



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 1876 OF 2025

BETWEEN:

1. NOOR MOHAMMED KHAN
S/O. LATE B.N. AKRAM ALI KHAN
@ AMJAD KHAN, 47 YEARS
NO.8/1, 1ST MAIN ROAD
RAHAMATH NAGAR
OPP MLA LAYOUT
BANGALORE-560032
2. AKBER ALI KHAN
S/O. LATE B.N. AKRAM ALI KHAN
@ AMJAD KHAN,
47 YEARS, NO.8/1,
1ST MAIN ROAD
RAHAMATH NAGAR
OPP MLA LAYOUT
BANGALORE-560032

...APPELLANTS

(BY SRI. T.A.KARUMBIAIAH, ADVOCATE FOR
MS. VINITHA P.C., ADVOCATE)

AND:

1. THE KARNATAKA STATE BOARD OF
AUQAF, NO.6,
CUNNINGHAM ROAD
BENGALURU-560052.
2. THE LAW COMMITTEE
KARNATAKA STATE BOARD OF AUQAF





NO.6, CUNNINGHAM ROAD
BANGALORE-560052.

3. THE CHIEF EXECUTIVE OFFICER
KARNATAKA STATE BOARD OF AUQAF,
NO.6, CUNNINGHAM ROAD,
BANGALORE-560052.
4. THE DISTRICT WAQF OFFICER
BENGALURU URBAN SOUTH DISTRICT
NO.16, 2ND FLOOR,
HAMEED SHAH COMPLEX,
CUBBONPET,
BANGALORE-560002.
5. JABIR ALI KHAN
S/O. LATE MOHAMMED RAZA ALI SHAH
AGED ABOUT 64 YEARS
SHUTTARI, CHISTI,
NIZAMIUL KHADRI, NO.10/1
SADAR PATHRAPPA ROAD
BANGALORE-560 002.

...RESPONDENTS

(BY SRI. MOHAMMAD NIYAZ S., ADVOCATE FOR R1 TO R4;
SRI G. KRISHNA MURTHY, SR. COUNSEL FOR
MOHAMMED ARIF KHAN MAKKI, ADVOCATE FOR R5)

THIS RFA IS FILED UNDER SEC.96 R/W ORDER 41 RULE
1 OF CPC, PRAYING TO CALL FOR THE ENTIRE RECORDS IN
APPLICATION NO.7/2025 FROM THE FILE OF THE KARNATAKA
WAQF TRIBUNAL, BANGALORE DN BANGALORE AND TO SET
ASIDE THE ORDER DATED 7.05.2025 PASSED BY THE
KARNATAKA WAQF TRIBUNAL, BANGALORE., DN.,
BANGALORE., ON IA NO.1 FILED UNDER SEC.5 OF THE
LIMITATION ACT IN APPLICATION NO.7/2025 AND ALLOW THE



SAID APPLICATION CONSEQUENTLY DIRECT THE TRIBUNAL TO RESTORE THE APPLICATION TO ITS ORIGINAL FILE AND TO PROCEED APPLICATION NO.7/2025 ON MERIT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

Captioned appeal is by the applicants assailing the order of the Waqf Tribunal dated 07.05.2025 passed in Application No.07/2025, whereby the applicants' interlocutory application filed in I.A.No.1 under Section 5 of the Limitation Act read with Section 83(5) of the Waqf Act, 1995 is rejected and consequently, the main application is also dismissed as barred by limitation.

2. For the sake of brevity, rank of the parties are as referred to before the Waqf Tribunal.

3. Along with the main application filed under Section 83(2) of the Waqf Act, 1995, the applicants also



filed I.A. No.1 under Section 5 of the Limitation Act, 1963 seeking condonation of delay in presenting the substantive proceedings. In the affidavit filed in support of the said application, the applicants averred that during the pendency of proceedings before this Court, their father, who had been arrayed as respondent No.7, expired. It was further stated that a memo dated 03.09.2024 was filed seeking liberty to approach the competent Tribunal to initiate appropriate proceedings in accordance with law. The applicants contended that though this Court, by order, granted three months' time to approach the Waqf Tribunal, there occurred some delay in filing the application under Section 83(2) of the Wakf Act, 1995 challenging the order dated 26.11.1976 passed in L.C.C. No.38/1975 by the then Administrator of the State Waqf Board. On this premise, condonation of delay was sought, asserting that the delay was neither intentional nor deliberate but occasioned by bona fide circumstances.



