IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

W.P. (CIVIL) NO. 276 OF 2025/ W.P. (C) No. 314/2025/ W.P. (C) No. 284/2025/
W.P. (C) NO. 331/2025/ W.P. (C) NO. 269/2025

In the Matter of:

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (1)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (2)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (3)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (4)
IN RE: THE WAQF (AMENDMENT) ACT, 2025 (5)

NOTE FOR INTERIM RELIEF ON BEHALF OF PETITIONERS

This Note is in two parts:

A. Provisions of the Act that are *per se* violative of Articles 14, 15, 19, 21, 25, 26 and 300A and thus unconstitutional.

B. Claim of 116% Increase in Auqaf Area [2013–2024] Based on WAMSI Data is Misconceived **[Counter @Para 11-13, Page 6-8 and Page 158]**

A. PROVISIONS *PER SE* UNCONSTITUTIONAL

The Court has the power to stay the **implementation of an Act** if :"*the statute is* ***ex-facie un-constitutional*** *and the* ***factors like balance of convenience, irreparable injury and public interest*** *are in favour of passing an interim order*"[1] Further, **the presumption of constitutionality is rebuttable if a *prima facie breach* is shown**, following which, the test of

[1] Rakesh Vaishnav v. Union of India, (2021) 1 SCC 590, Para 10; Jaishri Laxmanrao Patil v. State of Maharashtra, (2021) 2 SCC 785, Para 11 and 12.

proportionality will apply.[2] It is submitted that the following provisions of the Amendment Act are *per se* unconstitutional and ought to be stayed:

1. SECTION 3(r): DEFINITION OF WAQF

Under Section 3(r) a waqf can only be created by ***"any person showing or demonstrating that he is practicing Islam for at least five years".*** This part of the definition is *per se* violative of Articles 14, 15, 19, 21, 25, and 26 and thus unconstitutional because:

i. There is no "adequate determining principle"[3] for establishing if a person is practicing Islam for at least 5 years. Neither is there any procedure prescribed for demonstrating or proving this fact. **[Violates Article 14 – vague, manifest arbitrariness]**

ii. No other enactment requires a person to demonstrate that they are practicing a particular religion. **[Violates Articles 14, 15 – discrimination on the ground of religion]**

iii. Requiring a person to demonstrate that they are practicing Islam is in the teeth of the judgment delivered in ***K.S. Puttaswamy v. Union of India*, 2017 10 SCC 1**, where the Court held that religious beliefs are protected by the right to privacy. @ Para 298, 372, 413. **[Violates Articles 19, 21, 25, 26 – Freedom of expression, right to privacy in exercise of freedom of religion]**

- ***298*** *"…The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world."*
- ***372*** *"…the freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty"*
- ***413*** *"Ex facie, privacy is essential to the exercise of freedom of conscience and the right to profess, practise and propagate religion vide Article 25. The further right of every religious denomination to maintain institutions for religious and charitable purposes, to manage its own affairs and to own and administer property acquired for such purposes vide Article 26 also requires privacy, in the sense of non-interference from the State."*

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[2] Electoral Bonds Judgment @para 45; Khanna J.@245 :State must show empirical data to satisfy the necessity prong
[3] Shayara Bano v. Union of India, (2017) 9 SCC 1 at para 101, Navtej Singh Johar v. UOI, (2018) 10 SCC 1 at para 353, 637.9.

iv. The five-year period is arbitrary and imposes a condition that effectively suspends the ability of Muslims to exercise their fundamental rights in a manner of their choosing. By making the exercise of such rights contingent on the fulfilment of an extraneous temporal requirement, the provision renders the constitutional guarantee illusory. **[Violates Article 14, 15 – manifest arbitrariness, unreasonable classification]**

