



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 8848/2020

Jindal Saw Limited, Having Registered Office At - A-1, UPSIDC Industrial Area, Nandgaon Road, Kosi Kalan Mathura, U.P. Having Work Site Office At - Village- Pur, Bhilwara, Rajasthan Through Its Authorized Representative Mr. Ramesh Chandra Son Of Late Shri Shiv Dutt Naudiyal Aged About 49 Years, Resident Of House No. B-619, Sector - 17, Vasundhara, Ghaziabad, U.P.

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary Mines, Department Of Mines And Geology, Rajasthan, Jaipur.
2. Archaeological Survey Of India, Through Its Director General, Having Office At - Dharohar Bhawan, 24, Tilak Marg, New Delhi.
3. Mohd. Nizam Khan S/o Allauddin R/o Ward No.2, adjacent to pathano ki jamat, Khel Mohalla, Village Pur, District Bhilwara.
4. Mohd. Ayub S/o Mohd. Silawat, R/o Gali No.7, Gulnagri, District Bhilwara.
5. Mohd. Umar S/o Mohd. Hussain, R/o No.3, Village Pur, District Bhilwara.
6. District Collector, Bhilwara, Rajasthan.
7. Waqf Board, Rajasthan, through its President/ Chief Executive Officer, Rajasthan Board of Muslim Waqfs, Govt. of Rajasthan, Lal Kothi Yojana, Jyoti Nagar, Jaipur (302005).
8. Anjuman Committee, through its President, Aam Musalmanan (Anjuman Sewa Samiti), Pur, Bhilwara, Rajasthan.

-----Respondents

| | |
|--|---|
| For Petitioner(s) | : Mr. Manoj K. Singh, through V.C. with Mr. Ramit Mehta, Mr. Saurabh Maheshwari, Mr. Nilava Bandopadhyaya, Mr. Tarun Dudia, Mr. Yash Goyal, through V.C. |
| For Respondent No.1 & District Collector, Bhilwara | : Mr. Sandeep Shah, AAG with Ms. Pratyushi Mehta & Mr. Abhimanyu Singh |



For Respondent No.2 : Mr. Mukesh Rajpurohit, ASG through
V.C. with Mr. Navneet Singh Birkh

For Respondents : Mr. Yogendra Singh Rajput, through
No.3 to 5 V.C. & Mr. Usman Ghani

For Waqf Board : Mr. Anil Kumar Gaur, AAG with
Mr. Salman Agha,
Mr. Anupam Gopal Vyas

For Anjuman : Mr. Bhushan Singh Charan
Committee

For Municipal Council : Mr. Rajesh Parihar
Bhilwara



HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR

JUDGMENT RESERVED ON :: 10/09/2021

JUDGMENT PRONOUNCED ON :: 29/09/2021

BY THE COURT(PER HON'BLE THE CHIEF JUSTICE):

1. By way of instant writ petition, the petitioner has prayed for the following reliefs:-

"A. Allow the writ petition;

B. Issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to the Respondents not to interfere with the act of Petitioner in removal of structure, i.e., dilapidated platform/chabutarh at Tiranga Hills (Pahari) forming part of Khasra No.6731 of Village Pur, Bhilwara, Rajasthan for mining purpose as said dilapidated structure is stumbling block in the mining process which has been awarded to the petitioner in terms of the Lease dated 08.12.2010 by Respondent No.1 to the Petitioner for entire area 1556.7817 hectares of land which includes said Khasra No.6731 of Village-Pur, Bhilwara, Rajasthan;

C. Issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to Respondent No.1 to provide police assistance to Respondent No.2, if required, in removal remove dilapidated platform/chabutarh at Tiranga Hills (Pahari) forming part of Khasra No.6731 of Village Pur, Bhilwara, Rajasthan;



D. Issue a Writ in the nature of Mandamus or any other appropriate Writ, Order thereby declaring that the Section 6(c) of the Rajasthan Religious Building and Places Act, 1954 is ultra vires to the Constitution of India;

E. Pass any other/further order or orders, as this Hon'ble court may deem fit and proper in the interest of justice."

2. It is pertinent to mention here that vide order dated 09.10.2020, an Expert Committee was constituted by this Court under the Chairmanship of Shri R.K. Sinha, Controller General (Retd.) of Indian Bureau of Mines for the purpose of answering the factual issues and to submit its report. The Expert Committee submitted its detailed report dated 10.01.2021, to which the State of Rajasthan raised number of objections. The petitioner also filed its reply to the said objections.

