Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1080 OF 2024

1. **MEHTA IMPEX PRIVATE LIMITED,**
A company incorporated under the Companies Act, having its registered Office at 6th Floor, Kundan House, Dattapada, Borivali East of Village, Kanheri, Borivali East,
Mumbai 400066.

2. **ANIL CHOPRA,**
Director of M/s. Mehta Impex Pvt. Ltd., having its registered office at 6th Floor, Kundan House, Dattapada, Borivali East of Village Kanheri Borivali East,
Mumbai 400 066

...Petitioners

~ versus ~

1. **THE STATE OF MAHARASHTRA,**
through Secretary, Department of Revenue, Mantralaya, Mumbai.

2. **THE COLLECTOR,**
Mumbai Suburban District,
Bandra Kurla Complex, Bandra, Mumbai.

3. **CUSTODIAN OF ENEMY PROPERTY FOR INDIA,**
having address at Kaiser I, Hind Building, 1st Floor, Kaiseri, Currimbhoy Rd.,
Ballard Estate, Fort, Mumbai,
Maharashtra 400 001.

...Respondents

WITH
WRIT PETITION NO. 1233 OF 2024

KHAN BAHADUR HAJI SHAIKH,
Meherbaksh First Wakf through it
Mutawalli Amjad Aziz Meherbaksh,
Indian inhabitants of Mumbai,
having his address at 104, Zaitoon
Apartments, 10/14, S.V.S. Road, Mahim,
Mumbai 400 016. **…Petitioner**

~ versus ~

1. **THE STATE OF MAHARASHTRA,**
through Secretary, Department of
Revenue, Mantralaya, Mumbai.
2. **THE COLLECTOR,**
Mumbai Suburban District,
Bandra Kurla Complex, Bandra, Mumbai.
3. **CUSTODIAN OF ENEMY PROPERTY FOR INDIA**
having address at Kaiser I, Hind Building,
1st Floor, Kaiseri, Currimbhoy Rd.,
Ballard Estate, Fort, Mumbai,
Maharashtra 400 001. **…Respondents**

WITH
WRIT PETITION NO. 3746 OF 2023

1. **MANTRI BROTHERS,**
A Firm registered under the provisions of
the Indian Partnership Act 1932,
having its office at 254, Mayfair, Ground
Floor, Premier Road, Kurla (West),
Mumbai 400 070.
2. **FIROZE ZAINUDDIN MANTRI,**
Aged 75 years, an Indian Mumbai

inhabitant, the partner of Petitioner No. 1, having his office at 254, Mayfair, Ground Floor, Premier Road, Kurla (West), Mumbai 400 070.

3. **JOHAR JAINUDDIN MANTRI,**
Aged 74 years, an Indian Mumbai inhabitant, the partner of Petitioner No. 1, having his office at 254, Mayfair, Ground Floor, Premier Road, Kurla (West), Mumbai 400 070. **…Petitioners**

~ versus ~

1. **THE STATE OF MAHARASHTRA,**
through Secretary, Department of Revenue and Forest, having its office at Mantralaya, Mumbai 400 001 and through the Government Pleader, Writ Cell Original Side, High Court Building, Mumbai.

2. **THE COLLECTOR,**
Mumbai Suburban District, having its office at Mulund office, Topiwala College Building, Sarojini Naidu Road, Mulund (West), Mumbai 400 080.

3. **CUSTODIAN OF ENEMY PROPERTY FOR INDIA,**
having address at Keser I-Hind Building, 1st Floor, Kaiseri, Currimbhoy Rd., Ballard Estate, Fort, Mumbai, Maharashtra 400 001.

4. **PRATIKSHA COOPERATIVE HOUSING SOCIETY LTD,**
a registered cooperative housing Society having its registered address at Pratiksha Apartment, 239, New Mill Road, Kurla West, Mumbai, Maharashtra 400 0070 **…Respondents**

APPEARANCES

For the Petitioners in all Petitions.	**Mr Rajiv Narula**, with Mr Tarang Jagtiani & Mr Rahul Pillai, i/b Jhangiani Narula & Associates.
For Respondent No. 3 CEPI in all Petitions.	**Mr Rajiv Chavan, Senior Advocate**, with Ms Sonam Pandey, Ms Asmi Desai, Mr PS Gujar, i/b Mrs Manisha Jagtap.
For Respondent No. 4 in WP/3746/2023	**Mr Syed Nabeel Ali**, with Mr Omkar Mhasde.
For Respondents-State in WP/1080/2024 & WP/1233/2024.	**Mrs Jyoti Chavan, Addl. GP.**
For Respondents-State in WP/3746/2023.	**Mr Milind More, AGP.**
Present in Court	**Ms Patricia Fialho, Deputy Custodian.**

CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ

RESERVED ON : 29th APRIL 2026.
PRONOUNCED ON : 22nd JULY 2026.

JUDGMENT (*Per Suman Shyam, J*):-

1. Rule. Rule is made returnable forthwith.

2. By consent of the parties, the matters are taken up for final hearing and disposal.

3. Writ Petition No 1080 of 2024 has been instituted by the purchasers of the Wakf property under Property Card of CTS No. 1010/1 to 41, assailing the communication dated 28th December

2021 (Exhibit-I) and the Mutation Entry No. 1218 made on 17th May 2023 making an insertion in the revenue record noting that the property vests with the "Custodian of Enemy Property in India" thereby, deleting the names of the Petitioners as owners of the property in the Property Card of CTS No. 1010/1 to 41. Writ Petition No 1233 of 2024 has been instituted by the Wakf assailing the communication dated 28th December 2021. The mutation entry made inserting the name of the Custodian of Enemy Property by deleting the name of the owners on Property Card CTS No. 1012/ 1 to 16 and CTS No. 1010/42 to 64. Writ Petition No 3746 of 2023 has been instituted by the three Petitioners, also being the purchasers of properties of the Wakf, bearing CTS Nos 239 and 239/1 to 35, challenging the communications dated 16th December 2012 and 28th December 2021 as well as the Mutation Entry No 571 dated 30th May 2023 indicating that the property has vested on the Custodian of Enemy Property for India, i.e., the Respondent No 3. The core issue involved in all these Writ Petitions is pertaining to the question as to whether, the recourse adopted by the Respondent No. 3, pertaining to the alleged vesting of the property in question and the insertion of mutation entries, are as per the prescription of law and if not, whether the directions issued by the Respondent No. 3 to the revenue authorities encumbering the properties is liable to be declared as illegal and, hence, null and void. Since common questions of law, set out in identical fact situation, are involved in all the three Writ Petitions, hence, we propose to dispose of these Writ Petitions by this common judgment and order. For appreciating the controversy involved in these proceedings, the facts projected in Writ Petition No 1080 of 2024 are referred to, as here under, for ready reference.

4. Md. Khan Bahadur Haji Shaikh Meherbaksh had created a Wakf-al-aulad on 19th January 1926 for the benefit of his family members and descendants. Clause 4(a) to (i) of the Wakf Deed dated 19th January 1926 records the names of the Petitioners. Clause 5 lays down that if all the children of the Wakif died without leaving any legal heir, the balance income of the Wakf property shall be utilised for religious, pious and charitable purposes. Clause 12 of the Wakf Deed authorised the Muttawallis to sell and transfer Wakf properties. On 19th July 1929 a Supplementary Deed of the Wakf was executed modifying certain terms and conditions of the original Wakf Deed, which included

the area of Wakf property admeasuring 2949.10 sq. mtrs. Mohd. Abhubakar was one of the Muttawallis of the Wakf property. However, after his demise, by Indenture dated 28th September 1982, three new Muttawallis, viz., (i) Abdul Aziz Meherbaksh, (ii) Abdul Haque Shaikh Meherbaksh, and (iii) Amjad Aziz Meherbaksh were appointed as Muttawallis of the Wakf property.