2. SECTION 3C: WRONGFUL DECLARATION OF WAQF

Under Section 3C(1) of the Act, ***"any government property identified or declared as waqf property, before or after the commencement of this Act", shall <u>not be deemed</u> to be a waqf property".*** Section 3C(2) further states that ***"if a question arises"*** as to whether any such waqf property is government property, a designated officer above the rank of Collector (DO) is to ***"conduct an inquiry as per law"*** and submit a report to the State Government. The proviso states that ***"such property shall not be treated as waqf property until the DO submits his report".*** This is *per se* violative of Articles 14, 21, 25, 26 and 300A and is thus unconstitutional because:

i. "Government property" as defined under s.3(fb) means movable or immovable property belonging to a Government Organisation. "Government Organisation" as defined under s.3(fa) *includes* municipalities, panchayats, sub-ordinate offices, autonomous bodies of the Central or State government, "or institution owned or controlled" by the Central or State government. Thus, the definition of Government property under 3(fb) r/w 3(fa) is sweeping and allows even a tenuous, arbitrary connection with the state to be enough to defeat the waqf status of a property, if any questions arises as to whether it is government property. **[Violates Article 14 – manifest arbitrariness]**

ii. No procedure for such an inquiry is prescribed. Para 144 of the Counter **[@Page 90]** claims that a decision under s.3C on whether a waqf is government property or not, will be taken only "*after conducting an enquiry and after following principles of natural justice*". However, this is not substantiated by the statutory provision itself, rendering whatever procedure that may be followed discretionary and ad hoc. Such a glaring lack of procedure does not meet the test of constitutionality, *especially* when a decision under s.3C is bound to affect a substantive fundamental right itself, in this instance,

Articles 25 and 26. **[Violates Articles 14, 21 – principles of natural justice, Rule of Law, Articles 25 and 26]**

iii. The words *"if any question arises"* is overbroad and operate without limitation. This effectively means any question, by any person, regardless of motive or merit will be sufficient to suspend the waqf status of a property. **[Violates Article 14, 21 – vagueness, manifest arbitrariness, Rule of Law]**

iv. The waqf status is suspended indefinitely as there exists no prescribed time frame for submission of Report by the DO. **[Violates Article 14 and 21 – manifest arbitrariness, rule of law]**

v. Under S. 3C(3) and (4) the DO and the State Government may carry out "corrections" i.e., unilaterally alter records pertaining to the property without following any kind of adjudicatory process. **[Articles 14 and 21 – manifest arbitrariness, rule of law]**

vi. The Designated Officer is necessarily a Government Servant, being above the rank of Collector [defined u/s 3(da)]. As such, an agent of the government itself, is deputed to decide if the waqf property is government property or not. Thus, the Designated Officer is a judge in their own cause. **[Article 14, Rule of Law, Rule against Bias]**

vii. The determination of the character of property is a judicial exercise. It cannot be usurped by the legislature or bestowed upon the executive, especially when they have a direct interest in the legal dispute itself. **[Violates Separation of Powers]**

viii. The provision is violative of Article 300A as it expropriates waqf property, through a deeming fiction, without an adjudicatory process or payment of compensation. There is also no restriction on the government to create irreversible third-party rights in such properties, including while the proviso is in effect and the waqf property "shall not be treated as waqf property". **[Violates 300A – expropriation of property]**

ix. S. 83(2): Government can unilaterally deem a property as non-waqf "if any question arises"…" without invoking the adjudicatory process under Section 83(2). In contrast, only those asserting a property as waqf must undergo the full adjudicatory process before a tribunal. This results in an asymmetrical application of the Act's remedial framework, which creates a separate class of remedies for the Government as a litigant and for individual citizens as litigant, which is unconstitutional. **[Violates Article 14 – manifest arbitrariness, unreasonable classification].**

3. SECTION 3(r)(i): OMISSION OF WAQF BY USER

The Respondents have submitted that the concept of a "waqf by user" has remained untouched and that all such waqfs registered on or before the commencement of the Act are protected under the proviso to S. 3. Further, the Respondents argue that the Act does not require "waqfs by user" to submit documentary proof in support of their claims. **[Counter @Para 30, Page 15].** This submission is not supported by the text of the Amendment itself which effectively invalidates the concept of "waqf by user". This is *per se* violative of Articles 14, 15, 21, 25, 26 and 300A and is thus unconstitutional:

i. By virtue of the 2025 Amending Act, the following changes have been made:
    - Sec. 3 (r)(i) has been deleted.
    - The proviso to Sec. 3 (r) requires the waqf by user to have been registered on or before the commencement of the Amendment Act.
    - The proviso carves out an exception for 'government property' or property in 'dispute' i.e., if a registered waqf by user falls into either of these two categories, it will not be treated as a waqf.