3. It is to be noted that vide order dated 12.08.2021 passed by this Court, the Wakf Board, Anjuman Committee and the District Collector Bhilwara were impleaded as party respondents in the writ petition. Later, vide order dated 03.09.2021, on the application submitted by Mohd. Nizam Khan, Mohd. Ayub and Mohd. Umar, who filed the FIR before the concerned police station alleging that the land on which the construction is existing is a Waqf property, they were also impleaded as party respondents.

4. Learned counsel appearing for the petitioner submitted that the petitioner-company was allotted a mining lease by the Government of Rajasthan on 10.12.2010 for an area measuring 1556.78 hectares at Bhilwara. The said allotment was made after following the due process of law and all necessary reports from the concerned Government Departments. The mining lease deed



entitles the petitioner to use the said area of land in full fledged manner in optimal way for mining purpose without any hindrances. It was further submitted that the petitioner placed on record the revenue records for the year 1923, 1969 and 2012-15, which do not record the existences of any alleged mosque in the said Khasra No.6731 at village Pur, Bhilwara. Further, prior to the allotment of mining lease, a detailed khasra-wise report was sought from the Tehsildar, Bhilwara, who provided a detailed khasra-wise analysis of the complete area falling within the mining lease and according to which, in Khasra No.6731, situated at village Pur, permission was granted for carrying out the mining activities. The Tehsildar clearly identified the khasra numbers in which mining was permitted or prohibited.

5. Learned counsel further submitted that pursuant to the directions of this Court, an Expert Committee was constituted to determine the following two factual issues:-

“(i) As to whether the structure existing within the mining lease area of the petitioner was a mosque or structure which can be removed for the purpose of carrying out lease hold activities within the said area.

(ii) The Committee shall also ascertain as to whether any illegal mining activity within the mining lease area of the petitioner and if so whether the same was carried out by the petitioner-company or any other entity.”

6. It was submitted that Shri O.P. Kabara, nominee of Secretary of Mines, Department of Mines and Geology, State of Rajasthan, who was later on substituted by Shri A.K. Nandwana Superintendent Mining Engineer, DMG Bhilwara, during the meeting of the Committee held on 28.12.2020, informed the Committee that there was no mosque or structure of



archaeological importance on the top of Tiranga Hills within the leasehold of the petitioner. The Committee while submitting its detailed report dated 10.01.2021, recorded its conclusions in para 5 of the report observing that dilapidated structure existing in khasra No. 6731 is neither a mosque nor any structure with any archaeological or historical relevance and the structure can be removed for mining purposes.

7. Learned counsel for the petitioner further argued that the photographs of alleged structure annexed with the writ petition do not constitute a mosque, as alleged. It was submitted that on 17.4.2012, the Anjuman Committee sought opinion of the Waqf Board regarding the alleged structure as they haven't seen anyone offering prayers at the alleged structure which was in a dilapidated condition. It was also specified in the letter that elders of the community have stated that they haven't seen anyone offering *namaz* there.

8. On the applicability of Waqf Act, 1954, the contention of the learned counsel for the petitioner is that if the submission of the respondent is considered, then it is pertinent to note that first survey was conducted in the year 1963, when the alleged structure was recorded as a 'Waqf Property' and thus, the applicable Act would be the Waqf Act 1954, and not the Waqf Act 1995 or the Waqf (Amendment) Act, 2013. It was submitted that the Waqf Act was promulgated in 1954 to provide for better administration and supervision of the Waqf and for creation of the Waqf and the requirements provided under the Act of 1954 are relevant. In support of his submissions, learned counsel for the petitioner relied upon the judgments of High Court of Punjab &



Haryana in '**Punjab Wakf Board Vs. Gram Panchayat, Dakha, Tehsil and District Ludhiana and Ors., (2012) 3 RCR (Civil) 347 (DB)** and '**Punjab Wakf Board Vs. Financial Commissioner, Co-Operation, Punjab and Ors., (2012) ILR 2 Punjab and Haryana 587**. Further, it was submitted that the additional affidavit filed by the respondents on 08.09.2021 does not provide any detail as to how the present alleged Waqf Property was dedicated.