4. The said application was stoutly opposed by respondent No.5. The Waqf Tribunal, upon examining the order dated 10.09.2024 passed by this Court in W.P. No.24600/2022, recorded a finding that the applicants had not assigned any independent or sufficient cause for condonation of the inordinate delay, except placing reliance on the liberty reserved by the Co-ordinate Bench. The Tribunal observed that the writ petition in question had been instituted by respondent No.5 against the State Waqf Board and that the liberty to question the order dated 26.11.1976 had been expressly reserved in favour of the State Waqf Board alone. The Tribunal was of the considered view that such liberty could not be invoked by private individuals who were not beneficiaries of the said direction. On that reasoning, the Tribunal concluded that the applicants were not entitled to take advantage of the liberty granted to the Board and that no sufficient cause had been shown to condone the extraordinary delay in assailing a 1976 order. Consequently, I.A. No.1 was



rejected and, as a corollary, the main application came to be dismissed as barred by limitation.

5. Assailing the said order, learned counsel for the applicants, reiterating the grounds urged in the appeal, vehemently contended that the rejection of I.A. No.1 suffers from patent perversity and non-application of mind. Inviting attention to the material on record, he would submit that the entries in the List of Auqaf at Sl. No.147, which originally reflected the name of Dargah Hazrath Nawab Ibrahim Ali Shah Shuttari @ Zindavali (Sunni), were subsequently altered and replaced by a new entry. According to him, the applicants were entitled to establish, on merits, that the order dated 26.11.1976 delisting the notified Waqf properties and declaring them as private properties was without jurisdiction and legally unsustainable. It was further contended that in view of the liberty granted by this Court, the matter required substantive adjudication on merits before the Tribunal and ought not to have been non-suited on technical grounds of



limitation, particularly when the dispute pertains to properties originally notified as Waqf.

6. In support of his submissions, learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***P. Kumarakurubaran vs. P. Narayanan and others¹*** and ***Sunil Kumar Maity vs. State Bank of India and another²***, to contend that Courts and Tribunals ought to adopt a liberal and justice-oriented approach while considering applications for condonation of delay, especially where substantial rights are involved and when no prejudice would be caused to the opposite party by adjudication on merits.

7. Per contra, learned Senior Counsel appearing for respondent No.5, drawing attention to the order passed by the Co-ordinate Bench in W.P. No.24600/2022, submitted that while quashing the notice issued by the State Waqf Board proposing a fresh inquiry for relisting

¹ Civil Appeal No.5622/2025 dated 29.04.2025

² (2022) 20 SCC 543



the property as Waqf, the Co-ordinate Bench had clearly upheld the order dated 26.11.1976. He would emphasize that the liberty to approach the Tribunal within three months was specifically reserved to the State Waqf Board and not to any private individual. Therefore, according to him, the applicants cannot seek to enlarge the scope of the liberty granted nor step into the shoes of the Board to reopen a concluded issue after several decades. On this premise, it was contended that the Tribunal was fully justified in rejecting the application for condonation of delay and dismissing the main petition as barred by limitation.

8. Learned counsel appearing for respondent No.1 – State Waqf Board has also placed on record a detailed synopsis contending that the order dated 26.11.1976 passed by the then Administrator of the Board in L.C.C. No.38/1975 was without jurisdiction and, therefore, a nullity in the eye of law. On that premise, he sought to persuade this Court to hold that the liberty reserved by



HC-KAR

NC: 2026:KHC:12066
RFA No. 1876 of 2025

the Co-ordinate Bench while disposing of W.P. No.24600/2022 ought not to be construed in a narrow or pedantic manner. According to him, though the liberty was expressly granted to the State Waqf Board, the same should be interpreted as enuring not only to the benefit of the Board but also to persons interested in the Waqf, particularly when the subject matter concerns properties once notified as Waqf. He would therefore submit that the application filed by the present applicants under Section 83(2) of the Waqf Act, 1995, accompanied by an application under Section 5 of the Limitation Act, 1963 deserved consideration on merits. It was contended that the Tribunal erred in adopting a hyper-technical approach in rejecting the application for condonation of delay, instead of adopting a justice-oriented and liberal approach, especially when the challenge was directed against an order alleged to be without jurisdiction.