    This means ONLY those registered waqf by user are protected which are not in dispute or not asserted to be govt property by any government organization.

ii. "Waqf by user" has continuously been recognised judicially *at least* since 1912 in the Privy Council decision of ***Makhdum Hassan Baksh v Ilahi Bakhsh***[4]. A Waqf by user was statutorily recognized in Bengal Waqf Act of 1934, the Waqf Act of 1954, Waqf Act, 1995; and strengthened in the 2013 Amendment.

iii. Further, making the recognition of a waqf by user contingent on registration is **directly in the teeth of the judgment in *M. Siddiq (Ram Janmabhoomi Temple) v. Suresh Das* (2020) 1 SCC 1 [@Para 1134]** which upheld the recognition of religious endowments based on long-standing religious use as 'waqf by user':
    - *"1134.* ***Our jurisprudence recognises the principle of waqf by user even absent an express deed of dedication or declaration.*** *Whether or not properties are waqf property by long use is a matter of evidence. The test is whether the property has been used for public religious worship by those professing the Islamic faith."*

      [See also **Para 1125, 1126, and 1128]**

[4] 1912 SCC OnLine PC 45

iv. Additionally, it has consistently been held by High Courts that the **absence of registration does not affect the original character or status of property as waqf**. [Allahabad High Court; Karnataka High Court; Kerala High Court; Andhra Pradesh High Court].[5]

v. **Proviso obliterates the status** of a registered waqf by user if the property is "in dispute *or* is Government Property".

- There is no definition of "dispute". Its import is vague, overbroad and may thus be construed arbitrarily. **[Violates Article 14 – vagueness, manifest arbitrariness].**
- The definition of government property under 3(fb) r/w 3(fa) is sweeping and allows even a tenuous, arbitrary connection with the government to be enough to defeat the waqf status of a property. **[Violates Article 14 – no intelligible differentia, vagueness, manifest arbitrariness].**
- If the issue is whether the waqf property is Government property, Section 3C becomes applicable and the suspension of waqf status is indefinite. **[Violates Article 14 – manifest arbitrariness, Article 21 – procedure established by law, Separation of Powers] [Please see Section 3C above]**

vi. Under Sec. 36(7A) r/w 36 (1A), anything *merely* mentioned in the Collector's report as Government Property will not be treated as waqf. **[Violates Article 14 – manifest arbitrariness]**

vii. A conjoint reading of S.3(r), 3C, 36(7A) and 36(10) reflects that:

- All unregistered 'waqf by user' properties cease to be waqfs;
- All unregistered 'waqf by user' are barred from filing any suit, appeal or other legal proceeding for the enforcement of any right u/s 36(10).
- An unregistered waqf (not waqf by user) that makes an application for registration after the 2025 Amendment to the Board is verified by the Collector u/s 36(7). Upon verification, if the Collector finds that the property is wholly or in part in dispute or is a Government property, then it shall not be registered [36(7A)] and will also not be treated as wakf property u/s 3C during the pendency of the inquiry. No time-period is provided to the Collector to conclude his inquiry.