9. It was then submitted that notice dated 20.04.2012 issued by the District Collector under Section 6 (c) of the Rajasthan Religious Building and Places Act, 1954 (for short, 'the Act of 1954') has no applicability in the present case as the dilapidated disputed structure is not "Religious Place" in terms of the said Act. The District Collector had neither considered the revenue record, nor examined the report of the Tehsildar dated 03.12.2010 and he failed to appreciate the legal rights available to the petitioner under the Mining Lease before issuing the notice in question. It was further submitted that denying the petitioner to exercise its legal rights granted under the mining lease is not only violative of the statutory mandate granted under the provision of Mines and Mineral (Development Regulation) Act 1957, but is also against the public interest at large and the idea of optimal utilization of the natural resources of the country. Mere availability of alternative remedy does not bar the Hon'ble High Court from exercising its jurisdiction in granting the necessary reliefs, as sought for by the petitioner. In this regard, he has referred to the judgments delivered in the cases of **Whirlpool Corporation vs. Registrar of Trademarks, Mumbai & Ors, (1998) 8 SCC 1** and



**Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. & Ors.
(2003) 2 SCC 107.**

10. It was further submitted that the said dilapidated structure is not religious structure at all and this fact is corroborated from the contents of the letters dated 17.04.2012 and 18.04.2012 issued by the Anjuman Committee and Waqf Board. The said fact has been reaffirmed by the findings of the Expert Committee appointed by this Court that the dilapidated structure is having no religious or archaeological significance. He, therefore, prayed that the writ petition may be allowed and the reliefs sought for may be granted in favour of the petitioner.

11. On the other hand, Mr. Sandeep Shah, learned Additional Advocate General appearing on behalf of respondent No.1 submitted that prior to 2010, the worshippers and people from Muslim Community of village Pur and nearby areas used to offer their prayers in one Mosque, prominently known as Kalindiri Mosque situated on Khasra No.6731 of village Pur, Bhilwara, which is the land in dispute. On 10.12.2010, mining lease was allotted in favour of the petitioner in respect of the land in dispute and the petitioner was well aware of the existence of the mosque on the land in question. After obtaining mining lease, the petitioner started its mining activities including by way of blasting, which was objected to by the worshippers. On 20.04.2012 a notice under Section 6 (c) of the Act of 1954 was issued to the petitioner for destruction of Kalindiri mosque's wall. An FIR was also lodged by the people of Muslim community against the petitioner regarding removal and destruction of said mosque due to mining activities. On 23.04.2012, the Waqf Board granted sanction to



renovate the mosque so as to enable the members of the Muslim community to offer their prayers. In June and July, 2020 several complaints were received by the respondent-Department regarding worshippers not being allowed to enter the premises of Kalindiri mosque.

12. It was further submitted that the Chairman, Waqf Board Jaipur addressed a letter dated 11.08.2020 to the District Collector Bhilwara stating that Kalindiri mosque is place of worship for Muslims and it was prayed that since the officials of the petitioner do not permit the worshippers to enter the premises of the mosque, they may be dealt with appropriately. Further, an Expert Committee was also constituted by this Court for answering the factual issues, as aforequoted. On 01.12.2020, the District Collector Bhilwara addressed a correspondence alongwith the detailed factual position regarding the likelihood of unrest to be caused due to removal of Kalinidiri mosque. It was submitted that within merely one day and even without consulting the stakeholders, the Expert Committee conducted the field inspection and submitted its report, whereas the nominee of the respondent disagreed in some aspects with the report of Expert Committee. He also submitted that objections to the Expert Committee report were filed by the respondent, *inter-alia*, to the effect that stakeholders and people of Muslim community of the village were not even consulted before preparing the said report. Further, the observation that the mosque was recent and does not have any archaeological significance was arrived at without considering the fact that old structure was destroyed by the petitioner due to mining activities. He has, therefore, prayed that reliefs sought for



by the petitioner are not in the public interest and the writ petition may be dismissed as such.

13. Learned counsel appearing for the respondent Nos.3 to 5 submitted that the petitioner claimed that the disputed structure is known as Kalindiri Masjid, however the same is not in use, whereas upon perusal of the conditions of the lease deed, it is clear that such an area cannot be disturbed and neither any interference can be made nor access to it can be objected or obstructed. Furthermore, the petitioner has filed this writ petition suppressing the material fact and wrongly claiming the disputed property to be dilapidated platforms/chabutarah at Tiranga Hills, whereas the same is waqf property and recorded as waqf even in the waqf record and thus the petitioner cannot be allowed to interfere or change the position and also cannot be allowed to remove the structure as the same being waqf property. In this regard learned counsel has referred to Section 104A of the Waqf Act, 1995, which reads as follows:-

"104A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.- (1) *Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sale, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.*

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void ab initio."