9. Having heard the learned counsel appearing for the parties and upon careful perusal of the records, this Court has bestowed its anxious consideration to the impugned order dated 07.05.2025 passed by the Waqf Tribunal. In the light of the rival submissions, the following points arise for consideration:

"(i) Whether the impugned order dated 07.05.2025 rejecting the application filed under Section 5 of the Limitation Act, 1963 and, consequently, dismissing the main application as barred by limitation suffers from perversity or illegality so as to warrant interference by this Court?

(ii) Whether the applicants had the locus standi to maintain an application under Section 83(2) of the Waqf Act, 1995 and question the order dated 26.11.1976 passed in L.C.C. No.38/1975 by the then Administrator of respondent No.1 – Waqf Board?

(iii) What order?"



Findings on Points (i) and (ii)

10. Before this Court examines the correctness of the order impugned, it would be apposite for this Court to extract the prayer sought in the present application No.7/2025, which reads as under:

"a) Set-aside/Quash the impugned order passed in L.C.C No.38/1975 dated 26-11-1976 by the then Administrator of the 1ST Respondent-Board declaring the Gazette notified Waqf properties as private properties produced at Annexure-'A'.

b) To Restore the entries in the List of Auqaf at Serial No.147 pertaining to Dargah Hazrath Nawab Ibrahim Ali Shah Shuttari @ Zindavali, Sunni, situated at Kumbarpet, Bengaluru and Serial No.173 pertaining to Khabrastan belonging to Hazrath Nawab Ibrahim Ali Shah Shuttari @ Zindavali Sunni situated at Kumbarpet, Khasai Lane, Bengaluru of the Gazette Notification dated 07-06-1965 relating to Bangalore Urban District as per the entries found in Annexure-'B' & 'C'.

c) Pass such other orders/directions as this Hon'ble Tribunal deems fit in the facts and circumstances of this case in the interest of justice and equity."

11. This Court also deems it fit to extract the reasons assigned in the affidavit filed in support of the



application filed under Section 5 of Limitation Act, 1963.

The relevant paragraphs 5 to 7 reads as under:

"5. I submit that, being aggrieved with the Notice 12.11.2020 and proceedings initiated by the Law Committee of the Board which has allowed impleading application by its order dated 31-10-2022, the Respondent No.5 has preferred W.P No.24600/2022. In this writ petition, my Father being the lineal descendant of the holy saint was arraigned as Respondent No.7. The Hon'ble High Court of Karnataka was pleased to allow the writ petition by its order dated 10-09-2024 with a direction to the Waqf Board to approach this Hon'ble Tribunal to decide the nature of the Waqf, as it is only Tribunal at the instance of the Board or Muthavalli of the Waqf or any person aggrieved which is competent to adjudicate the matter and none-else.

6. It is submitted that, during the course of proceedings before the Hon'ble High Court of Karnataka, my Father expired and we the applicants have filed a Memo dated 03-09-2024 seeking to liberty to approach this Hon'ble Tribunal to initiate proceedings in the manner known to law as per the observation made in Para-8 & 9 of the order passed in W.P No.24600/2022. Accordingly, the main application is filed assailing the order passed in L.C.C No.38/1975 dated 26-11-1976 by the then Administrator of the 1st Respondent-Board.

7. I submit that, although the impugned order dates back to 26-11-1976, in view of the liberty reserved



to the applicants and also in view of the direction to the 1st Respondent-Board in the order passed by the Hon'ble High Court of Karnataka in W.P No.24600/2022, the period of limitation is revived. Hence with abundant caution the annexed application is filed to condone the delay if any, in filing the main application."

(Emphasis Supplied)

A careful reading of paragraphs 5 to 7 of the affidavit filed in support of the application under Section 5 of the Limitation Act makes it abundantly clear that the entire edifice of the applicants' plea for condonation of delay rests upon the liberty allegedly reserved by this Court in W.P. No.24600/2022. The applicants assert that since their father—who was arrayed as respondent No.7 in the said writ petition—expired during its pendency, and since a memo dated 03.09.2024 was filed seeking liberty to approach the Tribunal, the observations made by the Co-ordinate Bench in paragraphs 8 and 9 of the order would enure to their benefit. Proceeding on that premise, they contend that the limitation to challenge the order dated 26.11.1976 stood "revived" and that they are therefore



entitled to maintain the application under Section 83(2) of the Waqf Act, 1995, notwithstanding the lapse of several decades.

