

Wakf Act, 1995, S. 5, 6, 85 - Wakf Act, 1954, S. 5, 6 - Declaration as wakf property - Non-inclusion of a property in Survey commissioner's report - The overall view of the aforementioned provisions contained in Wakf Act, 1954 and Waqf Act 1995 make it evident that even under 1954 Act, as in 1995 Act, the Survey Commissioners were appointed for the purpose of making survey of wakfs in State. The Survey Commissioner was duty bound to conduct the survey of wakfs in the State and after making such enquiry, as he might consider necessary, would submit his report in respect of Wakfs existing in the State to the State Government with necessary particulars. Copy of the said report would be forwarded by the State to the Wakf Board which in turn would examine the report by applying its mind and thereafter would publish the notification. Whereas under 1995 Act, the Wakf Board after examining the report forwards it back to Government within a period of 6 months for publication in the Official Gazette in the State. Pursuant thereto the State will publish the Gazette notification. The revenue authorities will consequently include the list of Auqaf properties while updating the revenue records under sub-section (3) of Section 5 of 1995 Act. [Para 16]Held, Thus it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under 1995 Act, (it was by the Board under 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a Wakf Property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of it's mind and only thereafter the same will be sent to Government for notifying the same in the Gazette. Since the list is prepared and published in the official Gazette by following aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's report. Since the surveyor's report was required to be considered by the State Government as well as Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's report will have to be reconsidered. On the contrary Surveyor's report merges with the Gazette Notification published under Section 5 of the Wakf Act.

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