil Court irrespective of other questions. The exclusion was only pertaining to the matters which were required by law under the Act. A suit for seeking eviction of tenants from what was admittedly wakf property could only be filed before the Civil Court. Accordingly, the view taken by this Court and High Courts of Rajasthan, Madhya Pradesh and Kerala were overruled whereas view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay was affirmed. The relevant portion reads as under :-

"21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been

provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

22. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.

23. In the result these appeals succeed and are hereby allowed. The impugned orders passed by the High Court and those passed by the Wakf Tribunal shall stand set aside and the suit filed by the respondent-Wakf Board for the eviction of the appellants dismissed leaving the parties to bear their own costs. We make it clear that this order shall not prevent the Wakf Board from instituting, if so advised, appropriate civil action before the competent Civil Court for redress in accordance with law. No costs."

12. The above said judgment was noticed by the Apex Court in ***Board of Wakf, West Bengal v. Anis Fatma Begum and another, 2011(1) R.C.R.(Civil) 303 : 2010(6) Recent Apex Judgments (R.A.J.) 632 : 2010(14) SCC 588*** wherein there was a dispute regarding the wakf estate and the suit was filed in the High Court. The Apex Court held that the Wakf Tribunal would have jurisdiction and not the Civil Court and therefore, under Section 83(9) of the Wakf Act, 1995 the High Court was not correct in entertaining the dispute.

13. Similarly in ***Bhanwar Lal and another v. Rajasthan Board of Muslim Wakf and others, 2013(4) R.C.R.(Civil) 758 : 2013(5) Recent Apex Judgments (R.A.J.) 601 : 2014 AIR (SC) 758***, the application filed by the respondents in the civil suit for returning the plaint was allowed and the Civil Court returned the plaint on the ground of lack of jurisdiction. The High Court of Rajasthan dismissed the revision petition. The Apex Court held that the Tribunal had only to decide those disputes which were referred to in Sections 6

and 7 of the Wakf Act, 1995 and it was held that there was no dispute that the property in question was wakf property and therefore, the Civil Court would have jurisdiction and accordingly, the application for returning of plaint under Order 7 Rule 10 CPC was dismissed and the Civil Court was directed to decide the issue.

14. Similarly in **Faseela M. v. Munnerul Islam Madrasa Committee and another, 2014(1) R.C.R.(Rent) 404 : 2014(2) R.C.R.(Civil) 890 : 2014(3) Recent Apex Judgments (R.A.J.) 146 : 2014 AIR (SC) 2064**, the Apex Court approved the earlier view taken and held that the suit for eviction of the landlord against the tenant relating to wakf property is triable by the Civil Court and is not a suit covered by the dispute mentioned under Sections 6 & 7 of the Wakf Act, 1995. The order of the Wakf Tribunal returning the plaint to the Civil Court was restored.

15. In view of the above settled position of law, the Executing Court was well justified in placing reliance upon the judgment of the Sarup Singh's case (supra) wherein it has been held that the defect of jurisdiction goes to the root of the matter. If a decree is found to be nullity at any stage the same could be challenged even at the execution stage and in a collateral proceeding on the ground that the Court lacks inherent jurisdiction. The issue in the said case pertained to this Court granting the benefit of enhanced rate of solatium and interest under the Land Acquisition Act on the basis of amendment of 1984. It was held that benefit could not be given to the land owners in view of the law laid down by the Apex Court in **Union of India v. Raghubir Singh (Dead) by L.Rs., 1989(1) R.R.R. 552 : (1989)2 SCC 754** and therefore, the Executing Court was well justified in dismissing the execution application by holding that benefit granted by the High Court under Section 151 and 152 of the Act was without jurisdiction. It was held as under :-

"18. In so far as the second issue is concerned, it is true that the executing court cannot go behind the decree and grant interest not granted in the decree as submitted by the counsel appearing for the appellants in the light of the decision rendered by this Court in **State of Punjab & Others v. Krishan Dayal Sharma reported in AIR 1990 SC 2177**.

19. But, if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is in view of the fact that if a particular Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction and the same is non-est and void ab initio.