12. The affidavit does not disclose any independent, factual, or legally sustainable explanation accounting for the enormous delay from 1976 till the filing of the present proceedings. The sole ground urged is the liberty said to have been reserved by this Court and the consequential assumption that such liberty automatically extended the period of limitation or resurrected a cause of action long since concluded. In fact, paragraph 7 of the affidavit explicitly proceeds on the footing that the period of limitation stood revived by virtue of the order passed in W.P. No.24600/2022 and that the application under Section 5 was filed only “with abundant caution.”

13. Since the applicants have thus placed heavy reliance upon the observations and liberty granted in W.P. No.24600/2022, this Court deems it necessary to closely



examine the findings recorded by the Co-ordinate Bench in the said writ petition. The precise scope and ambit of the liberty granted, and more importantly, the beneficiary of such liberty, assume crucial significance in determining whether the applicants could legitimately invoke the same to overcome the bar of limitation. Equally relevant is the operative portion of the order, which would clarify whether any liberty was, in fact, reserved in favour of the present applicants to approach the Waqf Tribunal by filing the present application in Application No.7/2025.

14. It is in that context that this Court now proposes to extract and examine paragraphs 21 to 25 of the order passed in W.P. No.24600/2022.

" 21. The other aspect of the matter is the question whether the property is a Waqf Property or not has to be dealt with in the manner provided under the Waqf Act, 1995. Relevant at this juncture to refer to Sections 6 and 7 of the Act, which reads as under;

"6. Disputes regarding [auqaf].-(1) If any question arises whether a particular property specified as [waqf] property in the list of [auqaf] is [waqf] property or not or whether a [waqf] specified in such list is a Shia "[waqf] or Sunni [waqf], the Board or



the mutawalli of the "[waqf] or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of 10[auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of Section 4.]

12[Explanation.-x x x x x.]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of 14[auqaf] shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding [auqaf].- (1) If, after the commencement of this Act, (any question or dispute) arises, whether a particular property specified as [waqf] property in a list of [auqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [waqf] or a Sunni [waqf], the Board or the mutawalli of the [waqf], 10 [or any person aggrieved by the publication of the list of auqaf under Section 5] therein, may apply to the Tribunal having



jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that.

(a) in the case of the list of 1"[auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of 12 [auqaf]; and

(b) in the case of the list of 13[auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not reopen such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any [waqf] shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of (augaf) and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.



(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]"

22. Perusal of the aforesaid provisions would make it clear should there any question with regard to the nature of the Waqf, it is only Tribunal at the instance of 'Board', or mutawalli of the Waqf or any person aggrieved which is competent to adjudicate the matter and none-else. As noted above contents of the proceedings of the meeting dated 17.06.2020 and the Note issued by the Chairman produced at Annexure-R2 extracted hereinabove touches upon the very aspect of the very nature of property which in considered view of this Court can be dealt only under Sections 6 and 7 of the Act by the Tribunal more particularly in the absence of any power vested with the respondent No.1-Karnataka State Board of Waqf in recalling its order as noted above.

23. Relevant also at this juncture to refer to the reasons assigned by the Law Committee while passing the impugned order on the impleading application in I.A.No.3/2021 wherein at para 17, the law committee has held as under;



"17. The settled principle of law relating to the Wants that once the property is listed in the gazette notification (List of Waqf) remain intact unless the notification is set aside by the competent court of law.

The order of deletion of gazette notification and subsequent deletion of entry in the register of Waqfs is utter illegal act on part of the then administrator of Board, for which the present Board has initiated action for declaring the order passed by the then administrator as a nullity as same does not sustain in the eyes of law".

24. Since the claims and rival claims made in this petition as noted hereinabove would go to the root of the question regarding the nature of the property, continuation of proceedings by the law committee under the guise of power delegated under Section 18 of the Act, cannot be countenanced in view of the expressed provisions contained under Sections 6 and 7 of the Act, extracted hereinabove.

The point Nos. 1 to 3 are answered accordingly.

25. In that view of the matter keeping open all the issues and the grounds to be urged by the parties, this court is of the considered view that the respondent-Karnataka State Board of Waqf be directed to approach the Karnataka Waqf Tribunal by instituting the proceedings as contemplated under the Act, within a period of three months from the date of receipt of the certified copy of this order."