[5] Footnote to be added

- Access to courts is also barred u/s 36(10) after six months from the commencement of the amendment, leaving the unregistered wakfs remediless. Hence, a Collector can keep the application for registration pending for months, and in the event a dispute is raised that it's a government property, the wakf property is not treated as wakf and the unregistered wakf is barred from approaching courts.

viii. Most of the Hindu endowment legislations statutorily recognise endowments by user without any requirement of mandatory registration. **[Please see Orissa Hindu Religious Endowments Act, 1951, Definition of Temple u/s 3(xv)] [Violative of Articles 14, 15 – absence of intelligible differentia, discrimination on the basis of religion]**

ix. To retrospectively take away status of unregistered waqf properties, specifically waqf by user properties, that till date were statutorily protected is in violation of settled principle of law that every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect. The amendment also abrogates the principle of "*once a graveyard, always a graveyard*", or "*once a waqf, always a waqf*" as held by this Hon'ble Court in ***(1998) 2 SCC 642***; and no other action including non-registration can undo the dedication and vesting of land in God.

4. SECTION 3B(2)(b): FILING DETAILS OF NAME, ADDRESS OF CREATOR ETC.

This provision applies to every registered waqf. Sub-clause (b) requires the name and address of the creator of the waqf, mode and date of such creation to be mandatorily submitted. This is *per se* violative of Articles 14, 25, and 26 and thus unconstitutional because:

i. Not every registered waqf has details of name and address of the creator, mode and date of creation. Sub-clause (b) effectively defeats the long-standing status of ancient mosques, dargahs as waqfs by requiring the name and address of its creator. **[Violates Article 14 – manifest arbitrariness]**

ii. Sub-clause (b) uses the word ***"shall,"*** making it mandatory to provide such details, regardless of their availability. This is a clear departure from the following:

- **Section 3(2) of the Mussalman Waqf Act, 1923** required that the the statement of the mutawalli furnishing the particulars of the waqf in the

absence of a deed shall contain full particulars*, as far as they are known* to the mutawalli,

- **Section 25(4) of the 1954 Act** says every application shall contain full particulars of the nature, object and origin of the waqf, *as far as known* to the applicant.
- **Section 36(4) of the 1995 Act** is identical to the provision in the 1954 Act.

iii. The **mandatory nature of sub-clause (b) is in contrast to sub-clause (c)** which makes the submission of the waqf deed conditional upon its availability. The absence of a similar exception in sub-clause (b) creates an unreasonable burden on existing waqfs and threatens their continuing status. **[Violates Article 14 – manifest arbitrariness]**

iv. **Mandatory requirement under S. 3B(2)(b)** effectively defeats Waqf by User status. Waqf by User, by definition, does not have the name, address of the creator and the mode, date of its creation. Further, the Act imposes a **penalty u/s 61(1A)(v) on the mutawalli** for not providing details is imprisonment of up to 6 months and fine between 20,000 – 1 lakh. **Thus,** Respondent contention [**Counter @Para 30, Page 15]** that no documentary proof is required to be submitted is incorrect.

5. SECTION 3D: DECLARATION OF PROTECTED MONUMENT OR AREA AS WAQF TO BE VOID.

Section 3D declares all notifications/declarations made under the Waqf Acts to be void if the property in question is a protected monument under the Ancient Monuments Preservation Act, 1904 or the Ancient Monuments and Archaeological Sites and Remains Act, 1958. This is *per se* violative of Article 14, 15, 25, 26, 300A, and is thus unconstitutional because:

i. The purpose of the 1904 and 1958 Act is preservation and not extinguishment or alteration of title. As such, the declaration of property as an ancient monument cannot extinguish its identity or character. A specific reference may be made to Section 16 of the 1958 Act, which states that a place of worship or shrine shall not be used for any purpose inconsistent with its character. By introducing s.3D, apart from taking over the properties of a community, the 2025 Amending Act effectively alter the usage and character of the property. **[Violates Articles 14, 25 and 26]**

ii. Article 25 and 26 protections for religious practices and institutions can coexist with heritage preservation statutes. While the protection of ASI and the religious character can be simultaneously maintained, and *is* maintained, with respect to a number of

temples and other religions' institutions, Section 3D, in the manner which it is worded, applies retrospectively and seeks to derecognize older existing mosques and dargahs which are waqfs.

iii. Largely the declarations or notifications as to a property being waqf were issued after the Wakf Act, 1954 came into force by which time under the provisions of Ancient Monuments Preservation Act, 1904 such monuments already stood protected. Moreover, while the Counter admits that even under the 1923 Act the registrations remained low, and that it only contemplated furnishing of details to a Court (Sec. 3). It is only with the 1954 Act that registration was mandated for the first time (u/s. 25 of the 1954 Act).