20. The aforesaid position is well-settled and not open for any dispute as the defect of jurisdiction strikes at the very root and authority of the Court to pass decree which cannot be cured by consent or waiver of the parties. This Court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In **Union of India v. Sube Ram & Others reported in 1997(1) R.C.R.(Civil) 564 : (1997)9 SCC 69** this court held thus :

"5. [...] here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage." 21. In yet another case of **Amrit Bhikaji Kale & Others v. Kashinath Janardhan Trade & Another**

reported in (1983)3 SCC 437 this Court has held that when a Tribunal of limited jurisdiction erroneously assumes jurisdiction by ignoring a statutory provision and its consequences in law on the status of parties or by a decision are wholly unwarranted with regard to the jurisdictional fact, its decision is a nullity and its validity can be raised in collateral proceeding."

16. In such circumstances, in view of the law laid down by the Apex Court, the Executing Court was well justified in dismissing the execution application.

17. The argument of despair raised by the counsel for the Board that the law laid down in Ramesh Gobindram's case (supra) is prospective with effect from 1.9.2010 and all decrees prior to that passed by the Wakf Tribunal should be protected is without any basis. In Sarwan Kumar's case (supra) similar argument raised that decree passed by the Civil Court prior to the declaration of the law by the Apex Court in **Gian Devi Anand v. Jeevan Kumar, 1985(1) RCR (Rent) 459 (SC)** could be executed as the decree was valid and having been passed by the competent Court at the time of passing of decree and thus being capable of being executed was rejected. The contention that the judgment would be prospective in application and not applicable was rejected by holding that the Court does not hold legislature and only interpretes the law and how a particular provision is to be interpreted and declares the law as it stood from the beginning as per its decision. It was further held that it was always open to the Court to protect the earlier decisions to make the rule applicable prospectively. The invocation of the doctrine of prospective overruling done by the High Court was held to be misplaced and appeals were allowed. The relevant observations read as under :-

"19. In the present case because of the operation of Section 14 of the Act the only authority to pass a decree for ejection of the tenanted premises is the Rent Controller appointed under the Act and Section 50 of the Act specifically bars the jurisdiction of the civil court to entertain any suit or proceeding in so far as it relates to the eviction of any tenant from the premises which were covered by the Delhi Rent Control Act. The civil court lacked the inherent jurisdiction to take cognizance of the cause and to pass a decree. Challenge to such a decree on the ground of nullity could be raised at any later stage including the execution proceedings. Tenancy of the building was governed by a special Act and therefore the decree passed by the civil court was a nullity and therefore in-executable. Judgment-debtors had not filed their written statement in the civil court and no issue regarding the jurisdiction of the civil court to try the suit was framed. Tenant in the special leave petition in this Court raised the contention that the eviction decree passed by the civil court could not be executed against them. This Court refused to go into that question as it was not the subject matter of the order under appeal. It was left open to the judgment-debtors to raise this ground before the appropriate forum, if available to them under law. The only forum where the judgment-debtors could raise the objection regarding the executability of the decree was in the execution proceedings which they did. Since the jurisdiction of the civil court was barred, the decree passed by it was a nullity and the judgment-debtors could successfully raise objection regarding the executability of such a decree. The executing court erred in holding that judgment-debtors could not raise the objection to the executability of the decree being nullity having been passed by a court lacking inherent jurisdiction to do so. This Court in Gian Devi Anand's case (supra) did not lay down any new law but only interpreted the existing law which was in force. As

was observed by this Court in Lily Thomas's case (supra) the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In Gian Devi Anand's case (supra) the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi Anand's case, which was set aside by this Court.

20. For the reasons stated above, the appeal is accepted. The order passed by the High Court as well as the executing court regarding the executability of the decree passed by the civil court are set aside. It is held that the jurisdiction of the civil court to pass the decree for ejection was barred. A decree passed by a Court having no jurisdiction over the subject matter would be a nullity and the judgment-debtor can object to the execution of such a decree being a nullity and non-est. Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings. We are conscious of the fact that it would work a great hardship on the respondent-decree holder who would not be able to reap the benefit of the decree passed in his favour having won at all the stages but the vagaries of law cannot be helped. Accordingly, appeal is accepted. Orders of the High Court and the executing court are set aside. It is held that the decree obtained by the decree-holder cannot be executed being a nullity and non-est. The parties are directed to bear their own costs."