5. The Petitioner No. 1 in Writ Petition No 1080 of 2024 is a registered company and the Petitioner No. 2 is its director. By means of a registered instrument dated 14th September 1988 executed by the Mutawallis, the Writ Petitioners had purchased land admeasuring 2949.10 sq. mtrs situated at T.P.S. No. II, Juhu Sector, Village-Mouje Juhu, Vile Parle (West), Mumbai in the Registration District and Sub-District of Bombay Suburban relating to City Survey No. 1010/1 to 41 (hereinafter referred to as the "suit property"). On the date of execution of the Indenture dated 14th September 1988, there was no record, including any Mutation Entry, pertaining to the suit property indicating that the wakf property had vested on the Custodian of the Enemy Property for India.

6. In the year 1984, one of the beneficiaries, viz., Nabilla Begum, i.e. the daughter of S. M. Farooq, who was the eldest son of the Wakif, had instituted Suit No. 250 of 1984 before this High Court, claiming her share in the Wakf property. Nabilla was a Pakistani National. It appears that some of the other beneficiaries belonging to the family of Nabilla, were also Pakistanis. In the aforesaid suit, a compromise settlement was arrived at by and between the parties and it was agreed that a sum of Rs. 1,25,000/- (Rupees One Lakh and Twenty Five Thousands) would be paid to Nabilla Begum and other beneficiaries, who were Pakistani Nationals. The said amount was deposited before this Court as per the Consent Terms recorded *vide* order dated 6th November 1986 passed in Suit No. 250 of 1984. Thereafter, on 9th January 1989, a Deed of Rectification was executed by and between the Petitioners and the Muttawallis of the Wakf amending the Indenture dated 14th September 1988 whereby, the area of the property was amended pursuant whereto, on 12th January 1990, the name of the Petitioner No. 1 came to be recorded in the Property Card and the revenue record, in respect of the subject property. On 10th March 2004, Custodian of Enemy Property issued a notice to the effect that the Wakf properties are enemy properties. Following the Notice dated 10th March 2004, Certificate dated 5th April 2004 was issued under Section 12 of the Enemy Property Act, 1968 in respect of the Wakf properties, including the suit property purchased by the Petitioners. Aggrieved thereby, the Muttawallis had filed Writ Petition No. 1296 of 2004 before this Court *inter alia* assailing the Notice dated 10th March 2004 and the Certificate dated 5th April 2004. During the pendency of the aforesaid Writ Petition, the Wakf had addressed a communication dated 21st August 2007 to the Custodian of Enemy Property (Respondent No. 2 in the said Writ Petition) requesting for issuance of 'NOC' in respect of any claim/right/beneficial interest of alleged Pakistani Nationals and proposed withdrawal of the Writ Petition.

7. On 26th November 2007, a communication was issued by the Custodian of Enemy Property conveying his no objection for release of the claims/right/beneficial interest of the alleged Pakistani Nationals in the Wakf, subject to payment of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousands) to be deposited in the Bombay High Court. Thereafter, the Custodian of Enemy Property had addressed a letter dated 7th December 2007 to his Advocate conveying that after consultation with the

Ministry of Law and Justice,Government of India, it was felt that the attempt to vest the properties belonging to “Meherbaksh Wakf” may not stand the legal scrutiny. In the said letter, it was also mentioned that an administrative decision has been taken to issue ‘NOC’ to the Wakf and that Wakf properties cannot vest in the Custodian of Enemy Property. Thereafter, Consent Terms were filed in Writ Petition No. 1296 of 2004 agreeing to withdraw the Notice dated 10th March 2004 and the Certificate dated 5th April 2004. Based on such Consent Terms, Order dated 14th December 2007 came to be passed by the Division Bench of this Court in Writ Petition No. 1296 of 2004 disposing of the Writ Petition. By order dated 22nd November 2011, the Bombay High Court had directed that the amount of Rs. 1,25,000/- (Rupees One Lakh and Twenty Five Thousands), along with the accrued interest, pertaining to the beneficial interest of the Pakistani Nationals (Nabilla and others), be paid to the Custodian of Enemy Property. The amount was deposited in the High Court.

8. In view of the order dated 14th December 2007 whereby, the High Court had recorded the consent of the then Custodian of Enemy Property (i.e., the Respondent No. 2 in that Writ Petition), the Wakf property had been completely and absolutely divested of any interest of the Pakistani Nationals over the same. Therefore, it was incumbent upon the revenue authorities to delete the Mutation Entries/endorsement made in the Revenue Record pertaining to the Wakf property showing it as Enemy Property. However, no action was initiated by the authorities on that behalf. On the contrary, in the year 2019, an inquiry was initiated in respect of the Wakf property. The Wakf had addressed communication dated 16th September 2019 to the Respondent No. 3 calling upon him to refrain from passing any order or initiating any proceeding in respect of the Wakf property by projecting that the property in question had already been sold. Despite the receipt of the said communication, the Respondent No. 3 had issued the impugned order dated 28th December 2021 to the Collector projecting that the properties were enemy properties and, therefore, consequential Mutation Entry in the revenue records, pertaining to the subject property, was required to be made. Following the communication dated 28th December 2021, the Respondent No. 3 issued further communication dated 15th May 2023 directing the Revenue Authorities to immediately record the name of the Custodian of Enemy Property in the revenue records in respect of the properties mentioned therein, which included the suit properties. Pursuant to the communication dated 15th May 2023, Mutation Entry No. 1218/1219 was made in the Property Card/Revenue Records on 17th May 2023 thereby, recording the name of the Custodian of Enemy Property in respect thereof, by deleting the names of the Petitioners. The entry also came to be sanctioned on the same date. On 18th May 2023, the City Survey Officer communicated the action taken in the matter in the mutation proceedings and informed that the name of the Respondent No. 3 had been inserted in the Revenue Records. Prior to that, on 17th May 2023 the Settlement Commissioner and Director of Land Records had communicated that the name of the Respondent No. 3 had been inserted in the Revenue Records as per Mutation Entry No. 1219 dated 17th May 2023. The City Survey Officer, *Vile Parle* had also informed that the site inspection report was also submitted. In view of the above developments, the Petitioners have been compelled to approach this Court by filing the instant Writ Petition *inter alia* assailing the letter dated 28th December 2021, the Mutation Entry dated 17th May 2023 and the consequential communications and orders issued thereunder.

9. The primary contention of the Petitioners is that the suit property was never declared as “Enemy Property” by the Central Government under Rule 133-V of the Defense of India Rules, 1962 and therefore, it never vested with the Custodian under the Enemy Property Act 1968 (here-in-after referred to as the Act of 1968) in as much as, there was no order ever vesting the suit property upon Respondent No. 3. It has further been contended that the impugned order dated 28th December 2021 was issued by the Respondent No. 3 without examining the jurisdictional facts or ascertaining if any order had been passed by the Central Government under Rule 133-V. As such, the communication dated 28th December 2021 issued by Respondent No. 3 is without jurisdiction. Consequently, the letter dated 15th May, 2023 directing the Mutation Entries to be made in Revenue Record is also illegal and liable to be interfered with.

10. The Petitioner has also stated that the property in question was purchased by the Petitioners by a registered instrument, long before the impugned letter/notice was issued and the name of the Petitioner No 1 was also reflected in the Property Card since 12th January 1990. Since the property in question, all along belonged to Indian Citizens, hence, the same cannot be treated as Enemy Property. As such, there cannot also be any vesting of the property upon the Respondent No. 3.