14. Learned counsel also referred to the definition of 'waqf' under Section 3 (r) of the Act of 1995, which is quoted thus:-

"[(r) "waqf" *means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—*

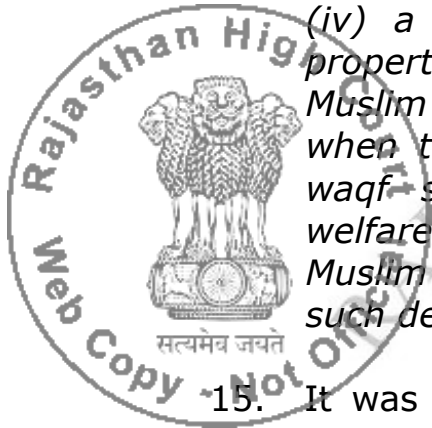


(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law, and "waqif" means any person making such dedication;]"



15. It was further submitted that if there is any dispute as to whether any property is waqf or not, the same can be decided and considered only by the Waqf Tribunal and Section 6 of the Act of 1995 provides specific provisions in this regard. Therefore, the petition deserves to be dismissed on this ground alone.

16. An additional affidavit in pursuance of the order of this Court dated 03.09.2021 has been filed by Mr. Sayed Mukarram Shah, Chief Executive Officer, Rajasthan Board of Muslim Waqf, Jaipur through his counsel Shri Anil Kumar Gaur, learned AAG. It has been submitted that the Waqf Act was promulgated in the year 1954 and was later amended in 1995 and as on date, it is known as the Waqf Act, 1995. In the year 1963, Survey Commissioner Waqf of the State of Rajasthan was duly appointed to conduct the survey of the waqf properties and after survey the disputed structure was registered as 'Tiranga Ki Qulandari Masjid' in the survey report. On the basis of said survey report, a notification was published on 14.09.1966, in which 'Tiranga Ki Qulandari



Masjid' located at village Pur was duly notified. Later, on the basis of gazetted notification, the '*Tiranga Ki Qulandari Masjid'* was registered in the waqf register in accordance with Section 26 of the Waqf Act, 1954, as amended to Section 37 of the Waqf Act, 1995.

17. It was further submitted that in the year 2002, second survey was conducted in village Pur, Bhilwara, wherein again the '*Tiranga Ki Qulandari Masjid'* was duly surveyed. Further, Sadar Anjuman Committee, Bhilwara wrote a letter dated 17.04.2012 to the respondents asking for guidance with regard to '*Tiranga Ki Qulandari Masjid'*. A perusal of the said letter shows that there is not an iota of description of the settlement taken place between the Anjuman and mining people. The respondent replied to the said letter on 18.04.2012 directing the Anjuman Committee, Bhilwara to take requisite decision in the interest of Waqf Board. Further, on 23.04.2012 the respondents wrote two letters to the District Collector, Bhilwara and Superintendent Police, Bhilwara and in pursuance whereof, the District Magistrate, Bhilwara replied vide letter dated 24.04.2012 that the repair of the damaged portion of '*Tiranga Ki Qulandari Masjid'* has been done and further assurance has been given to take necessary legal action against the culprit.

18. After hearing the rival submissions of the respective parties and upon careful perusal of the material available on record, it is revealed that the mining lease executed in favour of the writ-petitioner entitles it to use the said land for mining purposes in an optimal way and without any obstacles. It appears that the disputed structure became stumbling block in the mining process



of the writ petitioner and it gave a cause of action to it to file the present writ petition.

19. The question under consideration is whether a disputed structure was/is mosque, as alleged by the contesting respondents? The old khasra number of the land in dispute was 5993 and when land settlement took place in the year 1969, the old Khasra No.5993 was changed to new Khasra No.6731. The revenue record of Vikram Samwat 1985 corresponding to the calendar year 1923 records the said land as the government land, titled as 'Pahad Bilanama'. In the revenue record of the year 1969 also, there is no existence of any mosque in the said khasra number. Likewise, in the revenue record pertaining to the year 2012 to 2015 placed on record shows that there was no existence of any mosque at the disputed site of Khasra No.6731, Village Pur, Bhilwara.