iv. At the same time, the concept of waqf by deed/user has been in existence much prior to 1904, however, no requirement of registration persisted until 1954. Thus, in effect, Sec. 3D sets a cut-off date for registration in 1904, when the status of 'protected monuments' was introduced, even though registration was contemplated for the first time in 1954. **[Violates Article 14 – manifest arbitrariness]**

v. Automatic vesting of any Waqf property with the ASI, by virtue of having been notified under the 1904 or the 1958 Act is discriminatory. For structures belonging to other religious denominations, the ASI must take recourse to either section 10 of the 1904 Act or Section 13 of the 1958 Act, only if it finds that there is a threat of destruction, damage or decay. Consequently, the provision is expropriatory and violative of Article 300A. **[Violates Article 14, 15 – unreasonable classification, discrimination on the basis of religion, Article 300A]**

6. SECTION 3E: DISQUALIFICATION OF STs FROM CONSTITUTING WAQFS

Section 3E states that no land belonging to members of the Scheduled Tribes under the Vth or VIth Schedule of the Constitution shall be declared or deemed to be Waqf property. This provision is *per se* violative of Articles 14 and 15 and is thus unconstitutional because:

i. The classification is discriminatory and unreasonable. It presumes that a member of Scheduled Tribe cannot be Muslim, whereas STs communities follow various religions including Islam. **[Violates Article 14 and 15 –discrimination on the basis of religion] [Please see ANNEXURE I - List of STs with Muslim Population]**

ii. If a member of an ST is a Muslim, they cannot exercise their right to create a waqf.

7. SECTION 9, 14 AND 23 r/w 32: NON-MUSLIM MEMBERS IN ADMINISTRATION

The amendments to these sections primarily bring in two changes: (i) they provide for the inclusion of non-Muslim members to the Council u/s 9 and Board u/s 14, and remove the requirement for the CEO to be a Muslim u/23; (ii) Change the mode of constituting the Board from the members being elected to the members being nominated by the Government**. [Please see ANNEXURE – III – Chart on Composition and Appointment]** This is *per se* violative of Article 14, 15, 26, 27, 29 and thus unconstitutional because:

i. **To justify the amendments to Section 9, 14 and 23, the Respondent classifies** waqf as "secular" and other religious endowments to be purely religious **[Counter @Para 122-123, @Page 76]**. This classification is illusory and without rational basis **[Violates Article 14]**:

ii. Religious endowment acts also contemplate administrative functions which the Counter describes as 'secular' functions: **[Please see ANNEXURE II – Religious Endowment Acts]**

- **The Andhra Pradesh Charitable and Hindu Religious Endowments Act, 1987** under Section 2(28) defines "*Tirumala-Tirupathi Devasthanams*" to mean not only temples but also endowments and properties thereof, such properties include 24 educational institutions (including the prestigious Sri Venkateswara College or Venky College in Delhi). Section 96(1) then constitutes Tirumala Tirupathi Devathanams Board and Section 96(2) mandates appointment of only Hindu members. Even *ex officio* members are Hindus.
- **The Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959,** includes non-religious, secular, and charitable aspects of its properties including resthouses, choultries, patasalas, schools, colleges, hospitals etc. Under Section 10, the Act requires all officers and even servants appointed to carry out the purpose of the Act to be persons professing the Hindu religion. These persons shall not be able to hold office if they cease to profess the Hindu religion. Section 10 reads as follows:

> *Commissioner, etc., to be Hindus.—The Commissioner, 4[the Additional Commissioner], 5[every Joint, Deputy or Assistant Commissioner] and every other officer or servant appointed to carry out the purpose of this Act, by whomsoever appointed,*

shall be a person professing the Hindu Religion and shall cease to hold office as such when he ceases to profess that religion.

Further under Section 74 of the Act, the salaried executive officer is also similarly required to be a person professing Hindu religion.