11. In the reply of the Respondent No. 3, it has been *inter- alia* contended that in view of provisions of Section 5 read with Sections 6 and 22A(b) of the Enemy Property (Amendment and Validation) Act, 2017 (here-in-after referred to as the 'Act of 2017'), the claim of the Petitioners is wholly untenable in as much as even the consent order dated 14th December 2007 cannot come to the rescue of the Petitioners. It has also been contended that the Writ Petition is not maintainable in view of availability of alternative efficacious remedy provided under Section 18 of the Act, 1968. According to the Respondent No. 3, the impugned communications are nothing but derivative steps taken by the authorities, so as to give effect to the statutory provisions pursuant to the amendment to the Enemy Property Act. It is also the stand of the Respondent No. 3 that in view of the embargo created under Section 6, the Wakf property could not have been sold to the Petitioners and, therefore, they cannot claim to be the *bonafide* purchasers of such property. Moreover, according to the

Respondent No. 3, the eldest son of the Wakif viz. Md. Farooq, along with his family, had migrated to Pakistan and, therefore, the property in question was evidently, property belonging to an enemy subject, as a result of which, the Wakf property had automatically vested on the custodian. The Respondent No. 3 had also contended that the enemy interest in the Wakf property was detected on the basis of a complaint received by the answering Respondents, which had prompted the inquiry which was followed by the issuance of the Notice dated 10th March 2004. It is the case of the Respondent No. 3 that vesting of Enemy Property would be automatic under the statute and, therefore, no further notice was required to be given to the owner of the property on such count. The Respondent No. 3 has, therefore, denied and disputed the claim of the Petitioners that due to the purchase of the same by means of registered instrument, the suit property had never vested on the custodian.

12. The Respondent No. 3 had also filed an Additional Affidavit in Reply which apparently became necessary in view of the order dated 24th June 2025 passed by this Court directing *status quo* to be maintained as regards the subject property. However, since the averments made therein, basically relate to the various events that took place pursuant to the order dated 24th June 2025, primarily aimed at avoiding any action for contempt of court, we do not deem it necessary to refer to the statements made there-in for the purposes of adjudicating the core legal issues involved in these proceedings.

13. Mr Narula, learned counsel appearing for the Petitioners has argued that the "Wakf-al-aulad" was created as per law and had also been duly registered although there was no necessity to register the same under the Mussalman Wakf Validating Act, 1930. It is also his submission that unless an order is passed by the Central Government under Rule 133-V of the Defense of India Rules, 1962 specifying that the properties had vested in the Custodian, there was no question of automatic vesting of properties under the Act of 1968 or the amendment Act of 2017. According to Mr Narula, not a single property of the Wakf was ever declared as Enemy Property under the Defence of India Rules, 1962 or the Defence of India Rules, 1971. Therefore, there was also no question of continuance of vesting of the property under the Enemy Property Act, 1968.

14. It is also the submission of Mr Narula that even to take over possession of any property as enemy property, it would be incumbent upon the custodian to issue Show Cause Notice upon the owner in possession of the property, so as to give adequate opportunity of hearing to such affected party. But, in the present case, no such notice was issued to the Petitioners. As such, submits Mr Narula, the impugned orders are liable to be set aside only on the ground of violation of principles of natural justice.

15. To sum up his argument, Mr Narula has contended that as per material available, Mr Farooq was an Indian, holding an Indian Passport. Save and except his daughter Nabilla and her family members, whose beneficial interest in the Wakf property has already been taken over by the Custodian, no other member of the family of Farooq or the Wakif and the Muttawallis are Pakistani National. If that be so, the question of the Wakf property being declared as Enemy Property would not arise in the eyes of law. In support of his above arguments, Mr Narula has relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India & Anr. Vs. Raja Mohammed Amir Mohammad Khan***,[1] as well

1 (2005) 8 SCC 696.

as the decision of this Court in ***Lotus Classique Housing Society Vs. Union of India***,[2] and ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Office of CEPI***.[3]

16. Mr Rajiv Chavan, learned Senior Counsel appearing for the Respondent No. 3, on the other hand, has argued that once the property is detected to be Enemy Property, the vesting of the same on the Custodian would be automatic. In support of his above argument, Mr Chavan has relied upon the order dated 9th November 2021 passed by the learned Single Judge of the Kerala High Court in the W. P.(c) No. 25261 of 2009. Mr Chavan has also relied upon the order dated 18th December 1971 issued by the Additional Secretary to the Government of India to submit that in view of the aforesaid Notification, all movable and immovable property belonging to or held by or managed by and on behalf of an enemy defined in clauses (b) and (c) of Rule 130 of the Defence of India Rules, 1971 shall vest on the Custodian of Enemy Property.

2 Writ Petition No. 903 of 2025 (BHC Goa), passed on 22nd September 2025.

3 2023 SCC OnLine Bom 2314.

17. Questioning the legitimacy of the Wakf, Mr Chavan has also argued that in view of the provisions of the Mussalman Wakf Act, 1954, any Wakf, which is unregistered, would be invalid in the eyes of law. Therefore, there is neither any question of treating such unregistered Wakf as a legal entity nor can there be any valid conveyance of title in respect of the Wakf properties to a third party.

18. Addressing elaborate arguments in support of his contention that the vesting of property to the Custodian of Enemy Properties under the Defense of India Rules, 1962 and Rules of 1971 would be automatic and such vesting would continue even under the provisions of the Enemy Properties Act 1968, Mr Chavan has, argued that this is a classic case where the subject property/ suit property had clearly vested upon the Custodian of Enemy Properties, i.e., the Respondent No. 3 by operation of law and, therefore, the Petitioners cannot assert or maintain any claim over such Wakf property.

19. The learned AGP appearing for the Respondent Nos. 1 and 2 have supported the stand of the Respondent No. 3.

20. We have considered the arguments advanced at the Bar and have also meticulously gone through the record. At the very out-set, it must be noted herein that Khan Bahadur Haji Shaikh Meherbaksh "Wakf-alal-aulad' was created under the Mussalman Wakf Validating Act, 1913 (Act of 1913).This act was enacted with the object of declaring the rights of Mussalmans to make settlements of property by way of 'Wakf' in favour of their families, children and descendants. It is a validating legislation enacted during the pre-independence era. The Act of 1913 was enacted to validate creation of private family trust known as *Wakf-alal-aulad* by Hanafi Settlors which came under cloud of invalidity after the decision of the *Priviy Council* in the case of ***Abul Fata Mahomed Ishak vs Russomoy Dhur Chowdry***[4]*,* where-in it was *inter-alia* that the gift created for the poor by the settlor was illusory and have been put into the settlement merely to legalize the settlement by giving it a colour of piety.

21. The Act of 1913 lays down what is a Valid 'Wakf'. Sections 1 and 2 of the Act of 1913 defines a "Wakf" and "Hanafi Mussalman", respectively as follows:-

4 1894 SCC Online PC 24

> "(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.
>
> (2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines, of the Hanafi school of Mussalman law."

22. As per Section 3 of the Act of 1913, it shall be lawful for any person professing Mussalman faith to create a Wakf for the purposes mentioned therein. Section 3 of the Act of 1913 deals with the power of a Mussalman to create a Wakf, which is reproduced hereinbelow for ready reference:-

> "3. **Power of Mussalmans to create certain wakfs.**
>
> It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:-
>
> (a) For the maintenance and support wholly or partially of his family, children or descendants, and
>
> (b) Where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment 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 Mussalman law as a religious, pious or charitable purpose of a permanent character."

23. The Act of 1913 did not apply to the Wakfs created before the enactment. Therefore, Mussalman Wakf Validating Act, 1930 was enacted, so as to give retrospective effect to the Mussalman Wakf Validating Act, 1913. Section 2 of the Act of 1930 lays down that the Act of 1913 shall be deemed to apply to Wakfs created even before its commencement.

24. There is no controversy in this case about the fact that the *Wakf*- created by Khan Bahadur Haji Shaikh Meherbaksh would be governed by the provisions of the Act of 1913 which legitimizes a *Wakf* created by a Hanafi Mussalman for his own maintenance and of his family members, provided, the ultimate benefit is reserved for charitable purpose. Under the Act of 1913, it was not mandatory to register the Wakf.

25. After independence, the Parliament had enacted the Muslim Wakf Act, 1954 with the object of providing a better mechanism for administration and supervision of Wakfs. Section 3(l) of the Act of 1954 defines "Wakf" as follows:-

> "3(l) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
>
> (i) a wakf by user;
>
> (ii) mashrut-ul-khidmat; and

> (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;
>
> and "wakif" means any person making such dedication."

