HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

OWP No. 1151/2011
CM No. 3102/2026 c/w
OWP No. 500/2019 [WP(C) 1143/2019]
CM No. 2416/2019 [1/2019]

Reserved on: 23.07.2026
Pronounced on: 31.07.2026
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Whether the operative part or full judgment is pronounced: **FULL**

Sain Miran Baba Darvesh Ghulam Qadir Trust through its Managing Trustee i.e. Qazi Mohd. Sayeed Beig Age (73 years) S/o Jalal-ud-Din R/o Ward No. 7, Poonch …..Petitioner(s)

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate &
Mr. Abhishek Wazir, Advocate.

Vs.

1. State of J&K through Commissioner/Secretary, Haj & Auqaf, New Secretariat, Srinagar.

2. J&K State Wakaf Council, Through its Administrative Officer, New Secretariat, Srinagar.

3. Chief Executive Officer, J&K State Wakaf Council Karan Nagar, Opposite Petrol Pump, Srinagar.

4. Administrator Wakaf (Poonch)

….. Respondent(s)

Through: Mr. P.N. Raina, Sr. Advocate with
Mr. Ayjaz Lone, Advocate &
Mr. J.A. Hamal, Advocate.
Ms. Chetna Manhas, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGEMENT

1. The dispute in the present writ petitions pertains to the Ziarat of Sain Baba Miran Baksh Sahib, who passed away in the year 1984. He was regarded as a pious and revered spiritual personality who devoted his life to the service of humanity. Detached from material pursuits, he dedicated himself entirely to the welfare and betterment of mankind. After his demise, his disciple, Darvesh Ghulam Qadir Sahib, is stated to have succeeded to the Holy Shrine as *Wali-e-Ahad*. He too was a man of great vision and foresight and is stated to have possessed mastery over the Islamic, Arabic, and Persian languages. The Ziarat of Sain Baba Miran Baksh attracted hundreds of devotees irrespective of their religion, caste, creed, or colour, who would visit the shrine to pay their obeisance. The Ziarat is situated at Village Kopra Guntrian. During his lifetime, Darvesh Ghulam Qadir further developed the shrine property by raising additional constructions. He passed away sometime in the year 1999. The petitioner claims to be a Trust entrusted with the management and administration of the Shrine and its allied properties, comprising landed property and structures situated at Village Mendhar, Tehsil Haveli, District Poonch, measuring 62 Kanals and 11 Marlas, together with the buildings existing on the spot, including the Quadria Masjid Complex and Jamia Anwar-ul-Uloom/Ahata Anwar-ul-Uloom at Poonch City, the Gundi Masjid

Complex, Takiya Sharief Bandi Chechian, and the Ziarat Sharief/Complex of Hazrat Sain Baba Miran Baksh at Kopra Guntrian.

2. The petitioner further claims that after the demise of Darvesh Ghulam Qadir, and in accordance with his wishes, the Sain Miran Baba Trust came into existence on 08.03.2000. Among its members was the then MLA, Poonch, Shri Ghulam Mohammad Jan. According to the petitioner, Shri Ghulam Mohammad Jan was also serving as the Chairman of the Tehsil Wakaf Committee, Haveli, Poonch. In exercise of the powers vested in him as Chairman, he issued a proclamation dated 02.12.2000 declaring that the Ziarat of Sain Baba Miran Baksh, being managed by the Trust, was not a Wakaf property and that the Muslim Auqaf had no right, title, claim, or authority over the said Trust or its properties.

3. The respondent, Jammu and Kashmir Wakaf Board, through its Chief Executive Officer, informed the Administrator, Wakaf, Districts Poonch and Rajouri, that the Ziarat of Sain Miran Sahib, Poonch, and Takia Baba Ghulam Shah Badshah, Lassana, Surankote, were Wakaf properties. The Administrator was accordingly directed to take charge of both the Ziarats under the provisions of the Jammu and Kashmir Wakaf Act, 2001.

4. Aggrieved by the aforesaid action, the petitioner-Trust challenged the same by filing OWP No.1151/2011. This Court, vide order dated 24.08.2011, stayed the operation of the directions issued by the State Wakaf Council and directed the parties to maintain status quo. During the pendency of the said writ petition, the respondents entered appearance and contested the petitioner's claim. Subsequently, on 25.01.2019, the

Government of Jammu and Kashmir, Department of Haj and Auqaf, issued SRO 77 declaring the Ziarat property as a Wakaf property for the purposes of the Jammu and Kashmir Wakaf Act, 2001. The said notification was challenged by the petitioner through a subsequent writ petition, OWP No. 500/2019. Vide order dated 29.03.2019, this Court also stayed the operation of the notification dated 25.01.2019. Both the writ petitions have been clubbed together as they arise out of the same factual background.

5. Initially, the writ petition was instituted through its Managing Trustee, Qazi Mohammad Sayeed Beig. Subsequently, in terms of the order dated 30.07.2025, Altaf Hussain Shah, stated to be the Managing Secretary of the Trust, was substituted in place of the said Managing Trustee and has since been prosecuting the present proceedings on behalf of the Trust. It is the specific case of the petitioners that the Ziarat is not a Wakaf property and has, at all material times, been managed by Darvesh Ghulam Qadir, the disciple and spiritual successor of Sain Baba Miran Baksh, after whom the Ziarat is named. It is further pleaded that the assets and constructions forming part of the Ziarat were developed by Darvesh Ghulam Qadir and that, in accordance with his last wishes, the Sain Miran Baba Trust was constituted in the year 2000 to manage and administer the affairs of the Ziarat and its properties.