On a careful reading of the extracted portions of the order passed in W.P. No.24600/2022, it becomes evident that the Co-ordinate Bench was essentially examining the legality of the action initiated by respondent No.1 – State Waqf Board in issuing a show cause notice to respondent No.5 and commencing a fresh enquiry to determine whether the properties held by respondent No.5 were liable to be registered or re-registered as Waqf properties. It was this action of the Board that constrained respondent No.5 to institute the said writ petition.

15. In the said writ proceedings, the father of the present applicants, who had sought to participate in the enquiry proceedings initiated by the State Waqf Board, was arrayed as respondent No.7 at the instance of the writ petitioner (present respondent No.5). However, the order sheet produced by learned counsel for respondent No.5 indicates that the Co-ordinate Bench was of the opinion that the legal representatives of respondent No.7 were not necessary parties to the writ proceedings. This aspect



assumes relevance, inasmuch as it demonstrates that the *lis* in the writ petition was essentially between respondent No.5 and the State Waqf Board, and not between private *inter se* claimants.

16. Be that as it may, the principal question that engaged the attention of the Co-ordinate Bench was whether a dispute concerning the nature and character of the properties namely, whether they constitute Waqf properties could be adjudicated in exercise of writ jurisdiction under Article 226 of the Constitution of India. Having regard to the rival claims and counter-claims touching upon the very character of the properties, the Co-ordinate Bench was of the considered view that such disputed questions could not be conveniently adjudicated in writ proceedings. It was further held that the continuation of proceedings by the Law Committee of the Board, under the guise of delegated powers under Section 18 of the Waqf Act, 1995 could not be sustained.



17. Accordingly, the Co-ordinate Bench opined that if the State Waqf Board had any grievance regarding the nature of the properties, the proper course was to approach the Karnataka Waqf Tribunal by instituting proceedings as contemplated under the Waqf Act. Importantly, the liberty so reserved was specifically directed to be exercised by respondent No.1 – Board, and that too within a period of three months from the date of receipt of the certified copy of the order, as is evident from paragraph 25 of the judgment extracted supra.

18. The present applicants, however, seek to draw sustenance from certain observations occurring in the operative portion of the said order and contend that the liberty granted therein enures to their benefit as well. It is on the strength of such observations that they now attempt to invoke the liberty reserved by the Co-ordinate Bench to justify the belated filing of the application under Section 83(2) of the Waqf Act, 1995 and to contend that the period of limitation stood revived.



19. In order to appreciate the correctness of this submission and to ascertain whether any liberty was in fact reserved in favour of the present applicants to approach the Tribunal, this Court deems it apposite to extract the operative portion of the order passed in W.P. No.24600/2022, which reads as under:

"(1) The petition is allowed.

(2) Proceedings before the respondent No.3-law committee of the Karnataka State Board of Auqaf, Bengaluru, in the case No.KSBA/LCC/01/BNU/2020, dated 31.10.2022 is quashed. Any order passed thereunder would merge with the order quashed herein, as such no separate orders are required on the interim order that was passed by the Law Committee in I.A.No.3/2021.

(3) Since it is Waqf Board which has initiated the proceedings pursuant to the notice at Annexure-D this Court has given a specific direction to Waqf Board to approach the Tribunal.

Needless to mention any person interested in subject Waqf may participate in the proceedings."



A plain reading of paragraph (3) of the operative portion extracted supra leaves no manner of doubt as to the intent and scope of the liberty reserved by the Co-ordinate Bench. The language employed is explicit and unambiguous. It categorically records that "since it is Waqf Board which has initiated the proceedings... this Court has given a specific direction to Waqf Board to approach the Tribunal." Thus, the direction was singular, specific and confined to respondent No.1 – the State Waqf Board. The beneficiary of the liberty was clearly identified and no general or omnibus liberty was granted to all concerned.

20. The concluding clarification "Needless to mention any person interested in subject Waqf may participate in the proceedings" cannot, by any stretch of interpretation, be elevated to the status of a substantive liberty to institute independent proceedings before the Waqf Tribunal. The expression "participate in the proceedings" presupposes the existence of proceedings validly instituted by the Waqf Board in terms of the



direction issued. Participation is qualitatively distinct from initiation. The former denotes involvement in an already instituted *lis*; the latter signifies the act of setting the adjudicatory process in motion. To conflate the two would amount to rewriting the operative portion of the judgment and enlarging its scope beyond what was consciously granted by the Co-ordinate Bench. This Court is therefore unable to accept the contention that the liberty reserved enures to the benefit of the present applicants so as to clothe them with an independent right to institute proceedings in Application No.7/2025.

