

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

LPA No. 187/2023

Reserved on: 29-05-2025

Pronounced on: 05.06.2025

1. Intizamiya Committee Dargah (I)
Ziyarat Syed Jaffer (II) Ziyarat Syed Rehman(III)
Ziyarat Syed ul Hajra
Situating at Rayil, Gund Ganderbal, through Manager,
Haji Abdul Ahad Akhoon, Aged 70 years
Son of Late Mohd Ramzan Akhoon
Resident of Rayil, Tehsil Gund, District Ganderbal

2. Haji Abdul Ahad Akhoon, Aged 70 years
Son of Late Mohd Ramzan Akhoon
Resident of Rayil, Tehsil Gund, District Ganderbal

...Appellant(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate
With Ms. Mehnaz Rather, Advocate.

VERSUS

1. UT of J&K through Commissioner cum Secretary to
Government (Revenue/Haji & Auqaf), Civil Secretariat,
Srinagar/Jammu
2. Chairperson of J&K Wakf Board, Sonwar, Srinagar
3. Secretary, J&K Wakf Board, Srinagar
4. Chief Executive Officer, J&K Wakf Board, Srinagar
5. Executive Magistrate (Tehsildar) J&K Wakaf Board, Srinagar
6. Sub Divisional Magistrate, Kangan, Ganderbal
7. In charge Administration, J&K Wakaf Board, Wakaf Building
Zero Bridge, Srinagar.

...Respondent(s)

Through: Mr. Mohammad Iqbal Dar, Advocate
With Ms. Sana Imam & Mr. Ruaani A.
Baba, Advocates.

CORAM:

**HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE.**

JUDGMENT**Sanjeev Kumar J:**

01. This intra-court appeal by the appellants arises from an order and judgment dated 06.09.2023, passed by the learned Single Judge of this Court [“the writ Court”] in WP (C) No. 1044/2023, titled ***“Intzamia Committee Dargah. Vs. UT J&K and Ors.”***, whereby the writ Court has dismissed the writ petition filed by the appellants herein under Article 226 of the Constitution of India to throw challenge to Order No. 03 of 2023 dated 01-04-2023, Order No. 17-JKWB of 2022 dated 17-12-2022 and letter dated 08-04-2023 addressed by the respondent-Wakaf Board to the appellants.

Brief Facts:

02. The appellant-Haji Abdul Ahad Akhoon claims to be an owner in possession of land measuring 5 kanals situated at Rayil Gund, Ganderbal, and he claims to have developed Ziyarats of Syed Jaffer, Syed Rehman and Syed ul-Hajra. He also claims that the aforementioned three Islamic scholars and missionaries were buried at insignificant position. It was the appellant who made personal efforts to highlight the religious contributions made by these pious religious personalities. The appellant spent huge amount mainly collected through donations at the Ziyarats for upkeep and expansion of Ziyarats and allied properties. Within no time, the efforts made by the

appellants bear fruits and the footfall to these Ziyarats increased tremendously.

03. With a view to manage these Ziyarats and allied properties, the appellant- Haji Abdul Ahad Akhoun formed an Intizamiya Committee of which he was the Manager. The efforts made by the appellants were lauded by the general public which is evident from a press news published in weekly Asian Mail News paper in its issue dated 05.11.2007. In the year 2015, some private people tried to bring the management of the Ziyarats in disrepute by raising fictitious and irrelevant issues. They simultaneously approached the Secretary to Government, Revenue Department, for taking over the management of the Ziyarats. The Secretary, Jammu & Kashmir Muslim Wakaf Board wrote a communication dated 29.06.2015 requesting the Secretary to Government, Revenue Department, to issue necessary orders for taking over the Shrines. This made the appellants to approach the learned Single Judge of this Court by way of OWP No. 133/2015, in which the learned Single Judge vide interim order dated 11.08.2015 directed maintenance of status quo in the matter. The said writ petition remained pending for considerable time awaiting filing of reply by the respondents and on their failure to file the reply, the writ petition was admitted to hearing on 28.12.2022 and the interim order passed on 11.08.2015 was made absolute. However, on the basis of statement made by the respondents, that the legislations impugned in the said writ petition i.e. Wakafs Act, 2001 and J&K (Muslim Specified Wakafs Properties (Management and Regulation)

Act, 2004 as also the byelaws framed thereunder had been repealed and, therefore, the communication dated 29.06.2015 had outlived its utility, the learned Single Judge dismissed the writ petition as having rendered infructuous.

04. It is the further case of the appellants that after the dismissal of the earlier writ petition, the respondent-Wakaf Board issued order No. 03 of 2023 dated 01.04.2023, purportedly under Section 67, 68 & 69 of the Wakafs Act, 1985, and took over the management of the Ziyarat Sharif Syed Khazir Sahib at Rayil Gund, Kangan and its allied properties. Feeling aggrieved the appellants filed WP(C) No. 1044/2023, which has been dismissed by the writ Court in terms of the judgment impugned in this appeal.