26. Section 2 of the Act of 1954 lays down that unless expressly provided under the Act, it will apply to all Wakfs, whether created before or after the commencement of the Act. Section 25 of the Act of 1954 provides that all Wakfs, whether created before or after the commencement of the Act, shall be registered at the office of the Board for which, applications shall be made by the Muttawallis within the time frame prescribed there-in. Section 41 prescribes the penalties if the Muttawallis fail to carry out any of the duties laid down there-in, including failure to apply for registration.

27. From a careful reading of the definition of "Wakf", as provided by the different statutes referred to above, it is apparent that a "Wakf-alal-aulad" is a permanent dedication of the property for purposes recognized by Muslim Law, i.e., pious, religious or charitable. However, under the Act of 1913, "Wakf-alal-aulad" can also be created for the maintenance of the Wakif, the families and the decedents. By creating a Wakf, the property involved therein is permanently, irrevocably and inalienably turned into a corpus property, the ownership of which, by the fiction of Islamic Law, vests with the God Almighty.

28. In the present case, there is no dispute about the fact that the suit property forms part of the *Wakf-alal-aulad* created by Mr Khan Bahadur Haji Shaikh Meherbaksh on 19th January 1926, exclusively for the benefit of his wives and children. It was only once the line of succession in the family stood obliterated that the usufruct of the Wakf property was to be utilized for religious, pious and charitable purposes.

29. As has been note above, the Act of 1913 is only a validating enactment which did not contain specific provisions for administering the Wakfs. The statutory framework for laying down a mechanism for administrative oversight of the Wakfs in India, has been provided only in the Act of 1954 which, by virtue of Section 2, would have retrospective application on all Wakfs created even before the commencement of the Act. As per Section 25 of the Act of 1954, all Wakfs would have to be registered. However, the consequences for non-registration as provided in Section 41, do not include invalidation of the Wakf itself.

Therefore, even though Mr. Narula has argued that the Wakf in question was registered, even assuming that it was not, even then, non-registration of the Wakf by itself, would not denude it of its legitimacy even though the same might have certain other adverse consequences visiting the Muttawallis. Since, we are not concerned in this proceeding with the question of validity of conveyance of the title on the Wakf property to the Writ Petitioners, it would not be necessary for this Court to record any further observation in this regard, in this Judgment. Suffice it to mention here-in that there is nothing on record to show that the Writ Petitioner did not acquire valid title over the Wakf property, being the purchasers for valuable consideration.

30. Having held as above, we would now deal with the next issue, which is pertaining to the plea of automatic vesting of the *Wakf* property on the Custodian, as raised by the learned counsel for the Respondent No 3.

31. On the out-break of the Sino-Indian War, in exercise of powers conferred under clause (1) of Article 352 of the Constitution of India, the President of India had issued Proclamation of Emergency on 26th October,1962 on the ground of grave threat to the security of India due to external aggression. Following the Proclamation of Emergency, The Defence of India Act,1962 (for short 'Act of 1962') was enacted by the Parliament, which received the assent of the President on 12th December,1962. The object clause of the Act of 1962 provides that it was an enactment aimed at providing for special measures so as to ensure the public safety and interest, the defence of India and civil defence and for trial of certain offences and for matters connected there with.

32. The Act of 1962 provided certain extra-ordinary powers to the Central Government to over ride any ordinary statute or constitutional protection in the interest of national security. Section 3 of the Act of 1962 provided very wide Rule making powers to the Central Government to make such rules as may appear to be necessary or expedient for securing the defence of India and civil defence, the public safety, maintenance of public order or efficient conduct of military operations or for maintaining supplies and services essential to the life of the community. In exercise of powers under section 3, the Central Government had framed and promulgated the Defence of India, Rules 1962. Rule

133-V of the Rules of 1962, which deals with Collection of debts of enemy firm and custody of property reads as follows:-

> "**133-V. Collection of debts of enemy firm and custody of property**.—(1) With a view to preventing the payment of moneys to an enemy firm and preserving enemy property, the Central Government may appoint a Custodian of Enemy Property for India and one or more Deputy Custodians and Assistant Custodians of Enemy Property for such local areas as may be prescribed and may by order:
>
> (a) require the payment to the prescribed custodian of money which would but for these rules be payable to or for the benefit of an enemy firm; or which would but for the provisions of Rule 133-Q and Rule 133-T be payable to any other person and upon such payment the said money shall be deemed to be property vested in the prescribed custodian;
>
> (b) vest, or provide for and regulate the vesting, in the prescribed custodian such enemy property as may be prescribed;
>
> (c) vest in the prescribed custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian;
>
> (d) confer and impose on the custodian and on any other person such rights, powers, duties and liabilities as may be prescribed as respects-
>
> (i) property which has been or is required to be, vested in a custodian by or under the order,
>
> (ii) property of which the right of transfer has been, or is required to be, so vested,
>
> (iii) any other enemy property which has not been, and is not required to be, so vested,
>
> (iv) money which has been, or is by the order required to be, paid to a custodian;
>
> (e) require the payment of the prescribed fees to the custodian in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;

(f) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order;

and any such order may contain such incidental and supplementary provisions as appear to the Central Government to be necessary or expedient for the purposes of the order.

(2) Where any order with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under sub-rule (1) applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the order of the custodian, he shall not be liable to any suit or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an order made under sub-rule (1)-

(a) any money is paid to a custodian, or

(b) any property, or the right to transfer any property, is vested in a custodian, or

(c) an order is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order under sub-rule (1) applies, neither the payment vesting nor order of the custodian nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time-

(i) some person who was or might have been interested in the money or property, and who was an enemy firm, had died or had ceased to be an enemy firm, or

(ii) some person who was so interested and who was believed by the custodian to be an enemy firm, was not an enemy firm.

(4) In sub-rules (1), (2) and (3), the expression “custodian” includes a Deputy Custodian of Enemy Property and an Assistant Custodian of Enemy Property and every reference to an enemy firm shall be construed as including a reference to a person who is an enemy as defined in Rule 133-A.

(5) Where in pursuance of an order made under sub-rule (1) the assets of a company are vested in the custodian, no proceedings, civil or criminal, shall be instituted under the

Companies Act, 1956, against the company or any director, manager; or other officer thereof except with the consent in writing of the custodian.

(6) If any person pays any debt or deals, with any property to which any order under sub-rule (1) applies otherwise than in accordance with the provisions of the order, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and the payment or dealing shall be void.

(7) If any person without reasonable cause fails to produce or furnish in accordance with the requirements of an order under sub-rule (1) any document or information which he is required under the order to produce or furnish, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both. and any such order may contain such incidental and supplementary provisions as appear to the Central Government to be necessary or expedient for the purposes of the order."

33. Consequent upon the Chinese aggression that took place in the year 1962, the immovable properties and cash in balance belonging to the Chinese Nationals in India were vested in the Custodian of Enemy Property for India appointed under the Defence of India Rules, 1962. Likewise, after the aggression by Pakistan in the year 1965, immovable and other specified movable properties of Pakistani Nationals situated in India were also vested in the Custodian of Enemy Property. These vestments were evidently made under the powers derived under Rule 133-V of the Defence of India Rules, 1962 permitting administration of such property by the Custodian of Enemy Property in India in accordance with the provisions of the Rules of 1962.

34. The proclamation of emergency was revoked with effect from 10th January 1968. As result of the same, the Defence of India Act, 1962 and the Rules framed thereunder were to remain in force only for a period of six months, i.e, upto 10th July 1968. As such, in order to bring in fresh legal authority for administration of properties belonging to the Chinese and Pakistani Nationals with effect from 10th July 1968 and for management of such properties by the Custodian of Enemy Property for India. "The Enemy Property Ordinance, 1968" (7 of 1968) was promulgated by the President on 6th July 1968. The Ordinance was later replaced by Enemy Property Act, 1968. The dominant purpose of the Enemy Property Act, 1968 (hereinafter referred to as the Act of 1968) was to continue with the vesting of Enemy Property on the Custodian.