20. It is an admitted fact that before grant of mining patta to the petitioner, an enquiry was conducted by the concerned Tehsildar for the purpose of identifying the khasra numbers in which mining was prohibited and in which the mining was permitted. The grant of permission to the writ petitioner clearly shows that no religious structure had existed in khasra number 6731 of village Pur. The photographs annexed with the writ petition also reveal that the disputed structure does not constitute a mosque and it is only a wall without any passage by stairs. No other facilities are attached with the said structure. From the record, it is not borne out that anybody had worshipped or offered prayers at the disputed place.

21. It is relevant to mention that vide order dated 09.10.2020 passed by this Court, an Expert Committee was constituted for the



purpose of answering the factual issues, as quoted hereinabove. The Expert Committee was directed to be headed by Shri R.K. Sinha, Controller General (Retd.), of India Bureau of Mines along with a nominee of the Secretary Mines, Department of Mines and Geology, Rajasthan, Jaipur as well as the nominee of the Director General, Survey of India. The Collector, Superintendent of Police and Tehsildar, Bhilwara were directed to provide all necessary assistance to the Committee. The said Committee was directed to submit its report before this Court in a sealed envelope.

22. The Expert Committee consisting of Chairman, Shri R.K. Sinha, Controller General (Retd.), Indian Bureau of Mines and two other members, namely Smt. Nandini Bhattacharya Sahu, Regional Director (West), Archaeological Survey of India Shri A.K. Nandwana, Superintending Mining Engineer, DMG, Bhilwara, submitted its detailed report on 10.01.2021, which runs in 15 pages enclosing therewith the photographs of the disputed land and the relevant documents. The conclusions of the Expert Committee are being reproduced hereunder:-

"5.1. Based on the documents submitted by Jindal Saw Limited, records submitted by the State Agencies & verification of documents at the time of the site visit, this Committee concludes the following:-

(i) The dilapidated structure existing in Khasra No.6731, Tiranga hills is neither a mosque nor any structure with any archaeological or historical relevance and that the structure can be removed from the place where it stands today, for mining purposes. Additionally, it also found that the adjoining area does not have any archaeological significance and as such other structures can also be removed for carrying out leasehold activities.

(ii) Besides the removal of disputed and dilapidated structure from the top of



Tiranga Hills as well as other structures, would also facilitate to carry out mining operations in scientific and a systematic manner for optimal utilisation of mineral resources found within the leasehold area under reference of M/S Jindal Saw Limited.

(iii) Based on the field observations and past records and upon examination of the correspondences it can very well be said that illegal mining has taken place with the leasehold under reference of M/S Jindal Saw Limited.

(iv) Based on the observations made under the aforesaid paras, it can be said that there does not seem to be any motive behind the petitioner company to carry out illegal mining of masonry stones.

(v) It appears that illegal mining has been carried out by entity other than Petitioner Company/Jindal Saw Limited and it was beyond the purview of the committee to identify who had carried out illegal mining within the leasehold of the petitioner company.

(vi) In order to curb illegal mining of masonry stones within the leasehold under reference of M/S Jindal Saw Limited, it was observed by the committee that an area of 129.77 hectares may be deleted as in the past DMG had recommended to the Government of Rajasthan to reserve the same for masonry stone before grant of mining lease to the petitioner company."

23. The Expert Committee report expressly states the methodology adopted by it to examine the factual issues. Although this Expert Committee report was signed by all the three members constituting it, however before putting his signature on the report, one of its members, namely Shri A.K. Nandwana had partially dissented with the report by a handwritten note at the bottom of the report at page No.15, which reads as under:-

“नोट :- चूंकि सम्बन्धित पक्षों एवं तथ्यों की समुचित परीक्षण/जांच के अभाव में रिपोर्ट व तदनुसार निकाले गए निष्कर्ष, विशेषकर अवैध खनन



में संलिप्त व्यक्तियों के सम्बन्ध में अपूर्ण प्रतीत होते हैं। विभागीय पत्र दिनांक 9/1/2021 को भी संज्ञान में नहीं लिया है।

अतः शासन सचिव खान, राजस्थान सरकार के प्रतिनिधि के नाते विभाग के परिपत्र क्र. निखाभू/जेपी/सीसी-6/प-1(1) 9/90/1914 दिनांक 31/12/94 एवं शासन के पत्र क्र.प.17(160) खान/गुप-2/2005 पार्ट दिनांक 7/3/17 के क्रम में रिपोर्ट अंतिम (Final) किये जाने से पूर्व तदनुसार ध्यान में लाना आवश्यक समझता हूँ। तदनुसार ही अंतिम माना जावे।

sd/-

(AK Nandwana)''



24. Suffice it to say in this regard that the Chairman and both the members of the Committee gave unanimous observations regarding non-existence of mosque at the disputed land. The only reservation of Shri A.K. Nandwana was the issue of illegal mining.