Grounds of Challenge:

- a. That the impugned judgment is challenged by the appellants inter alia on the ground that the Ziyarat/Dargah in question is situated on the land measuring 5 kanals and 13 marlas falling under Khasra No. 323 recorded in the ownership of the predecessor-in-interest of appellant No. 2 and, therefore, the respondent-Wakaf Board, or for that matter the Government, is not competent to take over the Ziyarat/Dargah, that too, without following due process of law;
- b. That the order impugned before the writ Court dated 01.04.2023 was illegal and arbitrary and was tantamount to taking over the property of the appellants without any authority of law;

05. The appellants have also raised the following two questions for determination in this appeal:

(i) Whether the publication of lists of Wakaf Property in the Government Gazette is mandatory as per the mandate of Section 6 of the Jammu and Kashmir Wakaf Act, 1978;

(ii) Whether in absence of publication of the Notification in the Government Gazette declaring the property to be a Wakaf, the Wakaf Board in law, can be allowed to take over the management of the property.

06. In support of the issues raised, Mr. Jehangir Iqbal Ganai, learned senior counsel appearing for the appellants, has taken us through the entire Wakafs Act, in particular, the provisions of Sections 4, 5 and 6 thereof. It is submitted that no property can be declared as Wakafs and taken over by the Wakafs Board unless the procedure prescribed under Sections 4, 5 and 6 of the Jammu and Kashmir Wakafs Act, 1978, which was in vogue in the year 1985, is scrupulously followed. It is, thus, argued that in the absence of valid declaration of the Ziyarats as 'Wakafs', the respondents were not entitled in law to take over the management of the Shrine and its allied properties.

07. *Per contra*, it was argued by the learned counsel for the respondents that the Ziyarat in question alongwith other properties situate at village Rayil Gund of District Ganderbal were notified as Wakafs in terms of Section 6(1) of the Jammu and Kashmir Wakafs Act, 1978 vide SRO 510 dated 19.12.1985, which notification issued by the Government was not challenged

by any person including the appellants herein. Mr. Dar, learned counsel appearing for the respondents, would submit that no property, Ziyarat or graveyard situate in Khasra No. 323 claimably owned and possessed by the appellants has been notified as 'Wakafs'.

08. Our attention was drawn to Entry no. 21 to 25 of the annexure appended to SRO 510 of 1985 to demonstrate that the Government has notified Dargah known by the name of 'Ziyarat Sharif Syed Khazir Sahib' situate in Khasra no. 322 min, a graveyard situate in Khasra no. 236, aarazi, another graveyard and Jamia Masjid situate in Khasra no. 211 min and one more graveyard situate in Khasra no. 240 situate at Rayil Gund District Ganderbal.

09. Mr. Dar, therefore, would argue that since no properties, land or structure constructed in Khasra no. 323 has been notified as 'Wakafs' by the Government and, therefore, the appellants have no locus to challenge the Notification issued by the Wakaf Board to take over the management of Ziyarat Sharif Syed Khazir Sahib at Rayil, which is located and situated in Khasra no. 322. It is also argued by Mr. Dar that in the absence of challenge to SRO 510 dated 11.12.1985, no challenge would lie to the order dated 01.04.2023 issued by the respondents-Wakafs Board to take over the management of the Ziyarat.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court does not suffer from any legal infirmity calling for any

interference by us in this appeal. We are, thus, inclined to uphold the judgment of the writ Court, though for some additional reasons.

11. The writ Court has elaborately discussed the import of the provisions of Sections 4, 5 and 6 of the Wakafs Act, 1978. We would like to briefly examine the two issues raised by the learned counsel for the appellants. We are not going in unnecessary details for the reason that it is an admitted case of the appellants that they are owner in possession of the land measuring five (05) kanals falling in Khasra no. 323 situate at village Rayil Gund, which is recorded in the revenue records in the name of the predecessors of appellant no. 2. The entire claim of the appellants is premised on the plea that the Ziyarat, graveyard and other allied properties created by appellant no. 2 on his proprietary land can neither be declared as Wakafs nor the management of the same can be taken over by the Wakafs Board.

