IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 3498 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/FIRST APPEAL NO. 3498 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

==

Approved for Reporting	Yes	No
	✔	

==
MUSLIM KUZAFAROSH JAMAT THROUGH PRESIDENT
Versus
GUJARAT STATE WAQF BOARD & ORS.
==
Appearance:
MR MTM HAKIM WITH MR RIZWAN SHAIKH(7146) for the Appellant No. 1
FOUZAN N SONIWALA(8442) for the Defendant(s) No. 1
MR MANISH S SHAH(5859) for the Defendant(s) No. 1
MS RATNA VORA ADVOCATE RULE SERVED for the Defendant(s) No. 3
RULE UNSERVED for the Defendant(s) No. 2
==

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 09/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. By way of this First Appeal, the appellant – original applicant – ‘Muslim Kuza Farosh Jamat Trust’ (herein after referred to as ‘the applicant - Trust-Jamat’), while invoking the provisions of Section 83(9)

of the Unified Waqf Management Empowerment, Efficiency and Development Act, 2025 (for short 'the Waqf Act, 2025') challenges the order dated 13/05/2025 passed by the Gujarat State Waqf Tribunal (herein after referred to as 'Waqf Tribunal') rejecting the Waqf Application No115 of 2019 filed by the appellant herein; precisely holding that appellant – original applicant – Muslim Kuza Farosh Jamat Trust is a Waqf and thereby upheld the issuance of the Registration Certificate dated 28/11/2017 issued by the respondent No.1 – Gujarat State Waqf Board (herein after referred to as 'Waqf Board').

2. By an order dated 22/06/2026, the captioned appeal came to be admitted and Notice came to be issued upon the respondents in Civil Application (for Stay) No.1 of 2025 and in response thereto, the private respondents have appeared and filed their detailed objection and therefore, considering the issue involved in the matter and with the consensus arrived at between the parties, the matter has been taken up for hearing by this Court.

3. Having heard the learned Advocate appearing for the appellant, the facts emerging while leading to the filing of the present appeal are required to have a glance in nutshell that the applicant – Trust – Jamat has been engaged in various charitable and welfare activities for the benefits of its members and Jamat / community / society wherein the land of Qabarstan being Survey No.615, Village Asarva, Tal. Daskroi, Dist: Ahmedabad came to be allotted to the applicant – Trust – Jamat as Devsthan Inam.

4. It is further the case of the appellant that adjacent to the land of

Qabrastan which in fact was not used for the said purpose, the appellant – Trust – Jamat had put the construction of Chawl and thereby the said property has been let out and the proceeds thereof came to be utilized for the benefit of Jamant / Members / Society and out of the proceeds, the appellant – Trust – Jamat had purchased various immovable property in the District Ahmedabad as well as by obtaining financial accommodation from the financial institution and therefore it is contended that the said properties were never dedicated as religious waqf and it does not fall within the criterial of Section 3(r) of the Waqf Act.

5. It is further the case of the appellant that after the Bombay Public Trust Act, 1950 (for short 'the Act') came into force, the trust through its Secretary submitted an application No.6064 of 1952 claiming that the trust was merely an association and not a public trust. However, the said protest came to be turned down by an order dated 15/10/1952 holding that the trust established appears to be a general welfare and for education of its community, etc., and therefore the said Jamat – Trust came to be registered as the trust with the name as 'Muslim Kuzafarosh Jamat' – appellant herein and consequently, it came to be registered under "B" category with Registration Number B-276-Ahmedabad which pertains to Muslim Trust.

6. It is also the case of the appellant that being aggrieved by the protest having been raised by the appellant – Trust – Jamat which came to be turned down by an order dated 15/10/1952 by the learned Deputy Joint Charity Commissioner, the appellant – Trust – Jamat preferred an appeal being Appeal No.8 of 1952 before the Charity Commissioner, Bombay under Section 70 of the Act; however the said appeal came to be

dismissed by an order dated 20/04/1953 holding that the appellant – Trust – Jamat is a public charitable trust and thereby hold to be registered under the provisions of the Bombay Public Trust Act.

