

Waqf Act (43 of 1995), S.86, S.85 - Waqf property - In suits or other proceedings instituted by the Board falling under clause (a) or those instituted by the mutawalli falling under clause (b) of Section 86, the civil court will have jurisdiction to appoint a receiver - Bar under Section 85 will have no application to cases covered by Section 86.

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Waqf Act (43 of 1995), S. 85, 86, S.89, S.90 - Waqf property - Bar of jurisdiction under Section 85 is not total and omnipotent and that there may be cases which could still be entertained by civil courts - In fact, Section 93 which prohibits the mutawalli from entering into a compromise with the opposite party in any suit, also refers to “court” - It appears that the question of bar of jurisdiction of the civil court, has been left by the law makers to the vagaries of judicial opinion - A conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of civil court contained in Section 6(5) and Section 7(2) is confined to Chapter II, but the bar of jurisdiction under Section 85 is all pervasive - The words in the second limb of Section 85 namely, “other matter which is required by or under this Act to be determined by a Tribunal”, seek to cover matters which have no relevance to the two questions covered by Section 6(1) and 7(1).

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Waqf Act (43 of 1995), S.85, S.68(6), S.86, S.90, S.93 - Waqf property - Bar of jurisdiction of civil Court - Does not apply to the following matters - (i) Whenever a District Magistrate passes an order directing the removed mutawalli or removed members of a Committee of Management to deliver possession of the records, accounts and properties of the waqf, to the successor or successor Committee of Management, any person claiming that he has right, title and interest in the properties specified in the order so passed by the Magistrate can approach a civil court; (ii) The Board itself may approach a civil court either to set aside the sale in execution of a decree of civil court, of an immovable property which is a waqf property, or to set aside the transfer of any immovable property made by the mutawalli without the sanction of the Board or to recover possession of the property so sold or transferred, as the case may be; (iii) The mutawalli is also empowered to approach the civil court to recover possession of any immovable property which is a waqf property, but which had been transferred by the previous mutawalli without the sanction of the Board (this is implicit in Section 86); (iv) A waqf property can be brought to sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, but such a proceeding will be void if no notice thereof is given to the Board [this is implicit in Sections 90(2) and

(3)].

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Waqf Act (43 of 1995), S.83(1), S.85 - Specific Relief Act (47 of 1963), S.38 - CPC, 1908, O.7 R.11 - Waqf property - Suit for permanent injunction - Bar of civil Courts - To say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).

Held, It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1). In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.

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Waqf Act (43 of 1995), S.83, S.85 - Specific Relief Act (47 of 1963), S.38 - Waqf property - Suit for permanent injunction - Bar of jurisdiction of civil Courts - Property is admitted to be a waqf property - Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of section 83 and 85 which speak of any dispute, question or other matter relating to a waqf or a waqf property - A question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case - This question has necessarily to be decided by the Tribunal and not the civil court.

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