- The Uttar Pradesh Kashi Vishwanath Temple Act, 1983 which mandates the members, including *ex officio,* to be Hindus. Section 3 of the Act requires every person eligible for being or continuing as a member of the Board or Executive Committee or as CEO or even an employee of the temple to be a Hindu by religion. These persons would no longer be eligible if they cease to be Hindus. This is despite Section 14(e) of the Act which envisages making of *adequate arrangements for preservation and management of properties and secular affairs of the Temple.*

iii. **Inclusion of non-Muslims**:

- **Waqf Council:** 12/22 members can now be non- Muslim.
- **Waqf Board:** 7 /11 members can now be non- Muslim members. *In effect,* there is a subordination of Muslim members since Board gives binding directions to *mutawalli*.

Such changes in the membership of the Board do not bear any nexus with the purpose of the 2025 Amending Act to facilitate better management of Waqfs. **In any event, the inclusion of non-Muslims is not the least invasive measure to meet the purported purpose of better management of Waqf. Thus, the provision does not satisfy the test of proportionality. [Violates Article 14, 19 and 21]**

iv. **Nomination v. Election:** The composition of the Waqf Board under Section 14 implicates the right to 'community autonomy' in the administration of religious endowments, which flows from Article 26. This gives substantive meaning to the term "own" in Article 26. Under the unamended Section 14, all but one member of the Board were required to be elected, and the number of elected members was mandated to exceed that of nominated members. Under the amended Section 14, however, all members are either nominated or ex-officio.

The substitution of elected members with nominated members, particularly when read alongside provisions such as Sections 3B, 3C, and 36(7A) - where the government has a direct stake in the registration and continuation of properties as Waqf - infringes upon the right of the Muslim community to administer its religious properties freely. This

principle was affirmed by the Supreme Court in ***Ratilal Panchanand Gandhi v. State of Bombay*****, (1954) 1 SCC 487.**

The amendment transforms a democratically elected body into a wholly State-nominated one. Since nominated members owe their appointments to the government, they cannot reasonably be expected to act independently of it. **In *Fazlur Rahman v. State of Tamil Nadu*, (2021) 13 SCC 42,** at para 19, the Court recognized that the Waqf Board "represents a democratic function." The 2025 Amending Act does away with this democratic structure by replacing it with nomination.

8. SECTION 40: DELETED POWER OF WAQF BOARD

i. The omission of Section 40 of the Waqf Act, 1995 violates Article 14, 25 and 26 of the Constitution as it takes away the statutory power of the Waqf Board to determine and administer Waqf property. Following this omission, the authority to decide whether a property is Waqf has been vested in the Collector, based solely on their report.

ii. Section 40 previously provided a comprehensive and structured procedure aligned with principles of natural justice, which included a mechanism for hearing not only the parties concerned but also the registering authority in cases where a question arose as to whether a property was a trust or a waqf. This adjudicatory framework has now been unreasonably deleted, thereby replacing an impartial process with an executive determination lacking procedural safeguards. **[Violates Article 14 – manifest arbitrariness, Principles of Natural Justice]**

9. SECTION 107: APPLICATION OF LIMITATION ACT, 1963

This provision applies the Limitation Act to any proceedings in relation to any claim or interest pertaining to immovable property in a waqf. This is *per se* violative of Article 14 and 15 and is thus unconstitutional because:

i. Use of "any proceedings" makes the 1963 Act applicable to pending proceedings. The 2025 Amending Act does not use the words "any proceedings instituted after such commencement" [Violates Article 14 – vague, manifest arbitrariness]

ii. The Limitation Act is not applicable for Hindu Endowment Acts **[Violates Article 14, 15 – unreasonable classification, discrimination on the basis of religion] [Please see**

ANNEXURE – II - S. 109 of TN Hindu and Charitable Endowments Act, 1959; S. 143 of AP Charitable and Hindu Religious Institution and Endow. Act, 1987]