6. It is further pleaded that the trustees were nominated by the settlor of the Trust and have since been managing the affairs of the Shrine by providing facilities to pilgrims, including *langar*, besides constructing a double-

storied building, a ladies' hall, and a *Madrasa* for imparting education to children. According to the petitioners, the Trust is a private charitable trust created in pursuance of the last wishes of Darvesh Ghulam Qadir, the successor of Sain Baba Miran Baksh, with the objective of promoting the charitable and spiritual activities associated with the Ziarat for the welfare of mankind. Since its establishment in the year 2000, the Trust has been continuously managing the Ziarat and its allied properties. It is further submitted that the then Chairman of the Tehsil Wakaf Committee, vide proclamation dated 02.12.2000, declared the Trust to be a private body and further held that its properties did not fall within the ambit of "Wakaf property" as defined under the Jammu and Kashmir Wakaf Act.

7. It is further contended that no Special Officer, as contemplated under the Jammu and Kashmir Wakaf Act, 2001, was ever appointed by the respondents to ascertain whether the property in question was a Wakaf property, nor was any inquiry conducted in accordance with the provisions of the Act. It is, therefore, submitted that the communication/resolution dated 23.06.2010 directing the Administrator, Auqaf, to take over the charge of the Ziarat was issued without jurisdiction. Likewise, SRO 77 dated 25.01.2019 is stated to be arbitrary, illegal, and liable to be quashed, as the petitioner was not afforded any opportunity of being heard prior to its issuance. According to the petitioner, in the absence of any statutory inquiry into the status and character of the Ziarat and its attached properties, which have throughout

been managed by a private Trust, the respondents lacked the authority to issue the impugned orders.

8. It is further submitted that the provisions of the Jammu and Kashmir Wakaf Act do not empower the respondents to assume management or possession of the Ziarat, which, according to the petitioner, is a private charitable trust established and managed solely on a voluntary basis in accordance with the wishes of Darvesh Ghulam Qadir. It is further contended that the proclamation dated 02.12.2000 issued by the then Chairman of the Tehsil Wakaf Committee attained finality and continued to operate unless set aside in accordance with law. Consequently, the respondents could not subsequently take a contrary stand by asserting that the Ziarat and its attached properties constitute Wakaf properties. Reliance is placed upon Section 56 of the Jammu and Kashmir Wakaf Act, which provides that every order passed by the Chairman of the Tehsil Wakaf Committee or the Appellate Authority under the Act shall be final and shall not be called in question. Since the decision of the then Chairman has attained finality, it is contended that the subsequent communication dated 23.06.2010 and SRO 77 dated 25.01.2019 are without legal authority and are liable to be set aside.

9. The respondents have contested the claim of the petitioner by asserting that the Ziarat of Sain Baba Miran Baksh is a *Wakaf by user*, as it has, for several decades, been visited by hundreds and thousands of devotees every year who offer donations in cash and kind, allegedly amounting to several crores of rupees annually. According to the respondents, the

petitioner, motivated by the substantial donations received at the Shrine, has unlawfully assumed control over its affairs by constituting the Trust, which, according to them, has no legal sanctity. It is further alleged that the then Chairman of the Tehsil Wakaf Committee, who also happened to be a member of the petitioner-Trust, was under a statutory obligation to safeguard and protect the Wakaf property. Instead, he is stated to have played an instrumental role in constituting the Trust with the object of enabling the misappropriation of the donations and income of the Shrine with impunity.

10. The respondents further submit that the State Wakaf Council, in its meeting held on 23.02.2010, declared the Ziarat to be a Wakaf property and resolved that the Administrator, Wakaf, Poonch, should take over its management. Pursuant thereto, the Administrator was directed, vide communication dated 23.06.2010, to assume charge of the Shrine. The said communication was challenged by the petitioner by filing OWP No. 1151/2011. Subsequently, in the year 2019, SRO 77 was issued notifying the property as a Wakaf property under the Jammu and Kashmir Wakafs Act, 2001. It is further pleaded that the authorities constituted under the Act are autonomous statutory bodies and do not fall within the definition of "State". According to the respondents, the Ziarat of Sain Baba Miran Baksh has been revered by the public at large for several decades, and Darvesh Ghulam Qadir was merely a disciple of Sain Baba Miran Baksh, whose own shrine is situated at Bandi Chechian, approximately 20 kilometers away from the Shrine in question. It is specifically denied that

Darvesh Ghulam Qadir ever constituted the petitioner-Trust or authorized it to manage the affairs of the Shrine. The respondents maintain that the Shrine, being a *Wakaf by user,* is required to be managed and administered exclusively under the provisions of the Jammu and Kashmir Wakaf Act, 2001, and that the petitioner-Trust has no lawful right over either the Shrine or its funds. It is further submitted that the respondents are not only competent but are statutorily bound to take over the management of the Shrine, as all properties created out of the income and funds of the Shrine are themselves Wakaf properties. According to the respondents, SRO 77 was issued strictly in accordance with law and after following the prescribed procedure. It is also contended that the Shrine had been in existence long before the execution of the Trust Deed dated 08.03.2000 and that the Trust neither established nor developed the Shrine. Rather, according to the respondents, the Trust was constituted solely with the intention of usurping and grabbing the properties and income of the Shrine. It is further submitted that complaints were received from the residents of Tehsil Haveli regarding the alleged misappropriation of the Shrine funds, which ultimately led the State Wakaf Council to resolve to take over the management of the Shrine and its properties in the year 2010.