18. Similarly in ***P.V. George & others v. State of Kerala & others, 2007(1) S.C.T. 796 : (2007)3 SCC 557***, the Apex Court held that until a doctrine of prospective overruling has been applied, the Courts only state the law and the law declared by the Courts would have retrospective effect if not otherwise stated to be so specifically. Reference can be made to the relevant observations which read as under :-

"12. The Full Bench of the High Court indisputably did not say that the promotions which had already been granted would not be disturbed. The judgment of the Full Bench attained finality as special leave petition filed there against was dismissed. Rules as amended by the State of Kerala on 01.07.1980 and 30.08.1984 were upheld.

13. If the said Rules ultimately were held to be constitutional, it was required to be given effect to. The law declared by a court is ordinarily affects the rights of the parties. A court of law having regard to the nature of adversarial system of our justice delivery system exercises adjudicatory role. Legal consequences are determined in respect of the matters which had taken place in the past.

14. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a

situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

xxx xxx xxx

24. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

19. Accordingly, the said argument is rejected in view of the settled position of law since nothing was laid down by the Apex Court in Ramesh Gobindram's case (supra) that the judgment would be prospective in nature and would save the orders passed by the Wakf Tribunal earlier.

20. Similarly argument raised that amendment dated 1.11.2013 is retrospective is without any basis since nothing could be shown as the said amendment would relate back to the original Wakf Act, 1995 which was brought into force from 1.1.1996. Reliance placed upon **Zile Singh v. State of Haryana, 2005(2) R.C.R (Civil) 744 : 2004(8) SCC 1** to submit that by virtue of amendment now made it would relate back to the date on 1.1.1996 would be without any basis because a perusal of the said judgment would go on to show that in the said case second amendment was made whereby the words were substituted and thus it was held that being a case of substitution, the effect would be of amending the text since the commencement of the amendment. It was accordingly held that since there was a draftsman's mistake, therefore, the Legislature had stepped in by substituting the mistaken wording and removed the obvious error. Relevant observations read as under :-

"However, the legislature got wiser by realising its draftsman's mistake and stepped in by substituting the mistaken word 'after' by the correct word 'upto' which should have been there since very beginning. In our opinion the Second Amendment is declaratory in nature. It alters the text of the First Amendment in such manner as to remove the obvious absurdity therefrom and brings it in conformity with what the Legislature had really intended to provide. It explains and removes the obvious error and clarifies what the law always was and shall remain to be. The Second Amendment would operate retrospectively from the date of the First Amendment and in giving such operation no mandate of any law or principle is violated. Else, the evil sought to be curbed continues to exist for some period contrary to legislative intent. The application of rule against retrospectivity stands excepted from Second Amendment Act. In Javed (supra) the Court has been at pains to point out how the growth of population of India was alarming and posed a menace to be checked. It was in national interest to check the growth of population by casting disincentives even through legislation. The First Amendment Act targets the evil and seeks to cure it. The legislative competence of the State is not disputed. Thus, keeping in view the general scope and purview of the statute, the remedy sought to be applied, the former state of law, the legislative intent and the employment of the expression "for the word 'after' the word `upto' shall be substituted" in the text of the Second Amendment, we have no doubt in our mind that the Second Amendment has the effect of

amending the text of First Amendment ever since the date of commencement of the First Amendment, i.e., April 5, 1994.

21. A five Judges constitutional Bench of the Apex Court in ***Shyam Sunder and another v. Ram Kumar and another, 2001(3) R.C.R. (Civil) 754 : (2001)8 SCC 24*** considered the effect of retrospective amendments and held that there is a presumption against retrospective operation of the statute. Similarly in ***Anil Kumar Goel v. Kishan Chand Kaura, 2008(1) R.C.R. (Criminal) 290 : 2008(1) R.C.R.(Civil) 357 : 2007(13) SCC 492***, it was held that until express words were there to give retrospective effect or when the language is clear, the provision is to be given effect accordingly. The relevant observations read as under :-

"8. All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision is question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not. (See: ***M/s Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors., 1984(1) R.C.R. (Rent) 168***)."

22. Accordingly, no fault can be found in the well reasoned order passed by the Executing Court. Accordingly, the present revision petitions are dismissed. It is made clear that this order shall not prevent the Wakf Board from instituting, if so advised, appropriate civil action before the competent Civil Court for redress in accordance with law.

23. A photocopy of this order be placed on the record of each connected case files.