10. SECTION 108: DELETION OF SPECIAL PROVISION AS TO EVACUEE WAQF PROPERTIES

i. The Act omits Section 108 which provides that even if a waqf property was declared evacuee property, it would continue to vest in the Board. Its removal operates retrospectively and thus takes away any vested rights accrued between 1995 to 2025. **[Violates Article 14 – arbitrariness]**

ii. The omission of Section 108 is in the teeth of the principle that "once a waqf, always a waqf".[6]

11. SECTION 108A: OMISSION OF OVERRIDING EFFECT OF ACT

The overriding effect granted vide Section 108-A was inserted by the 2013 Amendment (w.e.f. 01.11.2013) and has now been omitted. As a result, other laws can now override the Waqf Act putting Waqf properties at risk especially since the State acquisition laws may take precedence. This issue is currently pending before this Hon'ble Court in SLP(C) No. 16536/2022[7] [and arising out of judgment by the High Court at Calcutta dated 24.08.2021, para 39-41 thereof [Thika Tenancy Act will prevail or the Waqf Act]. **[Violates Articles 25 and 26] Please see ANNEXURE – IV]**

B. CLAIM OF 116% INCREASE IN AUQAF AREA (2013–2024) BASED ON WAMSI DATA IS MISCONCEIVED [@PARA 11-13, PAGE 6-8 OF COUNTER] [@PAGE 158 OF COUNTER]

1. WAMSI DATA CANNOT REFLECT EXISTING WAQFS IN 2013

The following facts are relevant:

i. **2009** – The WAMSI Portal is introduced.

ii. **2011** – The Portal was **operationalized.** Details of waqfs are to be uploaded by State Waqf Boards.

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[6] Sayyed Ali v. A.P. Wakf Board, Hyderabad, (1998) 2 SCC 642 Para 13.

[7]

iii. **As of 2013** – The portal was in its nascent stages; digitization was incomplete. **According to a 2013 WAMSI Report [@Page 63, Rejoinder]** only pre-digitization work commenced; only 2 States and 2 UTs had completed digitization

iv. **As of July 2019:** 85% digitization achieved; remainder still pending. Reflected in Ministry of Minority Affairs answer to unstarred question on 18.07.2019 **[@Page 60-61, Rejoinder].** Quote:

- *"[I]n respect of digitalization of waqf properties, in the last five years, major work has been completed on a war-footing manner (85% so far) and State Waqf Boards (SWBs) have been directed to complete the remaining work on top priority".*

Thus, data sourced from the WAMSI Portal is not indicative of how many waqfs existed in 2013. Similarly, the data is not proof of *when* a particular waqf has come into existence or was registered. The only inference that can be made from the data post 2013 is that the details of the waqfs were *uploaded or updated.* In any case, an improved compliance with registration does not mean land-grabbing. Surveys under s.4 pending for years/ not conducted earlier now led to the registration of new properties. Finally, merely because there has been a JPC prior to a statute, does not confer any special mark of validity on the law. A JPC does not immunize judicial review. "*Any observation in the report or inference of the Committee cannot be held binding between the parties…*"[8]

There being no baseline data, the Respondents' contention that the number of waqf properties sky-rocketed after the 2013 amendment cannot be sustained.

2. FIGURES CITED BY RESPONDENT ARE ABSURD AND MISLEADING [SEE COUNTER @PAGE 158]

The data curated is absurd on the face of it:

State Waqf Board	**No. of Waqfs: 2013**	**No. of Waqfs: 2025**	**Increase**
Delhi	9	1038	11533.3%

[8] *Kalpana Mehta 2018(7) SCC 1*) at pr. 449.6,

Jammu and Kashmir	1	32,532	3,253,200%
UP Shia Board	0	15,386	

It is clear that the data at Page 158 cannot plausibly reflect the number of waqfs in existence in 2013. This implausibility is further compounded by the Respondent's claim that the pre-2013 data includes waqfs from the Mughal, pre-independence, and post-independence eras, while all waqfs recorded post-2013 are creations solely attributable to the amendments.

Thus the contention of the Respondent re the "phenomenal increase" must be rejected.