

**Wakf Act, 1954, S. 27 - Wakf Act, 1995, S.40 - [CPC](#) , 1908 (V of 1908), O.7 R.11 - Suit for cancellation of sale deed - Effect of Section 27 of 1954 Act or Section 40 of 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for the Wakf Board to take action, as per said provision.**

Property in question does not find place in the Gazette notification published under Section 5 of the Wakf Act - In other words, the property in question is not notified in the official Gazette as Wakf property - If anybody including the Wakf Board or the plaintiff was aggrieved by such non-inclusion of the property in the list notified, the aggrieved person should have raised the dispute under Section 6 within a period of one year from the date of publication of the Gazette notification in the matter - The plaintiff has practically questioned the non-inclusion of the property in the list and the validity of the list notified in the official gazette dated 28.06.1962 after the lapse of about 50 years, i.e. in the year 2013 by filing the present suit.

As per Section 27 of 1954 Act (Section 40 of 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question. The decision of the Board on any question under sub-section (1) of Section 27 of 1954 Act (or under Section 40(1) of 1995 Act) shall, unless revoked or modified by the Civil Court, be final. The effect of Section 27 of 1954 Act or Section 40 of 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for the Wakf Board to take action, as per said provision.

In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of 1954 Act and Section 40 of 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra. [Para 22]

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