

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.14417/2025

[Arising out of impugned final judgment and order dated 06-01-2025 in CRP No. 100027/2020 passed by the High Court of Karnataka Circuit Bench at Dharwad]

SYED GOUSE ALIAS NAWAB PASHA KAZI

Petitioner(s)

VERSUS

KARNATAKA STATE BOARD OF WAKFS & ANR.

Respondent(s)

(IA No. 103684/2025 - EXEMPTION FROM FILING O.T.)

WITH

SLP(C) No. 29044/2025 (IV-A)

(FOR EXEMPTION FROM FILING O.T. ON IA 239363/2025, FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 239365/2025, FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 262841/2025 AND FOR EXEMPTION FROM FILING O.T. ON IA 262842/2025)

Date : 03-11-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KAROL
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) :Mr. Shariq Ahmed, Adv.
Mr. Tariq Ahmed, Adv.
Mr. Sunil Kumar Verma, Adv.
Mr. Adnan Yousuf Bhat, Adv.
M/S. Ahmadi Law Offices, AOR

Mr. Shailesh Madiyal, Sr. Adv.
Mr. Chandrashekhar A. Chakalabbi, Adv.
Mr. Varnik Kundaliya, Adv.
Mr. Rahul Singh Latwal, Adv.
M/s Dharmaprabhas Law Associates, AOR

For Respondent(s) :Mr. Shariq Ahmed, Adv.
Mr. Tariq Ahmed, Adv.
Mr. Sunil Kumar Verma, Adv.
Mr. Adnan Yousuf Bhat, Adv.
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Ms. Baani Khanna, AOR
Mr. Robin Singh, Adv.
Mr. Kapil Balwani, Adv.
Mr. Shrikant Thokchom, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
2. The sole issue which arises for consideration is as to whether compliance of provisions of Section 4 of the Waqf Act, 1995 are sine qua non prior to the issuance of the Notification under Section 5 of the said Act or not.
3. To this effect a specific plea was taken by the instant petition in his suit, paragraph 8 of the plaint reads as under:

" The plaintiff submits that no preliminary survey of the alleged Wakf Properties was conducted as contemplated under Section 4 of the Wakf Act, 1995 before publishing the Gazette Notifying the schedule properties as Wakf Properties."
4. In response thereto, in paragraph 6 of the Written Statement there is a simple denial.
5. Even though the Tribunal specifically framed issue No.2 which reads as under, but however specifically did not deal with it:

"2. Whether the plaintiff proves that the Gazette Notification No. KTW/l611/ASR/75/14248 dated 18/23-8-1975 published on 27-1-1977 is null and void and not binding on him?"
6. This is evident from paragraph 30 of the judgment dated 04.11.2019 passed by the Karnataka Waqf Tribunal. The High Court, while dealing with the said issue has only observed as

under:

"36. Therefore, it would be incumbent on defendant no.1-Board to establish that notification under Section 5 was issued in compliance with Section 4 of Act. Strangely, no evidence was led by defendants in this regard. Therefore, finding of Tribunal that issuance of Gazette was conclusive proof about existence of Waqf would also be contrary to law."

7. Our attention is invited to paragraph 32 of the decision rendered by this Court in the case of *"Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and Ors."*, reported in (2023) 16 SCC 264 which reads as under:

" 32. A plain reading of the provisions of the above two Acts would reveal that the notification under Section 5 of both the Acts declaring the list of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Therefore, conducting of the surveys before declaring a property a wakf property is a sine qua non. In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the 16 Wakf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act. In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land. Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999."

8. There is yet another issue which we are called upon to answer, and that being, as to whether, in the absence of compliance of Section 4, proviso to Section 6 of the Act is applicable or not.

9. Let the parties address on these issue.
10. Liberty is granted to the respondents to place on record additional material, if any, indicating as to whether there was compliance of Section 4 of the Act or not. Let the needful be done within one week.
11. Learned counsel may submit their written submissions alongwith the decision(s), they seek to rely upon.
12. Heard in part.
13. List on 03.12.2025 (high up on the board).
14. Interim order to continue till the next date of listing.

(RAJNI MUKHI)
ASTT. REGISTRAR-cum-PS

(ANU BHALLA)
COURT MASTER (NSH)