35. As per Section 5 of the Act of 1968, notwithstanding the expiration of the Defence of India Act, 1962 and the Defence of India Rules, 1962, all Enemy Property vested on the Custodian of Enemy Property for India, before such expiration, under the said Rules, would continue to vest in him immediately as from the commencement of the Act. Therefore, the Act of 1968 provided the legal framework for continuing the vesting of enemy property on the Custodian even after the expiration of the Act and the Rules of 1962.

36. As noted above, the Defence of India Act, 1962 was a temporary statute which was to remain in force during the period of emergency proclaimed on 26th October, 1962. In view of the out break of the 1971 Indo-Pak war and the subsequent proclamation of emergency on 3rd December, 1971, the Parliament had enacted the Defence of India Act, 1972 with similar object. The Defence of India Rules, 1971 framed there under, also contained substantially similar provisions, as the Rules of 1962, thus continuing with the same policy as regards enemy property. However, the legal landscape of the statutory frame work for dealing with enemy property was laid down by the Act of 1968.

37. Section 2(b) of the Act of 1968 defines “Enemy” or “Enemy Subject” which read as follows:

> “2(b) “enemy” or “enemy subject” or “enemy firm” means a person or country who or which was an enemy, [an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality] or [an enemy firm, including its succeeding firm whether or not partners

or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality], as the case may be, under the Defence of India Act, 1962 (51 of 1962), and the Defence of India Rules, 1962 [or the Defence of India Act, 1971 (42 of 1971) and the Defence of India Rules, 1971, but does not include a citizen of India other than those citizens of India, being the legal heir and successor of the "enemy" or “enemy subject” or “enemy firm”.

Explanation 1.—For the purposes of this clause, the expression "does not include a citizen of India" shall exclude and shall always be deemed to have been excluded those citizens of India, who are or have been the legal heir and successor of an "enemy" or an "enemy subject" or an "enemy firm" which or who has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy.

Explanation 2.—For the purposes of this clause, it is hereby clarified that nothing contained in this Act shall affect any right of the legal heir and successor referred to in this clause (not being inconsistent to the provisions of this Act) which have been conferred upon him under any other law for the time being in force.”

38. 2(c) defines “Enemy Property”, which reads as follows:

“2(c) “Enemy Property” means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm:

Provided that where an individual enemy subject dies in the territories to which this Act extends, [or dies in any territory outside India], any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as Enemy Property for the purposes of this Act;

Explanation 1.—For the purposes of this clause, it is hereby clarified that "Enemy Property" shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an Enemy Property.

> Explanation 2.—For the purposes of this clause, the expression "Enemy Property" shall mean and include and shall be deemed to have always meant and included all rights, titles and interest in, or any benefit arising out of, such property.”

39. By the Enemy Property (Amendment and Validation) Act,2017 (here-in-after referred to as the ‘Act of 2017’), significant amendments were carried out in the Act of 1968 including amendments in Sections 5, 6, 8, 17, 18, 20, 22 and 23. Several new provisions such as Sections 5A, 5B, 18A, 18B, 18C and 22 were also inserted. The amended provision of Section 5(3) provides that the enemy property vested in the Custodian shall, notwithstanding that the enemy or enemy subject or enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir or successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain, save as otherwise provided in the Act, vested in the custodian.

40. Section 5A of the Act of 1968 inserted by the Act of 2017 provides for issuance of Certificate by the Custodian which reads as follows:-

> “5A. Issue of certificate by Custodian. —The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or

> the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein."

41. From the scheme of the Defence of India Act, 1962, Defence of India Rules, 1962, the Defence of India Rules, 1971 as well as the Act of 1968, it is apparent is that the Act and Rules of 1962 and 1971 were emergency and/or war time legislation which were framed with the specific purpose of preventing the properties in India belonging to the enemy, viz., the Nationals of China and Pakistan, from being funneled out of India and also to prevent any influence or economic exploitation of such property by the enemy subject. As noted above, the Act of 1968 was enacted with the objective of continuing with the vesting of enemy property, which had vested in the Custodian under any notification or order issued by the Central Government under the Rules of 1962.

42. From a careful examination of the scheme of the Act of 1962, Act of 1971, the Act of 1968, and the Rules framed thereunder, it is apparent that the law envisages two different modes of vesting of enemy property on the Custodian. Firstly, by means of an order or notification issued by the Central Government published in the Official Gazette, vesting the specific property on the Custodian of enemy property appointed under the Rules of 1962 or the Rules of 1971. If such a notification is issued under the provisions of the Rules of 1962 or the Rules of 1971 vesting the enemy property on the Custodian, such vesting will continue under the Act of 1968 by virtue of section 5 of the Act. Secondly, by making a declaration to such effect by the Custodian, upon verification of the fact that the property is an enemy property within the meaning of Section 2(c) or if the same belongs to “Enemy” or “Enemy Subject” or “Enemy Firm” as described in Section 2(b) of the Act. In such a case, once the jurisdictional facts, as noted above, are established, the vesting would be by operation of law.

43. We are in agreement with the submission of Mr. Chavan that, even without a notification or order issued by the Central Government, specifically vesting the enemy property on the Custodian, there could be statutory vesting of the enemy property on the Custodian simply by operation of law. However, such vesting would be contingent upon fulfillment of the requirements of the statue. In those cases, the statue would be triggered only when the conditions laid down under Sections 2(b) and 2(c) of the Act of 1968 are satisfied and not otherwise. It would, therefore, be incumbent upon the Custodian to make necessary inquiry and satisfy himself that the property in question is in fact an enemy property within the meaning of the Act of 1968. Therefore, even in case of statutory or automatic vesting of enemy property, by operation of law, such vesting would take effect only after a declaration is made to such effect upon the necessary verification and/or inquiry being conducted by the Custodian so as to record a *prima facie* satisfaction that the property in question is enemy property.

44. It would be significant to note herein that Section 5 of the Act of 1968 contains provisions for continuation of vesting of the enemy property on the Custodian. Such continuance of vesting would obviously apply to only those enemy properties, the vesting of which on the Custodian took place under the Rules of 1962 or the Rules of 1971. The Act is, however, silent as regards the procedure of vesting of enemy property on the Custodian under the Act of 1968, which is independent of the Rules of 1962 and Rules of 1971. By inserting Section 5A by the Act of 2017 provision has been made for issuance of certificate by the

Custodian. Such certificate shall be the evidence of vesting of the enemy property on the Custodian. However, there is no mention in the Act as to in what manner, an inquiry is to be made or the procedure to be followed by the Custodian so as to declare the property as enemy property.

45. What must, however, be borne in mind that even in the absence of any procedure prescribed by law, the Custodian will have to scrupulously adhere to the principles of natural justice and give proper opportunity of being heard to the affected party before initiating any action in respect of a property in possession of a party by treating the same as enemy property. In other words, the requirement of adherence to the principles of natural justice by the Custodian before declaring or treating any property as enemy property upon the custodian must be treated to be an inbuilt requirement of the provisions of the Act of 1968 since, such action of the Custodian will have adverse Civil consequences on the owner/possessor of the property. Therefore, in the absence of any Notification issued by the Central Government specifically vesting the property on the Custodian by declaring the same as Enemy Property, property held by any person or institution cannot be encumbered by treating the same as Enemy Property based on mere *ipse dixit* of the Custodian, that too, by issuing *ex-parte* orders/directions.