21. The background of the case further reinforces this conclusion. The liberty to approach the Tribunal within three months was expressly granted to the State Waqf Board. However, the Board did not avail the said opportunity within the stipulated timeline. It appears that, upon the Board's failure to initiate proceedings, the present applicants have sought to step in and institute Application No.7/2025 before the Waqf Tribunal, asserting



that the liberty granted by this Court extends to them as well. Such an assertion, as reflected in paragraph 6 of the affidavit filed in support of I.A. No.1/2025, is clearly misconceived.

22. It is relevant to note that the father of the present applicants, who had been arrayed as respondent No.7 in W.P. No.24600/2022, expired during the pendency of the writ proceedings. The Co-ordinate Bench was not inclined to entertain an application for bringing his legal representatives on record, having taken the view that they were not necessary parties to the writ petition. Consequently, the present applicants were never brought on record nor permitted to defend the writ proceedings. In such circumstances, the assertion in the affidavit that liberty was reserved to the applicants is factually and legally untenable.

23. Even assuming that the applicants are persons interested in the subject Waqf and are otherwise entitled



to initiate appropriate proceedings in their individual capacity, they cannot circumvent the statutory bar of limitation by invoking a liberty that was never granted to them. If they seek to independently challenge the order dated 26.11.1976 passed in L.C.C. No.38/1975, they are obliged to satisfactorily explain the inordinate delay spanning nearly five decades. The delay must be computed from 1976 and not from the date of disposal of W.P. No.24600/2022. The attempt to project the delay as negligible by reckoning it from the three-month period granted to the Waqf Board is legally impermissible.

24. The contours governing condonation of delay under Section 5 of the Limitation Act are well settled. In ***Pathapati Subba Reddy v. Special Deputy Collector (LA)***³, the Hon'ble Supreme Court has reiterated that the law of limitation is founded on sound public policy to ensure certainty and finality in litigation. While courts possess discretion to condone delay upon demonstration

³ 2024 INSC 286



of sufficient cause, such discretion is neither automatic nor unbridled. Inordinate delay, negligence or lack of due diligence disentitles a party from equitable indulgence. Similarly, in ***Shivamma v. Karnataka Housing Board***⁴, it has been held that extension of time is a matter of judicial discretion and not a matter of right, unless sufficient cause is convincingly established.

25. In the case on hand, the affidavit filed in support of I.A. No.1/2025 is conspicuously silent as to the reasons for the extraordinary delay from 1976 till the filing of the present application. The explanation offered is confined exclusively to the alleged liberty granted in W.P. No.24600/2022. There is no whisper of any factual circumstances accounting for the prolonged inaction over several decades. This Court is therefore not inclined to examine the applicants' claimed rights in the subject properties at this stage, particularly when the challenge is mounted after an inordinate lapse of nearly 50 years.

⁴ 2025 INSC 1104



26. The remote reliance placed on the proceedings in L.C.C. No.38/1975, allegedly initiated at the instance of the applicants' father, is equally of no assistance. Even if, according to the applicants, some proceedings were pending, they cannot simultaneously institute a parallel round of litigation in respect of the same cause of action. Such a course would be impermissible in law.

27. In that view of the matter, this Court finds that the explanation furnished in the affidavit is wholly misplaced and misconceived. The Waqf Tribunal was justified in rejecting the application filed under Section 5 of the Limitation Act, 1963 and, as a logical consequence, in dismissing Application No.7/2025 as hopelessly barred by limitation. The judgments relied upon by learned counsel for the applicants do not advance their case in the factual matrix of the present matter and are clearly distinguishable.



28. For the foregoing reasons, this Court does not find any illegality or serious infirmities in the order impugned. Accordingly, points (i) and (ii) formulated by this Court are answered in the ***Negative.***

Finding on point No.(iii)

29. In view of the findings recorded on points (i) and (ii), this Court proceeds to pass the following:

ORDER

The appeal is devoid of merits and accordingly, stands ***dismissed.***

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

ALB