11. The respondents further contend that the proclamation dated 02.12.2000, upon which the petitioner places reliance, cannot curtail or affect the statutory powers and duties of the respondents to manage and administer the Shrine, which, according to them, is a *Takia* and a *Wakaf by user*.

Reliance is placed on Section 72 of the Jammu and Kashmir Wakaf Act, 2001, which provides that no period of limitation shall apply to the enforcement of any right or interest in a Wakaf property. It is submitted that the said proclamation cannot, by any stretch of interpretation, be construed as a determination of the nature and character of the Shrine. Consequently, the petitioner cannot invoke Section 56 of the Act in support of their claim. It is further argued that even assuming the proclamation to be an order within the meaning of the Act, the same could not divest the Shrine of its inherent character as a *Wakaf by user*, particularly when the proclamation merely referred to the petitioner-Trust and nowhere declared that the Shrine of Sain Baba Miran Baksh was not a Wakaf property.

12. It is lastly contended that the Ziarat of Sain Baba Miran Baksh was not established by the petitioner-Trust but had been in existence for several decades prior to the execution of the Trust Deed dated 08.03.2000. Consequently, the petitioner cannot derive any benefit from the provisions of Section 23 of the Jammu and Kashmir Wakaf Act. According to the respondents, even Wakaf created through a trust continue to remain governed and regulated by the provisions of the Jammu and Kashmir Wakaf Act, 2001, and, therefore, the petitioner-Trust cannot claim any independent right to administer or control the Shrine or its properties dehors the statutory framework of the Act.

13. Learned Senior Counsel appearing for the petitioner submitted that the Shrine is governed by a valid Trust Deed and is, therefore, managed by an

autonomous private Trust. It was further argued that as early as in the year 2000, the Tehsil Wakaf Committee had declared that the Shrine did not constitute a Wakaf property and, consequently, the provisions of the Jammu and Kashmir Wakaf Act, 2001, are inapplicable. According to the learned Senior Counsel, Section 23 of the Act expressly excludes the operation of the Act in respect of such Trusts. It was contended that the Trust was constituted in accordance with the last wishes of its settlor, Darvesh Ghulam Qadir, the immediate spiritual successor of Sain Baba Miran Baksh, and that the revenue records also recognize the existence of the Trust. Once the Trust came into existence, it acquired the exclusive authority to manage the affairs of the Shrine and its allied properties, leaving the respondents with no right, title, or authority over the Ziarat. Learned Senior Counsel further submitted that Section 23 clearly contemplates that where a valid trust deed exists, the management of the property shall be governed by the terms of the Trust Deed and not by the provisions of the Wakaf Act.

14. Learned Senior Counsel further argued that the Tehsil Wakaf Committee had already rendered its decision by way of the proclamation dated 02.12.2000, which, in terms of Section 56 of the Jammu and Kashmir Wakaf Act, has attained finality and cannot be questioned before any Court. Referring to the definition clauses contained in the Act, it was submitted that the statute draws a clear distinction between a "Wakaf" and "Wakaf property". According to the learned Senior Counsel, even assuming that the Shrine is a *Wakaf by user*, the same would not, by itself,

entitle the respondents to invoke the provisions of the Act so as to displace the petitioner-Trust from its management. It was contended that the Trust was constituted solely to regulate and administer the affairs of the Shrine, which is visited by thousands of devotees offering prayers and paying obeisance. Besides managing the Shrine, the Trust also undertakes charitable and religious activities by running educational institutions, providing *langar* to pilgrims, and carrying out other welfare activities. It was, therefore, submitted that the objects of the Trust are purely religious, pious, and charitable in nature.

15. Learned Senior Counsel further submitted that Darvesh Ghulam Qadir was not only the disciple and spiritual successor of Sain Baba Miran Baksh but also the *Wakif-ul-Aulad* (settlor), and, therefore, his wishes are of paramount importance in determining the mode of administration of the Shrine. Since the Trust was constituted in accordance with his wishes, Sections 26 and 56 of the Jammu and Kashmir Wakaf Act confer finality upon the arrangement whereby the petitioner-Trust manages the affairs of the Shrine. It was further contended that the declaration of the respondents treating the Ziarat as a *Wakaf by user* and bringing it under the management of the statutory authorities was made unilaterally and in complete disregard of the mandatory procedure prescribed under the Act. Learned Senior Counsel submitted that Section 6 of the Act contemplates the appointment of a Special Officer for conducting an inquiry into the nature and character of the property, and it is only on the basis of the report submitted by such Special Officer, and after consultation with the

Tehsil Wakaf Committee, that the Government may publish the list of Wakaf in the Government Gazette. According to the petitioner, no such inquiry was ever conducted in the present case. Instead, the respondents initially relied upon the resolution of the State Wakaf Council dated 23.02.2010 and thereafter issued SRO 77 dated 25.01.2019 without complying with the mandatory statutory procedure.

16. Placing reliance upon Sections 34 and 38 of the Jammu and Kashmir Wakaf Act, learned Senior Counsel argued that the Chairman of the Tehsil Wakaf Committee is vested with the authority to inquire into the nature of a Wakaf, while Section 38 specifically empowers the Committee to determine whether a particular property is or is not a Wakaf property. It was submitted that these statutory provisions clearly indicate that the determination of the character of a property must be undertaken by the competent authority in the manner prescribed by the Act. Learned Senior Counsel laid particular emphasis upon the distinction drawn under the Act between the expressions "Wakaf" and "Wakaf property".

17. In conclusion, learned Senior Counsel submitted that while the Ziarat may be regarded as a religious endowment permanently dedicated for religious and charitable purposes, its management vests exclusively in the petitioner-Trust constituted under the wishes of Darvesh Ghulam Qadir. It was, therefore, argued that the respondents have no legal authority to assume control or management of the Shrine merely on the ground that it constitutes a *Wakaf by user*.

18. Per contra, learned Senior Counsel appearing for the respondents submitted that the petitioner-Trust has no legal significance in so far as the management of the Shrine is concerned. It was argued that even assuming the Trust to have been constituted under the Jammu and Kashmir Trusts Act, 1977, the saving clause contained in Section 1 of the said Act expressly provides that nothing contained therein shall affect the rules of Mohammedan Law relating to Wakaf. Learned Senior Counsel further submitted that, even for the sake of argument, the petitioner does not claim that the Trust was settled by Darvesh Ghulam Qadir himself. On the contrary, the Trust admittedly came into existence only after his demise. According to the respondents, the petitioner himself is uncertain as to who the actual author or settlor of the Trust is, and there is no material to demonstrate that Darvesh Ghulam Qadir had created or settled any Trust during his lifetime. It was, therefore, contended that the reliance placed by the petitioner upon Section 23 of the Jammu and Kashmir Wakaf Act is wholly misconceived. Learned Senior Counsel submitted that Section 23 applies only where a Wakaf has been created by a registered deed executed by the *Wakif*. The mere creation of a Trust in relation to a Wakaf does not divest the statutory authorities of their power to administer and manage the Wakaf. According to the respondents, Section 23 merely provides that where a Wakaf has been created by a deed, the objects of such Wakaf shall be regulated in accordance with the terms of the deed. Since a Wakaf constitutes a permanent dedication of property for religious, pious, or charitable purposes, the beneficiaries

continue to enjoy the benefits of the endowment. In the present case, it was submitted, the Ziarat of Sain Baba Miran Baksh is a *Wakaf by user* and, therefore, no separate declaration creating the Wakaf is either contemplated or required under law.

19. Placing reliance upon the judgment of the Division Bench of this Court in *Intizamiya Committee Dargah (I) Ziyarat Syed Jaffer (II) and Another v. Union Territory of Jammu & Kashmir and Others* (LPA No. 187/2023, decided on 05.06.2025), learned Senior Counsel submitted that Ziarats and Dargahs are recognized as *Wakaf by user* within the meaning of Section 3(d)(i) of the Jammu and Kashmir Wakaf Act and that no formal declaration is required to confer such status. Responding to the petitioner's reliance upon the proclamation dated 02.12.2000, it was argued that the Chairman of the Tehsil Wakaf Committee had no independent authority to issue such a proclamation, as it is only the Tehsil Wakaf Committee which is empowered under Section 38 of the Act to determine whether a particular property is or is not a Wakaf property. It was submitted that the petitioner has nowhere pleaded that the Chairman had been authorized by the Tehsil Wakaf Committee to issue the said proclamation. Although Section 56 accords finality to the orders of the Chairman, the Tehsil Wakaf Committee, or the Appellate Authority, learned Senior Counsel contended that the said provision has no application to the present case, as the proclamation was issued by the then Chairman, who was also the local MLA and is now stated to be a Trustee of the petitioner-Trust, without any statutory authority and for collateral

purposes. It was further argued that even a plain reading of the proclamation reveals that it merely states that the petitioner-Trust is an autonomous charitable body and that the Auqaf authorities have no claim over the Trust. The proclamation neither declares nor even suggests that the Ziarat of Sain Baba Miran Baksh, the Shrine of Darvesh Ghulam Qadir (RA), or the properties attached thereto are not Wakaf properties. According to the respondents, the proclamation has no bearing whatsoever upon the legal character of the Shrine as a *Wakaf by user*.

20. Learned Senior Counsel for the respondents also invited the attention of the Court to the revenue records and the principles of Mohammedan Law governing religious endowments. It was submitted that, under Muslim law, when a *Darvesh*, Sufi, or other revered spiritual personality settles in a locality and commands the respect and veneration of the people, the place associated with him is known as a *Takia*. Upon the death of such a holy person, the place where he is buried assumes the character of a *Ziarat* and becomes an object of pilgrimage not merely for his disciples but also for devotees from distant places. It was contended that the Shrine in question answers this description and has, over the years, acquired the character of a *Wakaf by user*.

21. Learned Senior Counsel accordingly submitted that the respondents have lawfully exercised the powers conferred upon them under the Jammu and Kashmir Wakaf Act by assuming the management of the Shrine and that the petitioner-Trust has no locus standi to challenge the same. According to the respondents, the petitioner-Trust is merely a body of private

individuals seeking to usurp the properties and income of the Shrine. In rejoinder, learned Senior Counsel for the petitioner's placed reliance upon *AIR 2023 SC 2769* to contend that a property can be declared to be a Wakaf only upon the basis of cogent evidence and after conducting a proper inquiry and that, in the absence of evidence establishing the creation or existence of a Wakaf, a property cannot be treated as a *Wakaf by user*. Reliance was also placed upon *AIR 2017 SC 2653* to submit that where the Wakaf Board has reason to believe that a property is a Wakaf property, it is under an obligation to collect the necessary material and conduct such inquiry as may be required before arriving at a conclusion. It was argued that although the Board is empowered to determine whether a particular property is a Wakaf property, such determination must necessarily be preceded by an inquiry contemplated under the Act, and its decision remains subject to the statutory remedies provided therein. Learned Senior Counsel submitted that, in the present case, neither any inquiry was conducted nor was any report submitted by a Special Officer regarding the status of the Ziarat as a Wakaf property. It was further argued that the reliance placed by the respondents upon the Division Bench judgment in *Intizamiya Committee Dargah* (supra) is misplaced, as the controversy involved therein did not concern the issue presently arising with regard to the declaration of a *Wakaf by user*. Lastly, it was submitted that, if the respondents intended to nullify or depart from the decision of the Tehsil Wakaf Committee reflected in the proclamation dated 02.12.2000, they were required to follow the due process prescribed under law, which admittedly was not done. Consequently, the communication dated 23.06.2010 and SRO 77 dated 25.01.2019 are stated to be unsustainable in law.

22. Heard the counsels and gone through the record.

23. In *Intizamiya Committee Dargah v. Union Territory of Jammu & Kashmir and Others* (LPA No. 187/2023, decided on 05.06.2025), a judgment to which I was a party, the Division Bench upheld the dismissal of the writ petition challenging the decision of the Jammu and Kashmir Wakaf Board. In that case, one Haji Abdul Ahad Akhnoon had constituted an Intizamiya Committee claiming to manage the Ziarats of Syed Jaffer, Syed Rehman and Syed-ul-Hajra situated at Gund, District Ganderbal, which had been notified as Wakaf properties. While examining the scheme of Sections 3 and 4 of the Jammu and Kashmir Wakaf Act, the Division Bench held that a Ziarat, by reason of its very nature and long user, constitutes a *Wakaf by user* within the meaning of Section 3(d) of the Act. The appellants had further contended that even their proprietary land had been treated as Wakaf property. The Court, however, found that such contention was factually incorrect. It was observed that the dispute as to whether the Ziarat had actually been constructed over Khasra Nos. 322 and 323 involved disputed questions of fact which could neither be adjudicated in writ proceedings nor in an intra-court appeal. Since Khasra No.323 had not been notified as Wakaf property, it was held that the appellants had no legal basis to challenge the notification declaring the Ziarat to be a Wakaf.

24. In *AIR 2017 SC 2653*, the appellant contended that the suit property was not a Wakaf property, as it had never been dedicated as a Wakaf and did not find mention in the list of Wakaf properties published in the Official Gazette. The Supreme Court noticed that both the Wakaf Tribunal and the High Court had concurrently recorded findings of fact that the property in question had never been included in the notified list of Wakaf properties. Such non-inclusion had remained unquestioned by any person, including the Wakaf Board, for more than five decades after publication of the Gazette Notification. In those circumstances, it was held that the Wakaf Board, having failed to assert any right over the property for such a prolonged period, could not subsequently seek cancellation of the sale deed through which title had already validly passed in favour of the defendants.

25. In *AIR 2023 SC 2769*, the Supreme Court was concerned with a case where it was undisputed that the property in question had never been expressly dedicated as a Wakaf. The issue before the Court was whether land proposed to be used as a burial ground could acquire the character of a *Wakaf by user*, particularly when it had not, in fact, been used for burials for more than sixty years. The Supreme Court held that, in the absence of any evidence establishing the valid creation or dedication of a Wakaf, the property could not be recognized as a Wakaf merely on the basis of an alleged user. It was accordingly held that, without proof of a valid Wakaf, the land could not continue to be treated as Wakaf property irrespective of its intended use or non-use as a burial ground.

26. Having considered the rival submissions advanced by learned Senior Counsels appearing for the parties, it emerges that there is, in substance, no serious dispute regarding the religious character of the Ziarat of Sain Baba Miran Baksh. The principal contention of the petitioner is not that the Shrine is devoid of the attributes of a Wakaf, but that, notwithstanding its character as a *Wakaf by user*, its management and administration stand vested in the petitioner-Trust by virtue of the Trust Deed, which, according to the petitioner, is protected under the provisions of the Jammu and Kashmir Wakaf Act. The controversy, therefore, centers not on the existence of the Wakaf itself but on the question as to who is legally entitled to administer and manage the Shrine and its allied properties.

27. To appreciate the rival contentions, it is necessary to examine the relevant provisions of the Jammu and Kashmir Wakaf Act, 2001. Section 3(l) of the Act defines "Wakaf" to mean the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim law or usage as religious, pious or charitable, and includes,

i. a Wakaf by user such as Masjid, Idgah, Durgah, Khankah, Maqbara, Graveyard, Grave, Rouza, Mausoleum, Takia, Saria, Yatimkhana, Madarsa, Schook, Islamia College, University and Shafakhana; and

ii. A Wakaf-ul-Aulad

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

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

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

28. A plain reading of the aforesaid provisions makes it evident that the Act contemplates the creation or recognition of a Wakaf in three distinct modes, namely: (i) by permanent dedication of property for a religious, pious or charitable purpose recognised under Muslim law; (ii) as a *Wakaf by user*; and (iii) as a *Wakaf-ul-Aulad*. In contrast, clause (n) defines "Wakaf property" or "Wakaf premises" to include every property dedicated for any purpose recognised by Muslim law or usage as religious, pious or charitable, as well as properties attached to or appurtenant to a Mosque, Eidgah, Khanqah, Dargah, Imam Bara or Graveyard. Thus, the Act makes a clear distinction between the concept of a "Wakaf" and that of "Wakaf property", while at the same time recognizing that a religious institution may acquire the character of a Wakaf by long, uninterrupted public user. Significantly, the revenue records pertaining to the property in question describe the land as **"Takiya Sain Baba Miran Baksh Sahib, etc."**, which prima facie reflects its long-standing religious character.

29. In his celebrated treatise on *Mohammedan Law,* Justice Syed Ameer Ali, while explaining the concept and evolution of a *Takia* and *Ziarat*, observes as under:-

> “In India, *Khankah* have generally sprung up in the following way: - A dervish or a person who, by leading a pious life, has won the

esteem and veneration of the neighborhood, or a Sufi of particular sanctity has settled down in some locality. So long as he has not attained sufficient importance, his place of abode is called a *Takia*. But when he is a man of importance or has attained sufficient eminence, it is designated an *Astana*. His pious life and religious ministrations attract public notice, disciples gather round him, and a place is constructed for their lodgment. And the humble Takia grows into a Khankah. After the death of the holy personage, the spot where he is buried becomes a *shrine* and an object of pilgrimage not only for his disciples, but for people of distant parts, both Mussulmans and Hindus, and is designated either as a dargah or Astana or Rouzan. Such are the shrine and Khankah of Shah Kuber Dervish, to which I shall refer again later."

30. The revenue records reveal that, during his lifetime, Darvesh Ghulam Qadir was recorded as the *Takiya* managing the Ziarat of Sain Baba Miran Baksh Sahib. It is an admitted position, even according to the petitioner, that Sain Baba Miran Baksh passed away in the year 1984, whereas his disciple, Darvesh Ghulam Qadir, died in the year 1999. During their respective lifetimes, neither Sain Baba Miran Baksh nor Darvesh Ghulam Qadir created any Trust or executed any deed permanently dedicating the Shrine or its properties. The Shrine had, however, become a place of religious reverence where devotees congregated in large numbers over a considerable period of time. In view of the definition of "Wakaf" contained in Section 3 of the Jammu and Kashmir Wakaf Act, 2001, such long, uninterrupted and recognized public user is sufficient to confer upon the Ziarat the character of a *Wakaf by user*. The next question which arises for consideration is whether a formal declaration or notification was

a condition precedent for recognizing the Shrine as a *Wakaf by user*. The answer to this issue necessarily lies in the scheme of the Act.

31. It is pertinent to note that, in the writ petition instituted in the year 2011, the petitioner had primarily asserted that although the Shrine was a Wakaf, its management vested in the petitioner-Trust. In the subsequent writ petition, however, an additional plea appears to have been advanced that Darvesh Ghulam Qadir was functioning in the capacity of a *Wakaf-ul-Aulad*, allegedly created by Sain Baba Miran Baksh for the maintenance and support of his descendants, the upkeep of the Wakaf, discharge of liabilities and charitable purposes. Be that as it may, Section 4 of the Act provides for the appointment by the Government of one or more Special Officers to undertake a survey of Wakaf in the areas where the Act is in force. The Special Officer is required to conduct an inquiry and submit a report to the Government containing, inter alia, the particulars of the Wakaf, the nature and objects of each Wakaf, and such other relevant details as may be prescribed. The provision further contemplates that where, during the course of such inquiry, a dispute arises as to whether a particular Wakaf falls within the meaning of the Act and there exist clear indications in the deed of Wakaf regarding its nature and character, such dispute shall be decided on the basis of the terms of the deed. The Act also provides a statutory remedy against the determination made by the competent authority by conferring a right of appeal upon an aggrieved person before the Appellate Authority.

32. Section 6 of the Act, on the other hand, provides that upon receipt of the report submitted under Section 4, the Government shall, after consulting the Tehsil Wakaf Committee, cause the list of Wakaf to be published in the Government Gazette or in a local newspaper having wide circulation in the area. The list so published attains finality unless modified pursuant to an order passed by the Appellate Authority. Section 21 provides for the constitution of the Tehsil Wakaf Committee. Since considerable reliance has been placed by learned Senior Counsel for the petitioner upon Section 23 of the Act, it would be appropriate to reproduce the said provision:

> "**23. Provisions not applicable to trust**.-(1) The provisions of Sections 3, 7, 19, 20, 21, 26, 27, 28, 30, 31 and 73 of the Act shall not apply to a Committee or members of Managing Body of any Wakaf referred to in sub-section (2).
>
> (2) The terms and conditions of office, procedure for election, nomination, appointment or removal of members, and the function of the Committee or members of any Managing Body or the method or manner of achieving the objects of any Wakaf shall be regulated in accordance with the provisions of the Trust Deed under which it is created and or the rules and the constitution if any thereof notwithstanding anything to the contrary contained in this Act."

33. Likewise, Section 26 of the Jammu and Kashmir Wakaf Act enumerates the functions of the Tehsil Wakaf Committee. The Committee is entrusted with the responsibility of ensuring that every Wakaf and Wakaf property within its jurisdiction is properly managed, administered and maintained.

It is further empowered to take appropriate measures for the recovery of lost or encroached Wakaf properties, investigate and determine the nature and extent of Wakaf and Wakaf properties, and, wherever necessary, cause surveys of such properties to be conducted in accordance with the provisions of the Act. Section 34 confers specific powers upon the Chairman of the Tehsil Wakaf Committee. The Chairman is authorized to investigate the nature and extent of Wakaf and Wakaf properties, cause inspections thereof, supervise their management, control and maintenance within his jurisdiction, and exercise such other powers as are conferred by the Act, including entering into arrangements with financial institutions for raising loans for the purposes contemplated under the Act.

34. Section 35 empowers the Chairman, or any person authorized by him, to inspect any Wakaf or Wakaf property. Section 38 vests the Tehsil Wakaf Committee with the authority to determine whether a particular property is or is not a Wakaf property. For that purpose, the Committee may conduct such inquiry as it considers necessary before arriving at its conclusion. Any decision rendered by the Tehsil Wakaf Committee under the said provision attains finality unless modified or set aside by the Government in appeal within the prescribed period of sixty days. Section 39 empowers the Government to delegate such of its powers under the Act as may be specified to the Chairmen of the Tehsil Wakaf Committees. Section 56 further provides that every order passed by the Chairman, the Tehsil Wakaf Committee or the Appellate Authority under the Act shall

be final and shall not be called in question by way of any original suit or other proceedings, except in the manner provided under the Act.

35. A conjoint reading of the aforesaid provisions makes it evident that the Jammu and Kashmir Wakaf Act, 2001 is a self-contained Code providing a comprehensive mechanism for the identification, protection, administration and management of Wakaf and Wakaf properties. There is no dispute before this Court that a *Takia* or a *Ziarat* falls within the ambit of a *Wakaf by user* and, therefore, answers the definition of "Wakaf" contained in Section 3(l) of the Act. The contention of the petitioner that the Shrine or its properties partake the character of a *Wakaf-ul-Aulad* is wholly unsupported by any material on record. A *Wakaf-ul-Aulad* necessarily postulates a dedication by the *Wakif* for the maintenance and support of his children or descendants, while simultaneously making provision for the maintenance of the Wakaf and other recognized charitable purposes. Admittedly, neither Sain Baba Miran Baksh nor his disciple, Darvesh Ghulam Qadir, executed any deed or other instrument dedicating the Shrine or its properties as a *Wakaf-ul-Aulad*. There is also no documentary evidence evidencing any such dedication. On the contrary, the Explanation appended to Section 3 makes it abundantly clear that every person appointed orally or under the instrument creating a Wakaf as a *Mutawalli*, *Sajjadanashin*, *Mujawar*, or by whatever designation called, ceases to exercise such authority upon the commencement of the Act unless appointed in accordance with the provisions thereof.

36. Equally misconceived is the reliance placed by the petitioner upon Section 23 of the Act. A careful reading of the said provision shows that Sections 3, 7, 19, 20, 21, 26, 27, 28, 30, 31 and 73 are rendered inapplicable only to those managing bodies whose constitution and mode of functioning are regulated by the deed creating the Wakaf. The exemption is confined to matters relating to the constitution of the managing body, the conditions of office, election, nomination, appointment or removal of its members, and the manner in which the objects of the Wakaf are to be achieved. Section 23, therefore, necessarily presupposes the existence of a valid deed creating the Wakaf itself. It does not exclude the applicability of the Act to the Wakaf or the Wakaf property. It merely preserves the internal management of such a Wakaf in accordance with the terms of the deed by which it was created.

37. In the present case, the very foundation of the petitioner's claim is the Trust constituted after the demise of Darvesh Ghulam Qadir. Admittedly, the said Trust was neither created nor settled by Darvesh Ghulam Qadir during his lifetime. The petitioner himself pleads that the Trust came into existence in pursuance of his alleged wishes. Whether the Trust is otherwise valid or governed by the provisions of any other enactment is not an issue arising for consideration in these proceedings. The only question which falls for determination is whether the Ziarat of Sain Baba Miran Baksh is a Wakaf governed by the provisions of the Act and, if so, whether its management can lawfully vest in a private body constituted

after the demise of the spiritual successor without any deed creating the Wakaf.

38. Insofar as the first issue is concerned, there is virtually no dispute that the Ziarat of Sain Baba Miran Baksh has acquired the character of a *Wakaf by user*. Neither at the time of the demise of Sain Baba Miran Baksh in the year 1984 nor upon the demise of Darvesh Ghulam Qadir in the year 1999 had either of them constituted any legally recognized body for the administration of the Shrine. After the death of Sain Baba Miran Baksh, his disciple Darvesh Ghulam Qadir continued to reside at and manage the *Takia*. With the passage of time, the Shrine became a place of pilgrimage attracting hundreds and thousands of devotees who visited it for religious purposes. It is by reason of such continuous and uninterrupted public user that the Shrine acquired the legal character of a *Wakaf by user*.

39. The reliance placed by the petitioner upon the proclamation dated 02.12.2000 is equally misplaced. It is not disputed that Shri Ghulam Mohammad Jan, who issued the proclamation, was then functioning as the Chairman of the Tehsil Wakaf Committee. However, Section 34 of the Act merely confers upon the Chairman powers relating to investigation into the nature and extent of Wakaf, inspection, supervision, maintenance and allied administrative functions. The provision does not confer any adjudicatory power upon the Chairman to determine the legal character of a property as being, or not being, a Wakaf property.

40. Such power is specifically vested in the Tehsil Wakaf Committee under Section 38 of the Act, which authorizes the Committee, either suo motu or

upon an application, to determine whether a particular property is or is not a Wakaf property after conducting such inquiry as it may deem appropriate. It is not even the petitioner's case that the then Chairman had been authorized by the Tehsil Wakaf Committee to exercise such jurisdiction. Equally, there is no material to show that any delegation of powers had been made by the Government in favour of the Chairman under Section 39 of the Act. Consequently, the proclamation dated 02.12.2000, insofar as it purports to pronounce upon the legal character of the property, was wholly without jurisdiction.

41. Even otherwise, a careful reading of the proclamation demonstrates that it merely records that the petitioner-Trust is a private charitable body and that the Auqaf authorities have no claim over the Trust. Significantly, there is not even a passing reference therein declaring that the Ziarat of Sain Baba Miran Baksh or the properties attached thereto do not constitute Wakaf properties. The proclamation is, therefore, confined to the status of the Trust and does not determine the legal character of the Shrine. The petitioner, consequently, cannot derive any substantive benefit from the said document. The respondents were, therefore, justified in not treating the proclamation as determinative of the status of the Shrine. In any event, the proclamation, having been issued by an authority lacking jurisdiction to decide such a question, was without legal effect. In that view of the matter in hand reliance by petitioner on Sec. 56 of the Act is totally misplaced.

42. There is yet another aspect of the matter. By the time the proclamation came to be issued, the petitioner-Trust had already been constituted and the then Chairman of the Tehsil Wakaf Committee was himself one of its members. The existence of such an apparent conflict of interest considerably weakens the evidentiary and legal value of the proclamation. In the aforesaid backdrop, the respondents cannot be faulted for contending that the proclamation did not confer any legal legitimacy upon the petitioner-Trust or alter the statutory character of the Shrine. More importantly, the petitioner-Trust cannot claim any statutory recognition merely by virtue of its own constitution. Admittedly, neither Sain Baba Miran Baksh nor Darvesh Ghulam Qadir executed any deed creating a Wakaf or constituting the petitioner-Trust as the body entrusted with the administration of the Shrine. In the absence of any such dedication or legally recognized instrument, the petitioner-Trust cannot claim a superior right to administer a *Wakaf by user*.

43. It is an admitted position that the petitioner-Trust came into existence only after the demise of Darvesh Ghulam Qadir. This circumstance lends support to the respondents' contention that the Trust was constituted independently by private individuals seeking to assume management of the Shrine and its properties after the Ziarat had already acquired the character of a *Wakaf by user*. In these circumstances, the respondents were justified in asserting their statutory authority under the Act to assume the management of the Shrine. Considerable emphasis was laid by learned Senior Counsel for the petitioner on the alleged absence of a

survey or inquiry prior to the issuance of the impugned notification. That aspect, however, would assume significance only if the petitioner first establishes, a legally enforceable right to challenge the assumption of management by the statutory authorities. That aspect, however, pales into insignificance in the facts of the present case, for the petitioner has failed to establish any legally enforceable right to administer the Wakaf in preference to the statutory authorities. The procedural objections raised by the petitioner, therefore, do not advance their case nor do they render the impugned action vulnerable in law.

44. Upon consideration of the rival submissions and the material placed on record, this Court finds that the authorities relied upon by the learned counsel for the petitioner are clearly distinguishable on facts and, therefore, do not advance the petitioner's case. On the contrary, the legal position governing the doctrine of *Wakaf by user* stands conclusively settled by the Division Bench of this Court and admits of no further reiteration.

45. The contention of the petitioner that a declaration under Section 6 of the Wakaf Act was a condition precedent for treating the property as Wakaf, and that no such valid declaration existed prior to the year 2019, is devoid of merit. Although Section 6 envisages examination of the Special Officer's report and consultation with the Tehsil Wakaf Committee before issuance of a proclamation, the said statutory requirement has no application in cases where the property has acquired the character of a *Wakaf by user*. The issue is no longer *res integra* and stands concluded by

the binding pronouncement of the Division Bench, which has categorically held that no declaration under Section 6 is necessary in respect of properties falling within the ambit of *Wakaf by user*.

46. This Court further finds that the petitioner has failed to establish any legally enforceable right or locus standi to question the assumption of management of the shrine and its properties by the statutory authorities. Even assuming that there was some delay on the part of the respondents in assuming management of the Wakaf property, such delay cannot enure to the benefit of the petitioner nor confer upon it any legal right to continue in management. The admitted position that the property in question is a Wakaf property leaves no manner of doubt that its administration is governed by the provisions of the Wakaf Act, 2001, which applies to all Wakaf irrespective of whether they were created before or after the commencement of the Act. The petitioner-trust, having entered into the management of the shrine without any lawful authority or legally recognizable claim, cannot be permitted to assail the action of the respondents in taking over the management in accordance with the statutory mandate.

47. In view of the foregoing discussion, this Court is of the considered view that the writ petitions are devoid of merit and warrants dismissal. Accordingly, both writ petitions stand dismissed. It shall, however, remain open to the respondents to proceed with the administration and management of the Ziarat and its properties strictly in accordance with the

provisions of the Wakaf Act and the rules framed there-under. Interim directions, if any, shall stand vacated. **Disposed of** as such.

(Sanjay Parihar)
Judge

Jammu
31.07.2026
Rahul Sharma

Whether the order is speaking? Yes.
Whether the order is reportable? Yes.