46. Section 23 of the Act of 1968 provides Rule making power to the Government. In exercise of powers conferred under section 23, 'The Enemy Property Rules, 2015 (here-in-after referred to as Rules of 2015) have been framed, which was published in the official gazette on 19th March 2015. These Rules prescribes the procedure for vesting of enemy property in the Custodian under the Act of 1968. Rule 3, which deals with the procedure for identification of immovable property, is reproduced here-in-below for ready reference :-

> "3. **Procedure for identification of immovable property.-**(1) The Custodian may seek assistance of the District Authority for examination of the tehsil-wise or block-wise revenue records for the purposes of identifying any immovable property belonging to or held in the name of an ["enemy" or "enemy subject" or "enemy firm"].
>
> (2) The concerned District Authority shall on identifying any immovable property belonging to or held [by the enemy or enemy subject or enemy firm], forward to the Custodian the complete details of such enemy property [and the name and address and other particulars of the person who is in possession of such property or the name of the occupier or manager or agent of the owner].
>
> (3) If the District Authority receives any information or complaint from any person or from any source in respect of an

enemy property, he shall forward such information or complaint to the Custodian along with details referred to in sub-rule (2).

(4) The Custodian may direct the District Authority in which the enemy property is located, to carry out physical inspection or verification of the enemy property for obtaining the information as specified by the Custodian.

(5) On receipt of the direction from the Custodian under sub-rule (4), the District Authority shall check the relevant revenue or municipal or police records to verify the location or area and other details of the enemy property and conduct survey for obtaining the information as specified by the Custodian.

[(5-A) Without prejudice to the provisions contained in this rule, the District Authority shall take all such steps as may be necessary for the purpose of identification of the enemy property.]

(6) The District Authority or any person authorised by the Custodian shall prepare a detailed report of all cases identified as enemy property and shall submit the same to the Custodian along with his comments thereon.]

… … ...

(14) All properties under examination and in the process of identification or verification shall be considered as Process Case and details of such cases shall be recorded in Annexure-I till its declaration.

(15) The Custodian shall maintain a register containing the properties identified as enemy properties and place the same in public domain and also exhibit the same on the website of the office of the Custodian."

47. Rule 4 prescribes the procedure for declaration of vesting of enemy property which reads as follows:-

"4. Procedure for declaration and vesting of the enemy property.-[(1) On receipt of the report under sub-rule (6) of Rule 3 or any other evidence, the Custodian shall examine and cause further inquiry, if considered necessary.

(1-A) On obtaining the required information referred to in sub-rule (5) of Rule 3 and on being satisfied that the property or interest therein is prima facie enemy property, the Custodian shall serve or cause a notice to be served in Form 1, on the person claiming title to such property or interest and on any other person or persons whom he considers to be interested in the property.

(1-B)(a) The notice referred to in sub-rule (1-A) shall be served personally to the person concerned or to his manager, or to other members of his family; or be sent through registered post; or affix it on some conspicuous part of the premises concerned of the enemy property or at the last known place of the business of the person concerned and may also be sent electronically.

(b) The Dasti service of notice through police may be resorted only in the case of persistent non-compliance of the notice.

(1-C) Where a notice has been duly served, the person or persons concerned shall be called upon to show cause as to why the subject property should not be declared as an enemy property.

(1-D) Any other person or persons claiming to be interested in the proceedings relating to enemy property, may file an application before the Custodian who shall then proceed further to inquire under Section 5-A of the Act and hear the applicant himself or cause the same to be heard by his authorised representatives.

(1-E) The Custodian shall give sufficient opportunity to the noticees and if the noticees fail to appear on the dates fixed for hearing even after giving reasonable opportunity, the Custodian may proceed further to hear the matter ex-parte and declare the property as enemy property under Section 5-A of the Act.

(1-F) The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under Section 5-A of the Act and issue a certificate in Form 2 to this effect and such certificate shall be the evidence of the facts stated therein.

(1-G) After issue of the order under sub-rule (1-F), the Custodian shall issue an authorisation in Form 3, authorising the District Authority to take over the said enemy property immediately on his behalf.]

(2) … … ...

(3) On receipt of the authorisation order from the Custodian under sub-rule (2), the District Authority shall proceed further to take control over the management of the enemy property and shall initiate action for recovery of arrears or dues recoverable from the occupier of the vested property and a notice in Form 4 shall be affixed over the property declaring the said property as vested with the Custodian.

(4) The District Authority shall prepare a list of the 22[vested immovable enemy property] pertaining to his district in the format given in Annexure II and a copy of the same shall be sent to the Custodian.”

48. Rule 5 of the Rules of 2015 prescribes as follows :-

“5. **Procedure for preservation, management and control of [immovable enemy property].**-(1) Where any [vested immovable enemy property in respect of which no income is received] by the Custodian, is under occupation of a person or persons or a company, the Custodian may serve a notice directing them to enter into an agreement with the Custodian in Form 5 and such occupant or occupants or the company, shall pay all arrears as may be determined by the District authority with effect from the date of occupation of the property or the date of vesting, whichever is earlier:

Provided that where the occupant of the [vested immovable enemy property] is unwilling to enter into an agreement, the Custodian may initiate process for the eviction of the occupant and take control over the property in accordance and in the manner provided [under the Act and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules made thereunder]:

Provided further that where the share of the enemy in such property exceeds one-half of the [whole immovable enemy property], the control over the whole property may be taken over by the Custodian.

[(1-A) The lease, leave and licence agreement, or tenancy or occupancy of the enemy property shall not be transferable by the tenant, lessee or licensee, as the case may be.

(1-B) The provisions of entering into a leave and licence agreement under sub-rule (1) or payment of rent, standard rent, lease rent, licence fee or usage charges, as the case may be, by any occupant shall not confer a perpetual right to continue as a tenant, lessee or licensee, as the case may be.

(2) Where [the vested immovable enemy property] is jointly owned by an enemy and an Indian National or is an undivided share in joint property, the income and expenses in respect of such property shall be apportioned for its preservation, management and control.

(3) All [vested enemy property] which is unoccupied at the time of taking over of control by the Custodian or has become vacant due to eviction under 31 [these rules] shall be leased out through open auction to the highest bidder.

(4) The Custodian shall prepare a list of all enemy properties out of which any income is received or receivable, in Annexure III which shall be reviewed and updated from time to time.

Explanation. For the purposes of this rule, "date of vesting" means the date of vesting of any property declared as enemy property in the Custodian which shall be with effect from 10th September, 1965, as notified under the notification of the Government of India in the Ministry of Commerce number 12/2/65-E.Pty. dated the 10th September, 1965."

49. Rule 6 lays down the procedure for taking over possession of movable enemy property whereas, Rule 9 enjoins a duty upon the Custodian to prepare inventory of immovable enemy property, the details whereof, is required to be published in the website so as to put it in the public domain.

50. A conjoint reading of the relevant provisions of the Rules of 2015 shows that the said rules lay down the operational mechanics for identification and verification of enemy property. On being *prima facie* satisfied that the property or the interest of any person therein is in enemy property and/or is an enemy subject, as the case may be, by following the procedure prescribed under Rule 3, the Custodian will have to serve notice under Rule 4 (1-A) upon the person claiming title or interest to such property. Upon completion of the above process, a certificate under Section 5A of the Act of 1968 can be issued. It is only after the aforesaid procedure is completed culminating in the issuance of a Certificate under section 5A that the Custodian can issue instructions to the Collector for making mutation entry in the revenue record showing it as an enemy property and not otherwise.

51. By interpreting the provision of the Rules of 2015, a Division Bench of this Court, in the case of ***Lotus Classique Housing Society Vs. Union of India*** (Supra), has categorically held that upon identifying the immovable property belonging to or held by an enemy or enemy subject, complete details of the property must be forwarded to the Custodian who shall, upon being satisfied that the property is Enemy Property, serve notice and give sufficient opportunity to the person concerned to show cause before issuing any declaration under the statute. The relevant observations made in the case of ***Lotus Classique Housing Society Vs. Union of India*** (Supra) in paragraph 15 are reproduced hereinbelow for ready reference:-

> “15. In order to declare certain property to be Enemy Property, the procedure prescribed under the Enemy Property Rules, 2015, contemplate the process of identification of the immovable property belonging to or held in the name of 'enemy or enemy subject or enemy firm.’
>
> Upon identifying any immovable property belonging to or held by the enemy or enemy subject or enemy firm, the District Authority is duty bound to forward the same to the Custodian, the complete details of such property and also particulars of the persons who is in possession of such property or the name of the occupants or manager or agent of the owner. The Custodian may then direct the District Authority in which the Enemy Property is located, to carry out physical inspection or verification of the property for obtaining the information as specified by the Custodian.
>
> Upon receipt of the report from the District Authority or any other evidence and on obtaining the required information and being satisfied that the property or interest therein is, prima facie, Enemy Property, the Custodian shall serve or cause a notice to be served in Form-1 on the person claiming title to such property or interest or any other person or persons who will be interested in the property.
>
> Where a notice has been duly served, the person or persons concerned shall be called upon to show cause as to why the subject property should not be declared as Enemy Property and the Custodian is duty bound to give sufficient opportunity to the noticees as a part of the inquiry, before he declares the property as 'Enemy Property’.

> The Rules of 2015 also set out the procedure for preservation, management and control of immovable Enemy Property and this shall include preparation of inventory as well as conduct of internal audit, etc.
>
> The Enemy Act read with the Rules therefore is a complete code prescribing identification of Enemy Property."

52. In ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Office of CEPI*** (Supra) relied upon by Mr Narula, another Division Bench of this court has held that under the Defence of India Acts and Rules as well as the Act of 1968, the Custodian does not have any power to issue directions restraining transfer of certain properties or for stopping of construction unless the Enemy Property has already vested in him and has been declared as such under Section 5A.

53. Coming to the facts of this case, as noted above, there is no controversy in this proceedings about the fact that by the Wakf Deed dated 19th January 1926, KBHS Meherbaksh had created a 'Wakf-al-aulad' for the benefit of his family members and descendants. The suit property forms a part of the "Wakf". With the creation of the Wakf, the property stood inalienably and irrevocably dedicated to the Almighty. Even assuming that such dedication to the Almighty is just nominal with there being no realistic basis for the same, even then, unless it is shown that the owners of the Wakf property or any one or more of them or the Managers of the property or the Mutawallis were or/are Pakistani Nationals and therefore, enemy subject under the Act of 1968, the property can neither be treated an enemy property nor can it vest on the Custodian. In such circumstances, the question of automatic vesting of the property will also not arise.

54. It is no doubt correct that there were some beneficiaries of the Wakf including Nabilla who were Pakistani Nationals. However, the custody of the beneficial interest of such Pakistani Nationals including Nabilla in the Wakf property had already been taken over by the Custodian pursuant whereto, a NOC regarding the Wakf property, had also been issued by the Custodian. There is nothing to show that Nabilla or any other member of her family being a Pakistani national, continued to derive benefits from the Wakf property in any manner. It is not the case of the Respondents that any other owner of the Wakf property or the Muttawallis, were nationals of enemy country, i.e., in this case, Pakistan. There is also no Notification issued by the Central Government notifying the vesting of the Wakf property or any part thereof, upon the Custodian of Enemy Property, i.e., the Respondent No. 3.

55. It is the admitted position of fact that the Notice dated 10th March 2004 was issued on the basis of some complaint received by the authorities that the Wakf property was enemy property. The Certificate dated 5th April 2004 was also issued on the basis of such notice. However, the notice dated 10th March 2004 as well as the Certificate dated 5th April 2004 were subsequently un-conditionally withdrawn by the Custodian himself. Thereafter, no further order or notifications had been issued by competent authority vesting the Wakf property on the custodian.

56. In the above context, it would be pertinent to mention herein that the claim of the Custodian over the property in question by treating it as enemy property was finally put to rest on the basis of a consent order dated 14th December, 2007 passed by the Division Bench of this Court. A perusal of the consent order dated 14th December 2007 passed in Writ Petition No. 1296 of 2004 would go to show that, by consent, the Custodian had voluntarily withdrawn the Notice dated 10th March 2004 as well as the Certificate dated 5th April 2004 issued by him. The Custodian had also agreed to issue a communication for deletion of adverse endorsements made in respect of Wakf property. The order dated 14th December 2007, along with the Consent Terms, are significant for the purpose of this case and, therefore, are being reproduced hereinbelow:-

> "Learned counsel appearing for the parties have filed in Court today consent terms. It is stated at the Bar that the petition can be disposed of in terms of the consent terms which may be directed to form part of this order. Consent terms is taken on record and marked `X' for identification.
>
> Petition is disposed of in terms of the consent terms. Parties agree to act as per the consent terms. Parties to bear their own costs."
>
> **"CONSENT TERMS**
>
> 1. Agreed, declared and confirmed that by and under letter dated 26th November 2007, the Respondent No.2 (Custodian of Enemy Property) has conveyed their No Objection to the Wakf releasing Wakf's properties from all their claims or beneficial interest on behalf of all the Pakistani nationals subject to conditions enumerated therein. Further agreed and confirmed that in view of the said letter conveying NOC issued by Respondent No.2, the Notice dated 10th March 2004 (Exhibit G to the Petition) and impugned letter dated 5th April 2004 issued under Section 8 of the Enemy Property Act, 1968 and Certificate dated 5th April 2004 issued under Section 12 of the Enemy Property Act, 1968 (Exhibits W, X and Y to the Petition) are withdrawn. A copy of the said letter dated 26th November 2007 is annexed herein and marked as Annexure "A"
>
> 2. Agreed, declared and confirmed that the properties enumerated in Annexure "A" hereto being the properties described in Exhibit "G" to the Petition are belonging to the Wakf and are not enemy properties. Further agreed, declared and confirmed that the Custodian of Enemy Property namely the Respondent No.2 has no right, title, interest or claim in respect thereof.
>
> 3. Further agreed, declared and confirmed that the Petitioners have deposited a sum of Rs.1,25,000/- (Rupees One lakh twenty five thousand only) in Suit No.250 of 1984

> towards the share of Nabila Begum & Others, who were beneficiaries of the said Wakf and some of them were Pakistani nationals. The Petitioners shall make an Application before the Hon'ble High Court for release of the said amount of Rs.1,25,000/- alongwith accrued interest thereon till date to the Respondent No.2 being the full and final share of the Pakistani nationals.
>
> 4. The Respondent No.2 shall address a letter for deletion of the endorsements made by the Collector of Mumbai in respect of some of the properties of the Wakf in the Property Register Cards and/or other revenue records' and to delete the name of Custodian therefrom.
>
> 5. By consent, the. Petition is disposed off in the terms aforesaid, with no order as to costs."

57. Record reveals that the Consent Terms filed in Writ Petition No. 1296 of 2004 was not based on the decision of the Custodian alone but the stand taken therein was based on proper consultation with Ministry of Law and Justice, Department of Legal Affairs, Branch Secretariat, Mumbai which is apparent from a bare perusal of the communication dated 7th December 2007 issued by the Custodian to his Advocate. In the said communication, it has been categorically mentioned that in view of the judicial pronouncements, the vesting of properties belonging to Meherbaksh Wakf may not stand legal scrutiny and, therefore, the continued litigation will only cost the government in terms of time and money. Therefore, it would be prudent for his office to agree to issue a "No Objection Certificate" to the Wakf in respect of any claim, right or interest in the beneficial interest in the property belonging to the Wakf. Based on such written communication, the Consent Terms were prepared and filed in Writ Petition No. 1296 of 2004 which forms part of the order dated 14th December 2007.

58. There is no change in the circumstances since the consent order dated 14th December 2007 was passed by the Division Bench. There is also no application filed by the Respondent Nos. 2/3 seeking review and/or modification of order dated 14th December 2007. There is no fresh declaration or certificate issued by the Custodian under Section 5A of the Act of 1968. Notwithstanding the same, an inquiry was made in the year 2019, which was followed by the impugned order dated 28th December 2021 encumbering the property purchased by the Petitioner (suit property) by showing it as Enemy Property. Such action on the part of the Respondents, in our view, is only *ex facie* in complete contravention of the scheme of Rules of 1962 as well as the Act of 1968 and the Rules framed thereunder but also in flagrant violation of the consent order dated 14th December 2007 passed by the Division Bench of the Bombay High Court.

59. In the above context, it would be significant to note herein that by the Act of 2017, Section 22 A was inserted in the statute, which reads as follows:-

> "22A- **Validation.—**Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—
>
> (a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2017, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times;
>
> (b) any Enemy Property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of Enemy Property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;
>
> (c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of Enemy Property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2017, and such Enemy Property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Act, as the said section, as amended by the aforesaid Act was in force at all material times;
>
> (d) any transfer of any Enemy Property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of Enemy Property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment

> and Validation) Act, 2017, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act."

60. By placing heavy reliance on Section 22A(b) which projects overriding effect of the statutory provision over any Judgment, Decree or Order of any Court or Tribunal, the learned counsel for the Respondent No 3 had submitted that notwithstanding the order dated 14th December 2007, the property in question would continue to vest on the Custodian. We are unable to countenance such argument of the learned counsel for Respondent No. 3 primarily for two reasons. Firstly, as noted above, there has never been any valid vesting of the subject property on the Custodian. Therefore, the question of the Custodian being divested from the property also does not arise. Under such circumstances, Section 22A(b), in our opinion, would not have any application in the facts and circumstances of the case.

61. Secondly, the order dated 14th December 2007 is a consent order passed by the High Court in a writ petition in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. Such order was passed on a concession made by the Respondent No. 3 upon due consultation with the concerned

Ministry. By the order dated 14th December 2007, the Respondent No. 3 had given up all claims over the property by issuing an NOC. Therefore, it is not a case where the Custodian has been divested of the property on the basis of any Judgment, Decree or Order of the Court or Tribunal, so as to attract Section 22A(b) of the Act.

62. The expressions 'judgment' 'decree' or 'order' of a 'court' or 'tribunal' in Section 22A cannot be interpreted to include a judgment or order passed by the High court in exercise of writ jurisdiction under Article 226. The power of the High Court in exercise of writ jurisdiction cannot be circumscribed or excluded by statute. [see- Maharashtra Chess Association vs Union of India– (2020) 13 SCC 285]. Therefore, Section 22A(b) of the Act, in our opinion, cannot have the effect of wiping out or nullifying the order of the High Court passed in exercise of writ jurisdiction, based on a provision in the statute, that too with retrospective effect.

63. While dealing with an issue of similar nature involving pre-amended provisions of Sections 6, 8, 13 and 18 of the Enemy Property Act, 1968, the Hon'ble Supreme Court, in the case of ***Union of India & Anr. Vs. Raja Mohammed Amir Mohammad Khan***

(Supra) relied upon by Mr Narula, has held that under the Enemy Property Act, the title of the property of an enemy does not vest in the Custodian. The Custodian merely takes over the Enemy Property only for the purpose of possession, control and management. However, the said decision was rendered by interpreting the law, as it stood, prior to amendments carried out to Sections 5, 6 of the Act of 1968.

64. It will be pertinent to note herein that the Act of 2017 had inserted Section 5(3), which provides that the property once vested on the Custodian shall continue to vest notwithstanding the fact that the “Enemy” or “Enemy Subject” or “Enemy Firm” has ceased to be an enemy due to death, extinction, winding up of business or change of nationality. Likewise, by carrying out amendment to section 6, it has been provided that no “Enemy” or “Enemy Subject” or “Enemy Firm” shall ever have any right and shall never be deemed to have any right to transfer any property vested in the Custodian and the property deemed to have been vested in the Custodian shall, notwithstanding anything contained in any Judgment, Decree or Order of any Court, Tribunal, continue to vest or deemed to have been vested on the Custodian and no person shall have any right including rights, titles and interests or any benefits arising out of such property vested or deemed to have been vested on the Custodian.

65. In view of the aforesaid amendments carried out to Sections 5 and 6 of the Act of 1968, which took effect from 7th January 2016, the very basis of the Judgment rendered in the case of ***Union of India & Anr. Vs. Raja Mohammed Amir Mohammad Khan*** (Supra) stood altered. Therefore, the ratio laid down in the said decision, in our opinion, would not have been any bearing on the facts and circumstances of the present case.

66. In the decision of the learned Single Judge of the Kerala High Court dated 9th November 2021 relied upon by Mr Chavan, there was evidence to show that the property in question originally belonged to one Mr. Moosa who was a Pakistani National, holding a Pakistani Passport. There was no specific denial by the Writ Petitioner of the assertion made by the authorities that Moosa was a Pakistani National. Mr. Moosa had assigned the property in favour of the Writ Petitioner. The learned Single Judge also took the note of the Notification dated 11th September 1965 issued by the Central Government in exercise of powers under Rule 133-V of the Defence of India Rules containing details of the properties in the schedule annexed thereto belonging to or held or managed on behalf of Pakistani National, thus vesting those on the Custodian of Enemy Property for India. However, as would be apparent from the narrations above, none of these conditions are met in the present case. Therefore, the decision of the Kerala High Court is clearly distinguishable on facts.

67. Mr Rajiv Chavan, learned Senior Advocate for the Respondent No. 3 has also placed heavy reliance on Section 18 of the 1968 Act to contend that in view of availability of alternative remedy, the Writ Petition should not be entertained by this Court. In order to appreciate his above argument, we have gone through the provisions of Section 18, which reads as follows:-

> "18. Transfer of property vested as enemy property in certain cases.—The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian."

68. First of all, the law is well settled that the Doctrine of 'alternate remedy' is not a Rule of law but a Rule of prudence. In a given case, where alternate remedy is available to the Petitioner, the High Court may refuse to entertain a Writ Petition in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. However, it is purely a matter of discretion of the High Court. There is no statutory bar for a litigant to maintain a Writ Petition under Article 226 of the Constitution of India, even if there is an alternative, efficacious remedy is available. The Supreme Court in the case of ***Whirlpool Corporation versus Registrar of Trade Marks, Mumbai,***[5] has observed in paragraph 20, as follows :-

> "20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

69. From a reading of Section 18 of the Act, we find that an Appeal would lie before the Central Government by a person aggrieved by an order vesting a property as Enemy Property,

5 (1998) 8 SCC 1.

within a period of 30 days from the date of receipt of such order or from the date of its publication in the Official Gazette. In the present case, there is no order vesting the property on the Custodian which was published in the official gazette. What the Custodian has done is that he has issued instructions to Revenue Authorities to make suitable insertions in the revenue records by showing the same as enemy property vesting on the Custodian of Enemy Properties even though the certificate of vesting dated 5th April,2007 had earlier been revoked by him. There is neither any order of the Central Government vesting the property on the Custodian nor is there any Certificate under Section 5A available in this case. Under such circumstances, we are of the considered view that this is not a fit case where the Petitioners should be asked to avail alternate remedy in the form of an appeal under Section 18 of the Act of 1968.

70. In view of the determination made hereinabove, we hereby declare that there was no valid vesting of the Wakf property, including the suit properties, on the Custodian of enemy property for India, i.e., the Respondent No. 3, at any point of time. As such, the Respondent No. 3 did not have any jurisdiction or authority under law to issue the impugned communications to the revenue authorities. Consequently, the impugned communication dated 28th December 2021 and the Mutation Entry dated 17th May 2023 impugned in Writ Petition No. 1080 of 2024, Mutation Entries both dated 15th May 2023 and the communication dated 28th December, 2021 impugned in Writ Petition No. 1233 of 2024 and Mutation Entry dated 30th May 2023 and communications dated 16th December 2021 and 28th December 2021 impugned in Writ Petition No. 3746 of 2023 are held to be illegal and *dehors* the law. The same are accordingly, set-aside.

71. For the reasons stated above, all the three Writ Petitions succeed and the same are hereby allowed.

72. Parties to bear their own costs.

(SHYAM C. CHANDAK, J.) **(SUMAN SHYAM, J.)**