Even otherwise, no fault can be found in the methodology adopted by the Expert Committee in arriving at its conclusions. The Committee observed that the dilapidated structure existing in khasra no.6731 is neither a mosque nor any structure with archaeological or historical relevance and that the same can be removed from the place where it stands today because nearly 50% of the total resources of the Tiranga Hills are blocked due to the disputed structure located on its top situated in Khasra No.6731. It would facilitate the carrying out of the mining operations in a scientific and systematic manner and there will be optimal use of mineral resources found within the leasehold area. The report further states that there does not seem to be any motive behind the petitioner-Company to carry out illegal mining of masonry stones.

25. It is also relevant to observe that Shri O.P. Kabra, nominee of the Secretary Mines, Department of Mines and Geology, State of



Rajasthan, who was later substituted by Shri A.K. Nandwana, Superintending Mining Engineer, Bhilwara also participated in the meeting held on 28.12.2020 and he was also involved in the site visits and the process of preparation of the report. Shri Kabra informed the Expert Committee that there was no mosque or structure of archaeological importance on the top of Tiranga Hills within the leasehold of the petitioner. In that meeting, Shri A.K. Nandwana was also present and he had not raised any objection at that time. This fact is established from the minutes of the 1st meeting of the Expert Committee held on 28.12.2020, which are annexed with the report of the Expert Committee.

26. Vide order dated 12.08.2021, the Waqf Board Rajasthan was impleaded as respondent in the writ petition, who filed its additional affidavit raising the following contentions:-

a. In year 1963, Survey Commissioner, Waqf of State of Rajasthan was duly appointed to conduct survey of Waqf Properties. The 1st Survey Report has been annexed as **Annexure-AR/1 @ pg.264-265 of the Additional Affidavit filed by Waqf Board.**

b. Based on this Survey Report, a Gazette Notification was published on 14.09.1966, where at S.no.95 '*Tiranga Kin Qalandri Masjid*' was notified. (See **Annexure-AR/2 @ pg. 266-268 of the Additional Affidavit filed by Waqf Board**). Subsequently, the Masjid was registered in the Waqf Register.

c. In the year 2002, another Survey was conducted. The Survey Report dated 15.01.2002 has been also annexed with the Additional Affidavit. (**see Annexure-AR/4 @ PG. 270-273 of the Additional Affidavit filed by Waqf Board**).



27. In this regard, it is noticeable that a survey of the disputed land was conducted in the year 1963, when the alleged structure was recorded as Waqf Property by the Waqf Department and as such, the provisions of the Waqf Act, 1954 may come into place. The said Act was promulgated in the year 1954. Section 2 (I) of the Act of 1954 defines "Waqf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable and includes:-

(i) A wakf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognized by the Muslim law as pious, religious or charitable; and)

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

28. However, in the present case, there is no evidence to substantiate the fact of dedication by any person professing Islam or otherwise. No details have been provided by the Waqf Department as to who and how the present alleged "Waqf Property" was dedicated. The Revenue record reveals that Khasra No.6731 (Old Khasra No.5993) at Village Pur, Bhilwara has always been Government land since 1923. As a matter of fact, without dedication Waqf cannot be created. The survey report of 2002 placed on record shows the presence of alleged waqf in Khasra No.931, whereas the disputed structure exists on Khasra No.6731. Mere inclusion of the dilapidated structure in the Notification



issued by the Waqf Board does not create a valid waqf and the property cannot be said to vest with the Waqf Board.

29. In view of the discussion made hereinabove, the writ petition stands allowed and the respondents are directed not to interfere with the act of petitioner in removal of structure i.e. dilapidated platform/chabutarh at Tiranga Hills (Pahari) forming part of Khasra No.6731 of Village Pur, Bhilwara, Rajasthan for mining purposes for entire area of 1556.7817 hectares of land which includes said Khasra No.6731 of Village-Pur, Bhilwara, Rajasthan. The respondent No.1 is directed to provide police assistance to respondent No.2, if required, in removal of dilapidated platform/chabutarh at Tiranga Hills (Pahari) forming part of Khasra No.6731 of Village Pur, Bhilwara, Rajasthan.

(GOVERDHAN BARDHAR),J **(INDRAJIT MAHANTY),CJ**

Kamlesh Kumar/

सत्यमेव जयते