7. However, aggrieved by the said order, the appellant – Trust – Jamat preferred Misc. Application No.119 of 1953 before the learned District Judge, Ahmedabad under Section 72 of the Act which also came to be dismissed by an order dated 17/12/1953 which has attained the finality.

8. It is only after the Waqf Act, 1995 came into force, the Survey Commissioner of Waqfs and the Deputy Charity Commissioner sent a questionnaire to the Trust / Jamat on 27/06/1996 for preliminary waqf survey purposes and in response thereto, the details came to be forwarded; however under protest that the appellant – Trust – Jamat is a Trust and sought to strike out the reference to waqf in the questionnaire.

9. Consequent thereupon the entire record of the appellant – Trust – Jamat came to be transferred to the Waqf Board under Section 43 of the Waqf Act, 1995 which admittedly appears to have been governed under the provisions of Waqf Act.

10. Again, the appellant – trust – jamat appears to have moved the protest by way of filing a detailed representation to the Waqf Board seeking to de-list the trust from the list of the Waqf Board and sought to transfer back to the Charity Commissioner having the jurisdiction thereof. Application dated 18/09/2010 submitted by the appellant – trust – Jamat for the said purpose.

11. That vide order dated 27/04/2011, the CEO accepted the trust application and declared that it was not Waqf under Section 3(r) of the Waqf Act and thereby ordered to remit the record to the Charity Commissioner. However, since the order in question could not have been complied with as the record in question have not been transferred to the Charity Commissioner, the appellant – Trust – Jamat claims to be fall under the provision of the Charity Commissioner and therefore, filed an application seeking to change report. Though it transpires that alongwith the said request one application also seems to have been filed before the Waqf Board for the said purpose which has resulted into the dispute arose between the trust and the respondent nos.2 and 3 who also seems to have filed an affidavit before the Charity Commissioner with respect to their appointment.

12. It further transpires that the Waqf Board initiated the proceedings for annual contribution under the Waqf Act, 1995 wherein simultaneously the proceedings also claim to have been initiated under Section 41(a) of the Bombay Public Trust Act which led the conflict of jurisdiction and therefore, the appellant was constrained to file an application seeking compliance and implementation of the order dated 27/04/2011. Meanwhile, the respondents no.2 and 3 came to be removed on account of the misconduct committed by them in the capacity of the Trustees of the appellant – Trust – Jamat followed by the resolution dated 16/09/2017 who in turn seems to have filed an application under Section 70 of the Waqf Act, 1995 against the management committees and the trustees / mutawallis claiming mismanagement in the trust and pursuant thereto the Waqf Board issued a Notice to the appellant who in turn filed a detailed reply solely resting on the issue of lack of jurisdiction of the Waqf Board

to initiate the proceedings while relying upon the order dated 27/04/2011.

13. It also appears that respondent Nos.2 and 3 also moved the Waqf Board by way of filing an application being Application No.47 of 2017 against their removal from the Trustees / Jamat and sought the election against the Committee Members. Thus, the said factors compelled the appellant to move this Court by filing Special Civil Application No.4599 of 2018 seeking to issue directions for compliance of the order dated 27/04/2011 and sought the proceedings initiated by the Waqf Board as well as Waqf Tribunal be quashed and set aside and declared to be illegal and without any jurisdiction. On the request of seeking impleadment as party respondent in the aforesaid SCA by the respondents no.2 and 3 by filing Civil Application No.1 of 2018 and exceeding their request, the respondents no.2 and 3 also placed on record the material sought for by them while invoking the provisions of Right to Information Act before the concerned authority. The said SCA came to be disposed of as withdrawn while allowing the appellant to initiate appropriate proceedings to challenge the Registration Certificate issued by the Waqf Tribunal dated 28/11/2017 and consequently the application being Waqf Application No.115 of 2019 challenging the aforesaid certificate and inter-alia sought the implementation of the order dated 27/04/2011 came to be filed.

14. It also surfaces from the record and as contended that even before Waqf Tribunal, the appellant moved an application below Exhibit – 32 in Waqf Application No.47 of 2017 seeking to decide the issue of jurisdiction and the maintainability of the said application as preliminary issue. However, the said application came to be rejected on 07/01/2021

by reasoned order.

15. It also averred that despite their request seeking time to assail the said order, the Waqf Board proceeded further and thereby disposed of the Waqf Application No.47 of 2017 while directing the respondents No.1 – Waqf Board to remove the committee members and appoint the Class – I Officer and further to conduct the election within the stipulated time with a direction to file a change report before the Waqf Board.

16. The aforesaid order has been assailed before this Court by way of preferring Civil Revision Application No.61 of 2021 challenging the order passed below Exhibit – 32 in Waqf Application No.47 of 2017 as well as the order passed by the Waqf Board in Waqf Application No.47 of 2017 by way of preferring Civil Revision Application No.62 of 2021 and both the CRAs came to be disposed of while quashing and setting aside the impugned orders with the issuance of the directions to the Tribunal to decide the issue as to ***"whether the appellant – trust – Jamat is a Waqf or is a Trust"*** in Waqf Application No.15 of 2019 with a further directions pertaining to the respondents no.2 and 3 following which the Waqf Tribunal vide its order dated 13/05/2025 rejected the Waqf Application No.15 of 2019 moved by the appellant – trust – Jamat and held that the appellant – Trust – Jamat is a "Waqf" which has constrained the appellant – trust – Jamat before this Court by way of filing the present appeal.

17. In support of the submissions, learned Advocate for the appellant has placed reliance upon several decisions. While referring to the decision of the Hon'ble Apex Court in the case of ***Maharashtra State***

Board of Waqfs vs. Shaikh Yusuf Bhai Chawla & Ors., [2022 SCC Online SC 1653], it is submitted that issue is as to whether the trust or waqf registered in the category of the Bombay Public Trust Act can be deemed to be registered under Section 43 of the Waqf Act without conducting the mandatory inquiry and the said issue has been dealt with the by the Hon'ble Apex Court and is no more res integra. In absence of the mandatory inquiry, the provisions under Section 43 straightway cannot be made applicable and the learned Tribunal has committed an error while not adhering to the same.

18. In continuation of the aforesaid and on the similar issue, learned Advocate for the appellant has placed reliance upon the decision of the Hon'ble Apex Court in case of ***M.P. Waqf Board vs. Subhan Shah (Dead) by Lrs & Ors. [(2006) 10 SCC 696]*** wherein the powers of the Tribunal appears to have held or not to the extent of framing of the scheme for managing with Waqf and such powers only vests with the Board and thereby submitted that the Waqf Tribunal has no power whatsoever to conduct the inquiry. In the case of hand, even no such inquiry has been held and therefore also the said order is bad in law.

19. While referring to the decision of the Bombay High Court in the case of ***Alisagar Ramzan Dekhani & Ors. Vs. Maharashtra State Board of Waqfs & Ors., [2025 SCC Online SCC 732]***, learned advocate for the appellant has submitted that the order passed by the Waqf Tribunal is without jurisdiction as the key finding of the learned Tribunal rests on while exercising the jurisdiction under Section 43 of the Waqf Act which applies only in cases where there is already waqf registered under the Waqf Act, 1954. However, in the facts of the present case, in view of the

order passed by the CEO dated 27/04/2011 and the challenge made by the appellant, the appellant – Trust – Jamat cannot be said to have effect of registration since inception e.g. registration under the Waqf Act, 1954. Thus, it is submitted that even mere registration of the Trust under the Act would not create a deeming fiction under Section 43 of the Waqf Act and therefore, the reliance placed by the Tribunal rather invocation of provision of Section 43 of the Waqf Act is nothing but erroneous and therefore, also the impugned order passed by the learned Tribunal deserves to be quashed and set aside.

20. Learned Advocate for the appellant has also placed reliance upon the decision of this Court in case of ***Ashrafbhai Noorbhai Khalifa vs. State of Gujarat [20222 (0) AIJEL-HC 244141]*** and the decision of the Allahabad High Court in the case of ***Mohd. Saleem Krodhi vs. U.P. Sunni Central Board of Waqf, Lucknow and Others [2017 SCC Online All 3024]***. However, the said decision pertains to the Tribunal constitute with less than three members as mandated under Section 83(4) of the Act lacks jurisdiction and therefore, any order passed by the Tribunal comprises of less member or required number or coram deemed to be non-jurisdiction. However, the aforesaid stand as raised herein do not inspire much confidence as the Government of Gujarat has passed the Resolution in State of Gujarat Waqf Rules, 2023 Notification No.GK/60/2024/WAQF/102014/47/78/E dated 16/08/2024, whereby Rule 71(1) has been amended and it has been resolved that for removal of any doubt, the Tribunal shall not be treated as non-coram if at any given time, the office of the member remains vacant or any member / chairman remains absent, the Chairman of the Tribunal shall competent to function

and thereby in the aforesaid rule, Rule 72 and 74(2) came to be upheld. This contention has been raised by the learned Advocate for the appellant before the Tribunal and the same has been dealt with by the learned Tribunal and therefore, aforesaid decision would not come to the rescue of the appellant at this stage.

21. *Per contra*, learned Advocate appearing for the respondents no.1 and 2 has submitted that considering the very purpose and object of the Trust which on earlier occasion has been registered in the B-Category several efforts have been made by the appellant – Trust by moving an application before the learned Charity Commissioner or the learned District Court which came to be turned down and the said order appears to have been unsuccessfully assailed before this Court where this Court while reserving the liberty in favour of the appellant to ventilate its grievance before the learned Tribunal; including the contention with regard to the jurisdiction of the Tribunal left it for the Tribunal to decide as to whether the appellant – Trust is a Waqf or not accordingly, the Civil Revision Applications stood disposed of and thereafter the applications have been made by the appellant before the learned Tribunal challenging the issue of the jurisdiction where the appellant has duly participated in the said proceedings by adducing the evidence and the learned Tribunal after considering all the material facts has been pleased to dismiss the said application moved by the appellant. It is therefore submitted that now the appellant is estoped from raising the contention as regards the jurisdiction of the Tribunal as the issue of jurisdiction of the Tribunal has been succinctly decided and therefore, again the appellant cannot press for the exercise to be conducted under the provisions of Section 40 of the

Waqf Act. It is further submitted that all these contentions raised herein have been raised and met with by the learned Tribunal in accordance with the law and not only the issue of jurisdiction; but also the vociferous contention pressed for compliance of the order of the CEO which as held is nothing but a mere communication and cannot be said to be an inquiry or an order that may be construed to have been passed by the Waqf Board so that compliance can be sought for. It is therefore submitted that thus, considering all the aforesaid aspect, the relief as claimed therein at the relevant time by the appellant have not been accepted not only by the learned Tribunal but also by this Court subject to the rider to approach the Tribunal and the Tribunal has rightly rejected the same and therefore it is submitted that no such interference at the hands of this Court is required to be made.

22. In nutshell, learned Advocate appearing for the respondents no.1 and 2 has opposed the relief sought for by the appellant and while raising several grounds and supporting the impugned order has submitted to dismiss the present appeal.

23. Likewise, learned Advocate appearing for the respondent no.3 on similar footing filed a detailed written arguments stating and contending that the relief sought for by the appellant is fundamentally non-maintainable and barred by law on account of suppressed material fact on *res judicata*, delay and latches while narrating the entire events as per the case of the appellant as described in the foregoing paragraphs. In addition to the aforesaid submission, it is submitted that much reliance rather harped upon by the appellant on the so-called order dated

27/04/2011 is nothing; but a mere correspondence and as such no such inquiry as claimed by the appellant has been conducted by the CEO (Chief Executive Officer) and therefore, in absence of any such inquiry, such correspondence cannot take the place of the inquiry or order as mandated under the provisions of the Waqf Act by the Waqf Board as per the facts of the case so required.

24. In support of submissions, learned Advocate for the respondent no.3 has placed reliance upon the following case law:

1. ***Makardhwaj Ram vs. Jagdish Rai (Dead) Th Lrs., & Anr., [2026 INSC 636].***
2. ***Manjula & Ors. Vs. D.A. Srinivas [2026 INSC 465].***
3. ***Shivamma (Dead) by Lrs. Vs. Kantaka Housing Board & Ors., [205 INSC 1104]***.

25. By making the above submissions, learned Advocate appearing for the respondent No.3 would also submit to dismiss the present appeal.

26. Having heard the learned Advocates appearing for the respective parties and in view of the aforesaid submissions advanced by the learned Advocates appearing for the respective parties, the issue which surfaces on record of the case is whether the appellant – Trust – Jamat is a Trust or Waqf requires to be considered under the Waqf Act, 1995 having come into force with effect from 01/01/1996 and in furtherance thereto whether the case of the appellant – Trust – Jamat attracts provision of Section 40 of the Waqf Act, 1995 pertaining to the decision for the property as waqf property or Section 43 of the Waqf Act, 1995 pertaining to the Waqf

registered before the commencement of this Act deemed to be registered as claimed by the other side.

27. Apparently, the issue as agitated by the appellant followed by the number of proceedings initiated before the concerned authority and the orders passed therein, so also the very purpose of the trust / Jamat are the issues which are germane and requires to have a glance from inception in consonance with the aforesaid provision. Thus, the issue rather the claim as agitated by the appellant seeking to get the aforesaid provision attracted, more particularly, Section 40 of the Waqf Act, 1995, for the purpose of brevity and convenience is required to be reproduced hereunder:

> *"**40. Decision if a property is waqf property.—***
>
> *(1) The Board may itself collect information regarding any property which it has reason to believe to be waqf property and if any question arises whether a particular property is waqf property or not or whether a waqf is a Sunni waqf or a Shia waqf, it may, after making such inquiry as it may deem fit, decide the question.*
>
> *(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.*
>
> *(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is waqf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is waqf property, call upon*

the trust or society, as the case may be, either to register such property under this Act as waqf property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal."

28. The sum and substance of the aforesaid provision is that after coming into force of the Waqf Act, 1995, the Board on its own may collect information with regard to the property for which it has reason to believe a Waqf property or the property of any trust or the society registered in pursuance of the Indian Trusts Act, 1882 or under any other Act and while taking these measures, if any such issue arises as to whether the property being a Waqf property or otherwise then it may after thorough inquiry decide the questioned issue and such decision of the Board is considered to be final unless the same is revoked or moved by the Tribunal. However, as per the proviso, the Notice to the concerned person/s are required to be given.

29. Now, considering the facts of the case on hand, whether the provisions of Section 40 does warrant to be invoked or not; is required to have a glance.

30. It is not in dispute that the questioned property / trust have been registered under the provisions of the Bombay Public Trust Act, 1950 on the basis of the application moved by the Secretary vide application No.6064 of 1952 where-from it appears that the protest lodged by the appellant came to be overruled and the appellant – Trust – Jamat is held as a trust and the main object of the trust is held to be for the general welfare and for education of its community and Jamat and thereby the Jamat came to be registered as Muslim Trust and the entry to that effect came to be registered under the "B" category. Though the said order is unsuccessfully assailed by the appellant by way of preferring an appeal before the learned Charity Commissioner vide Appeal No.8 of 1952 which came to be dismissed and the relevant observations made therein, more particularly, paragraph 4 thereof reads as under:

> *"4. The objects also are clearly religious and charitable. They are (1) uplift of the Jamat in every way, (11) to encourage religious amongst the members of the Jamat & to render monetary held for receiving and secular education, (iii) to give to the lame, the blind such education/widows orphans and needy persons, (IV) to create in the men and women of the Jamat interest in physical, economic and social matters, (v) to foster unity amongst the members of the Jamat and (vi) to perform religious ceremonies and festivals. Ex 3 is the deposition of the Secretary of the Jamat. He admits that admission to the school of the Jamat is open not only to members who pay fees but also to those who do not. The Deputy Charity Commissioner has, therefore, rightly held that the Jamat constitutes a public trust and this appeal must be dismissed. As there are no respondent there will be no order as to costs.*"

31. Again, the said order has been challenged by way of filing Misc. Application No.119 of 1953 under the provisions of the Bombay Public Trust Act, before the learned District Judge, Ahmedabad and the said application also came to be turned down vide order dated 17/12/1953.

32. Relevant to note that on account of the enactment of the Waqf Act, 1995 and as per the provisions of Section 43 of the Waqf Act, 1995 all Waqf which were earlier under any law including the Bombay Public Trust Act were registered were deemed to be registered under the Waqf Act and thereby all such trust which also falls under "B" category under the Bombay Public Trust Act were transferred to the Waqf Board and accordingly the appellant – trust also came to be transferred therein.

33. It is pertinent to note that the Deputy Charity Commissioner has sent a questionnaire to the appellant – Trust – Jamat and in compliance thereof, the appellant has filled-up the said questionnaire as under:

"Illustration of Questionnaire

Trust Reg. No.: B/276

Questionnaire for Waqf Trust

1. (a) Name of the Trust and Registration Number: Muslim Kunjra Farosh Jamaat Ahemed - Allahpalinaatkiyani- and Graveyard

(b) Address of the Trust: Jamaat Building, Opposite Anand Dining Hall, Salapas Road, Ahmedabad

2. Type of Waqf: Sunni

3. Nature of Waqf (such as Mosque, Madresa, Dargah, Graveyard, Musafirkhana, etc.): Mosque and Graveyard

*4. **Objectives of the Waqf: To offer Namaz in the mosque, carry out religious work, and bury the Muslim brothers and sisters of the Jamaat in the graveyard**.*

5. Annual Income of the Waqf: Approximately Rs. 27,000

6. Details of Annual Expenses:

- *(a) Land revenue tax and local rate expenses on immovable property: Rs. 3,126 Municipal Tax*
- *(b) Expense for Mutawalli's remuneration: Rs. 6,400 (Maulana's salary expense) (Mutawallis do not take a salary)*
- *(c) Expenses towards objectives: Rs. 3,600*
- *(d) Other expenses: Rs. 6,000*
- *(e) Total Expenses: Approximately Rs. 19,000*

(sd/-)

Note: Show the above stated income and expense details as per the submitted last financial statement.

7. Names and Addresses of Mutawalli / President / Secretary / Trustees:

- *Secretary: Osmangani Ghulam Nabi Shaikh, Jamaat Building, Salapas Road, Ahmedabad.*

8. Other Necessary Information: The Trust also holds possession of the mosque and graveyard along with other properties.

Date: Place: Ahmedabad

Address: Jamaat Building, Salapas Road, Ahmedabad

Trustee's Signature:

Undertaking

I, Osmangani Ghulam Nabi Shaikh, residing at Jamaat Building, Salapas Road, Ahmedabad, resident of Ahmedabad, hereby declare that the facts stated above are true to the best of my knowledge and belief.

Place: Ahmedabad

Date: Signature:"

34. Though the said questionnaire claims to have been supplied under the protest; however simply by raising the protest without there being any substance and considering the very object of the trust, which is the sole criteria to be considered while considering the provisions of Section 43 of the Waqf Act, and thereafter the appellant – Trust – Jamat remained under the Waqf as under the provisions of the Waqf Act, the only issue and the claim raised by the appellant solely rests on the application moved by the trust requesting to transfer it to the Charity Commissioner and the CEO has been placed observe that the appellant – Trust -Jamat is not the Trust as defined under Section 3(r) of the Waqf Act and thereby held to be a trust and ordered to remit back to the Courts of the Charity Commissioner and the aforesaid has been vociferously pressed for by the appellant stating and contending that CEO has conducted the thorough inquiry and thereby come to the conclusion and therefore, subsequent thereto the Notice issued by the Waqf Board for the annual contribution under Section 72 of the Waqf Act treating as a Waqf on the basis of the affidavit sworn by the respondents no.2 and 3 and considering the questionnaire filled-up by the appellant–trust is nothing; but an afterthought of illegal measures initiated at the instance of the

respondents no.2 and 3 and therefore, the appellant has been constrained to challenge the same while initiating the several proceedings which has reached upto this Court as described in the foregoing paragraphs where-from it appears that the proceedings initiated and pending before the Waqf Board has been assailed by the appellant on the basis of the lack of jurisdiction with the Waqf Tribunal and ultimately, this Court by an order passed in SCA No.4599 of 2009 disposed of the said petition as withdrawn by the appellant with a view to enable the appellant to file appropriate proceedings before the appropriate forum at appropriate time in accordance with the law and therefore, the appellant moved the Waqf Tribunal by filing an application below Exh.32 in Waqf Application No.47 of 2017 raising the preliminary issue of the jurisdiction of the Tribunal to decide it as the waqf dispute and also filed an application No.115 of 2019 challenging the issuance of the certificate dated 28/11/2017 and simultaneously sought the enforcement of the order dated 27/04/2011. However, the said request came to be turned down which culminated into moving to this Court by filing CRA no.61 and 62 of 2021 wherein this Court has observed in paragraph 8 to 11 as under:

> *"8. Further, the issue whether Muslim Kuzafarosh Jamat is "Waqf" or "Trust"shall be decided in the Waqf ApplicationNo. 115/2019 and st atus of Muslim Kuzafarosh Jamat being Trust or Waqf and election as ordered shall be subject to the final outcome of the said proceeding and any further proceedings, if any, pursued against the order in Waqf Application No. 115/2019.*
>
> *9. The Respondent Nos.2 and 3 shall be impleaded as a party respondents by the petitioners in Waqf Application No.115/2019.*

10.If therefore, the Muslim Kuzafarosh Jamat/Trust is held to be"Waqf" then the Waof Board shall have to decide application under section 70 made by the Respondent No. 2 and 3 in accordance with law.
11. Both the Civil Revision Applications disposed of accordingly."

35. In nutshell, the issue whether the appellant – Trust – Jamat is a waqf or trust was held to be decided in the Waqf Application No.115 of 2019 by the Waqf Tribunal.

36. In compliance of the aforesaid order, the Waqf Tribunal, after affording all reasonable opportunities to all the parties and considering the material placed before it for consideration has been pleased to reject the Waqf Application No.115 of 2019 moved by the appellant and consequently held that appellant – original applicant – Muslim Kuza Farosh Jamat Trust is a Waqf.

37. Much has been emphasized by the learned Advocate for the appellant that the Tribunal has no authority, power or jurisdiction to decide the issue as to whether the appellant – Trust – Jamat is a waqf or trust. However, considering the very stand as to the jurisdiction raised by the appellant and decided by this Court in the aforesaid CRA, the appellant has chosen to approach the Tribunal; instead thereof challenging the common order passed in the aforesaid CRA. Be that as it may; what is required to be considered as claimed by the appellant is that the Tribunal has no authority to conduct the inquiry and instead thereof the Board has been vested with the authority under Section 40 of the Waqf Act to conduct the inquiry though this Court cannot be said to be out of the sight of the fact of appellant having participated in the

proceedings before the Tribunal on the basis of the aforesaid order and therefore, now the appellant is not expected to raise the aforesaid issue solely on the ground that the Tribunal has no authority as the Tribunal has not ordered any inquiry which is required to be conducted as per the provisions of Section 40 of the Waqf Act.

38. It is pertinent to note that the Board may initiate the inquiry rather collect the information regarding any property so as to come to the conclusion pertaining to the kinds of the particular property is of waqf property or not. Thus, the provision of Section 40 of the Waqf Act can be invoked only and only if the circumstances as enumerated under Section 40 of the Waqf Act arises and in any case which attracts the provision of Section 43 of the Waqf Act. Therefore, what is required to be considered is whether the contention raised by the respondent that the appellant – Trust – Jamat is a waqf as per the provisions of Section 43 of the Waqf Act or not, the said provision is also required to have a glance at this stage and for the sake of convenience and brevity the same is reproduced hereunder:

> "***43.* Auqaf registered before the commencement of this Act deemed to be registered.—**
> *Notwithstanding anything contained in this Chapter, where any waqf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act."*

39. In consonance with the aforesaid provision while equating with the facts of the case on hand, it transpires from the record that the appellant – Trust – Jamat is a registered under the Bombay Public Trust Act and as per the questionnaire called for by the Waqf Board, which also met with the requirement and the very purpose and object as enshrined in the provisions of the Waqf Act so as to establish the factum that the property or the trust in question falls under the provisions of the Waqf Act. Thus, the entire gamut of the issue on hand is whether the appellant - Trust – Jamat registered before the Charity Commissioner is a waqf or not.

40. To avoid any repetition and reiterating the fact that one of the object of the trust from the questionnaire supplied by it appears to be of religious and it falls within the definition of Section 3(r) of the Waqf Act. Relevant material supplied by the appellant – Trust – Jamat showing their activities such as nature of waqf is Mosque, Madress, Dargah, Kabrasthan, etc., and the purpose of waqf is to offer prayer in the mosque and to do social work for poor and to bury the dead bodies of the Muslim community in the Kabrasthan.

41. Not only that, the appellant – Trust also seems to have spent a huge amount for the aforesaid purpose as reflected from the audit report submitted before the Waqf Board and therefore, it has rightly been held by the Tribunal that there appears to be no dispute regarding the dedication of the property of the appellant – Trust – Jamat for the aforesaid purpose and attracted the provisions of the Waqf Act and was registered as a trust for the same purpose before the Charity Commissioner and that it has been rightly fallen rather attracted the provisions of Section 3(r) of the Waqf Act, 1995.

42. Thus, as discussed in detail in the foregoing paragraphs, which otherwise is apparent that the appellant – Trust – Jamat came to be registered under the Bombay Public Trust Act, 1950 before the Charity Commissioner, Ahmedabad vide its Registration Number B-276-Ahmedabad on 15/10/1952 with the object as mentioned herein above and that has continued till the Waqf Act, 1995 came into force and as per the provisions of Section 43 of the Waqf Act, 1995 which expressly made clear that no waqf is registered before the commencement of this Act or under any law for the time being in force then it would not be necessary to register a Waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registered under this Act. Thus, it is expressly clear that in the aforesaid circumstances since the appellant – Trust – Jamat has already been registered for the purpose as enshrined therein and again after the enactment of the Waqf Act, 1995 came into force the same is not subject to any inquiry or decision as to whether the properties is a waqf property or not and therefore, under the aforesaid circumstances the provisions of Section 43 of the Waqf Act does apply to the facts of the case on hand.

43. Insofar as the communication made by the CEO dated 27/04/2011, the same cannot be said to have been arrived at by thorough inquiry as claimed by the appellant – Trust under the provisions of Section 40 of the Waqf Act, 1995, which is nothing but a mere communication nor the aforesaid letter dated 27/04/2011 appears any indication as to the inquiry having been conducted by the CEO and therefore, the status of the trust remained the same as it falls under the provisions of Section 43 of the Waqf Act, 1995 and it has rightly been held by the Waqf Board while

issuing the certificate dated 28/11/2017 and as confirmed by the Tribunal that applicant – Muslim Kuza Farosh Jamat Trust is a Waqf / Trust as fall within the jurisdiction of the Gujarat State Waqf Board as reflected from the documents produced by the parties where-from the notices issued by the Gujarat State Waqf Board, Gandhinagar demanding only contribution on a change report came to be considered by the Gujarat State Waqf Board by the appellant would negate the very contention raised by the appellant.

44. Though learned counsel appearing for the parties have drawn attention of this Court to the Unified Waqf Management Empowerment, Efficiency and Development Act, 2025 whereby the provision of Section 40 of the Waqf Act, 1995 came to be omitted; and therefore now on-wards the issue as to entrusting the inquiry as fall under Section 40 of the Waqf Act since omitted subsequent to amendment came into Unified Waqf Management Empowerment, Efficiency and Development Act, 2025 does not warrant qua the case on hand is concerned as the said exercise is required to be done by the Tribunal. To be noted further that as per Section 83 of the aforesaid amended Act, the Tribunal may determine any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of the rights and obligations of the lessee of such property under the aforesaid Act. However, so far as the case on hand is concerned, as submitted by learned Counsel for the respondents that the learned Tribunal while considering the material placed for consideration has come to the conclusion that the said trust is a Waqf and therefore, the question for applicability of the amended provision does not arise so far as the case on hand is concerned.

45. For the reasons recorded herein above, the appeal fails and it is accordingly dismissed while confirming the impugned order passed by the Tribunal. Consequently, the Civil Application for Stay is also dismissed.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

sompura