12. From careful perusal of SRO 510 dated 11.12.1985 issued by the Government in exercise of powers conferred by sub-section (1) of Section 6 of the Jammu and Kashmir Wakafs Act, 1978 and the list of property annexed thereto, it is abundantly clear that not an inch of land claimed to be the proprietary land by the appellants has been declared as Wakafs. The Ziyarat Sharif Syed Khazir Sahib, three graveyards, some land and one Jamia Masjid have been notified as Wakafs, which properties do not fall in Khasra no. 323 of village Rayil, Gund of District Ganderbal. The proprietary land of the appellant no. 2 is not the subject matter of the notification issued by the Government under Section 6 of the Act. A small digression at this time may

be required to understand the import and correct meaning of the term ‘Wakaf’ as defined in Section 3(d) of the Act of 1978. Section 3(d) reads thus;

“(d) “Wakaf” means the permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable and includes-

(i) a Wakaf by user such as Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takia, Sarai, Yatim Khana, Madrasa and Shafakhana; and

(ii) a Wakaf-ul-Alad-

(a) for the maintenance and support, wholly or partially of his family, children or decedents; or

(b) for the maintenance of the Wakaf or for the payments of his debts out of the rents and profits of the property dedicated;

provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Muslim law as a religious, pious or charitable purpose of a permanent character;

(iii) a grant, endowment or dedication of any property movable or immovable, made by the Government or any person or ruler for any of the aforesaid purposes.”

13. From a plain reading of the definition of ‘Wakaf’, it is crystal clear that the Wakaf would mean permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable. It would also include a Wakaf by user, such as, Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takia, Sarai, Yatim Khana, Madrasa etc. etc. It is, thus, quite evident that Wakaf can be created by permanent dedication by a person professing Islam with respect to his property for any religious,

pious or charitable purposes recognized by Muslim law. The properties like Masjid, Dargah etc. by virtue of their user as such are also Wakafs and no formal declaration to declare such properties as 'Wakaf' is required under the Act of 1978.

13. Section 4 of the Act of 1978 deals with preliminary survey of Wakafs. One or more "Special Officers" appointed by the Government by a notification in the Government Gazette are empowered to make survey of the Wakafs in the area in which the Act is enforced. The survey provided under Section 4 of the Wakaf properties necessarily pre-supposes the existence of the Wakafs. It is true that under subsection (5) of Section 4, if during the course of enquiry to be made by the Special Officers, dispute arises as to whether a particular Wakaf is a Wakaf within the meaning of the Act, and there is a clear indication in the deed of Wakafs as to its nature, the dispute has to be decided on the basis of such deed. The enquiry envisaged under Section 4 is, thus, limited to making survey of the Wakafs in the area. The Ziyarats and Dargahs are Wakafs by user in terms of Section 3(d) (i) of the Act.

14. In the instant case, the Ziyarat in question, of course, is not situate in the proprietary land of the appellants and by virtue of definition of 'Wakaf' given in Section 3, a Ziyarat does not require any formal declaration by the Wakaf Board or the Government. Section 6, as is rightly held by the writ Court, does not provide for declaration of the property as 'Wakaf'. Section 6 merely casts a duty on the

Government to publish the list of Wakafs in the Government Gazette, which list, subject to its modification in pursuance of the decision of the Government in an appeal against the decision of the Special Officer under Section 5, would be final and conclusive.

15. In the instant case, when the survey of Wakafs in the District of Ganderbal was conducted by the Special Officer appointed by the Government, nobody including the appellants ever raised any dispute with regard to the nature of the property. As a matter of fact, the appellants cannot raise any dispute with regard to the nature of the property in question, for the reason that it is, as per own admission of the appellants, the property taken over by the Wakaf Board, is a Ziyarat. As stated above, the Ziyarat by its nature and user is a Wakaf by the operation of Section 3(d) of the Act.

16. That apart, the appellants deserve to be dislodged on the sole ground that their proprietary land, as claimed by them, has not been notified by the Government as Wakaf and, therefore, the appellants do not have any legal authority to challenge the action of the Wakaf Board to take over the Wakafs duly notified under Section 6 of the Act of 1978. If the grievance of the appellants is that the 'Ziyarat' in question is not in Khasra no. 322 min but is in Khasra no. 323 owned and possessed by the appellants, remedy of the appellants lies somewhere else. The appellants are within their power to approach the revenue authorities for demarcation of their proprietary land or they

may file a suit for possession before the civil court, as they may be advised.

17. Since the property claimably owned and possessed by the appellants, which falls in Khasra No. 323 of Village Rayil, is not notified as Wakafs, as such, the appellants have no legal authority to challenge either the publication/ notification of the Ziarat as 'Wakaf', as is done in terms of SRO 510 of 1985 dated 11-12-1985, or taking over of the management of the Ziarat by the Wakaf Board.

18. For all these reasons as also for the reasons given by the writ Court in support of the impugned judgment, We find no merit in this appeal and the same is, accordingly, **dismissed**. The appellant No.2, who claims to be owner of land measuring 5 Kanals in Khasra No. 323, which, admittedly, is not notified as Wakaf, shall be well within his rights to take appropriate remedies to protect his proprietary land in accordance with law and nothing said hereinabove shall come in his way to agitate his rights qua the land owned by the appellant No.2.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

05.06.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes