IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for an order in the nature of restitutio in integrum and or revision under and in terms of Article 138(1) of the Constitution.

M. H. Mohideen Abdul Cader,
Masjidul Abrar, Maradana, Beruwala

Appellant

Vs.

1. Dr. A. H. M. Marjan,
   No. 28, Buhari Thakkiya Road, Beruwala

2. A. H. M. Huzaif, Yoosuf Avenue, China Fort, Beruwala
3. M. Jabir Mohamed, No. 25, Perera Road, China Fort, Beruwala
4. A. H. M. Athaullah, No. 41, Perera Road, China Fort, Beruwala
5. Mohamed Riza, No. 34, Bakir Marikkar Avenue, Beruwala and 6 others

Respondents

CA/RII/0006/2023
Wakfs Tribunal case No. WT/291/2023
Wakfs Board case No. WB/5594/2012

AND NOW BETWEEN

1. Dr. A. H. M. Marjan,
   No. 28, Buhari Thakkiya Road, Beruwala

2. A. H. M. Huzaif, Yoosuf Avenue, China Fort, Beruwala

3. M. Jabir Mohamed, No. 25, Perera Road, China Fort, Beruwala
4. A. H. M. Athaullah, No. 41, Perera Road, China Fort, Beruwala
5. Mohamed Riza, No. 34, Bakir Marikkar Avenue, Beruwala
6. M. A. M. Hanafy, "Farwin Manzil", Markkar Place, Maradana, Beruwala

1st to 5th and 11threspondents petitioners

Vs.

M. H. Mohideen Abdul Cader,
Masjidul Abrar, Maradana, Beruwala

Appellant Respondent

1. Dr. A. A. A. Azwar,
2. Dr. M. R. FasloonLizan
3. M. N. M. Yakooth,
4. Z. A. M. Kaleel,
5. A. W. M. Ajward

6th, 7th, 8th, 9th, 10th<u>RESPONDENTS</u>

Before: Hon. D. N. Samarakoon, J

Counsel: RazikZarook, P.C., with N. M. Riyas and Chanakya Liyanage instructed by G. B. Madhushani Chandrika for 1st, 2nd, 3rd, 4th, 5th and 11th respondent petitioners.

N. M. Shaheid with M. Y. Nazar, E. Madawala and M. A. Zaid for Appellant Respondent and 6th, 9th and 10th respondents.

Date: 02.05.2023

ORDER

As the Appellant Respondent and 06th, 09th and 10th respondents, in their written submissions, objecting to the extension of the interim order granted by this Court on 06th April 2023 says, the case which is the subject matter of this application relates to the appointment of Trustees to the Mosque named MasjidulAbraar, Maradana, Beruwala.

As per 1st, 2nd, 3rd, 4th, 5th and 11th respondent petitioner, who obtained the interim order, the said Mosquebelieved to be the first Mosque of Sri Lanka or Serendib is 1400 old.

As per facts presented to this Court by the petitioners, by petition dated 04th April 2023, affidavit and documents, the Wakfs Board of Sri Lanka decided on 14th March 2023, the 1st to 5th petitioners to be the Trustees of the said Mosque. An Instrument of Appointment was issued on 22nd March 2023.

Mohammed Riza, the 5th respondent petitioner, in his accompanying affidavit dated 04th April 2023, at paragraph 15 stated as follows,

> "15. I state that after the order of the Wakfs Board was pronounced, on 22.03.2023 management of the said Mosque was handed over to the Petitioners by the Special Trustees, following Isha prayers after the 1st respondent addressed the "jamaath" (…the congregation who ordinarily participate in the religious rites and customary rites and ceremonies of the mosque;…) by the public announcement apparatus. The 1st respondent also wished us the best in managing the said Mosque".

However, on the very next day, i.e., on 23rd March 2023, the appellant respondents went before the Wakfs Tribunal which issued an ex parte order and gave the notice returnable date as 13th May 2023, seven weeks later.

The effect of that order was to stay the order of the Wakfs Board dated 14th March 2023, as per which an Instrument of Appointment was issued dated 22nd March 2023.

Paragraph 19 of the above affidavit said,

> "19. I state that the members of the jamaath after witnessing the handing over of management by the Special Trustees are puzzled of the purported attempt of the appellant respondent to retake the management and administration of the said Mosque and are provoked by his actions, which could easily lead to injury to person and property. The jamaath is viewing the actions of the appellant respondent as mischievous and to undermine the smooth running of the activities of the said Mosque during the month of Ramadan".

The appellant respondent, as per the petitioners, on 01st April 2023 filed a motion before the Wakfs Tribunal, in order to retake the possession of control and management of the Mosque. But on this day petitioners also appeared before the Wakfs Tribunal. It is alleged that the learned counsel for the petitioners was continuously disturbed by the Wakfs Tribunal and it was repeatedly informed that "no matter what submissions are made an order will not be given till May 2023".

The parties have then entered into a "settlement" before the Wakfs Tribunal. But the petitioners alleges that orders of Wakfs Tribunal dated 23rd March 2023 and 01st April 2023 are based on altered documents.

The petitioners further stated in paragraph 29 of the petition,

"The petitioners state further that the orders of the Wakfs Tribunal dated 23.03.2023 and 01.04.2023 are wrong and contrary to law inasmuch as:

(a) The proceedings currently filed in case No. 5594 dated 25.01.2023 and 14.03.2023 do not reflect the actual orders made by the Wakfs Board on those respective days,

(b) The proceedings on record and relied by the Wakfs Tribunal are altered proceedings,
(c) Any decision, order or settlement made based on the altered documents have no force of avail in law".

It was in the above circumstances, this Court issued interim orders as per paragraphs (a) and (c) of the prayer to the petition.

They are,

(a) Stay the operation of orders of the Wakfs Tribunal dated 23.03.2023 and 01.04.2023,
(b) Stay all the proceedings before the Wakfs Tribunal in Case No. WT/291/2023 till the final determination of this case,

The respondents have raised several Preliminary Objections.

(i) Failure to follow Court of Appeal (Appellate Procedure) Rules 1990.

Reliance is made on Rule 2(1) which says, "every application for a stay order, interim injunctions or other interim reliefs shall be made with notice to the adverse parties or respondents.

However, as the respondents also cites, under Rule 2(1)(a) "interim reliefs may be granted although such notice has not been given to some or all of the respondents if the Court is satisfied that there has been no unreasonable delay on the part of the applicant and that the matter is of such urgency that the applicant could not reasonably have given such notice".

The respondents cite Rule 2(1)(b) too, which says, "that in such an event the order for interim relief shall be for a limited period not exceeding two weeks sufficient to enable such respondents to be given notice of the application and **to be heard in opposition** (emphasis added in respondent's written

submissions) thereto <u>on a date to be then fixed</u>". (emphasis added in this order).

Hence under circumstances mentioned in Rule 2(1)(b) an interim order could be issued ex parte for two weeks, which this Court did. The notice returnable dated was 20th April 2023. As per the underlined part, the hearing in opposition has to be done on a date to be then fixed. But this Court heard the respondents on 20th April 2023 itself. On the other hand the Wakfs Tribunal on 23rd March 2023 gave the next date as 13th May 2023, which has not even yet come.

(ii) And (iii) The preliminary objections in those are that the impugned orders are subject to statutory appeal and revision is an extraordinary/discretionary remedy exercised only in exceptional circumstances.

These two items could be dealt with together as follows,

BANK OF CEYLON v KALEEL AND OTHERS 2004 (1) S. L. R. 284, is a good point to commence consideration of authorities, as Wimalachandra J., in the Court of Appeal has referred not only to the existence of exceptional circumstances but to the order being of such a nature which would have shocked the conscience of court.

The ' head note ' states,

> 'The court will not interfere by way of revision when the law has given the plaintiff-petitioner an alternative remedy (s. 754(2))[1] and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction'.

It further states,

[1] Section 754(2) is leave to appeal

> 'In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court'.

It is appropriate, to first consider the aspect of the order ' shocking the conscience of court ', as it has to be determined whether powers of revision are to be exercised <u>only</u> in respect of such orders.

In **Gunewardane vs. Orr 2 Appeal Court Reports 172,** Hutchinson C. J., said, '...here the party aggrieved <u>might have obtained</u> leave to appeal notwithstanding the lapse of time that has expired'. In **Perera vs. Silva 4 Appeal Court Reports 79,** Hutchinson C. J., said, 'This is a case in which the applicant <u>had another remedy</u> provided by the legislature; and it is not a case in which the order is obviously wrong '. In **Ameen vs. Rasheed 6 C. L. W. 8,** Abrahams C. J., said, 'I can see no reason why the petitioner should expect us to exercise our revisional powers in his favour when <u>he might have appealed,</u>...' In **Alima Natchiya vs. Marikar 47 N. L. R. 82,**Keuneman S. P. J., stated, '..we should be slow to exercise our discretion to allow an application in revision in view of the fact that no appeal has been taken in this case'.

In **Rustom vs. Hapangama& Co. 1978-79-80 (1) S. L. R. 352,** Ismail J., in the Supreme Court said,

> 'It is only in very rare instances where exceptional circumstances are present that the Courts would exercise powers of revision in cases where <u>an alternative remedy has not been availed of</u> by an applicant'.

It is seen, that, it was in support of aforesaid dictum, Ismail J., then referred to, <u>Gunewardane vs. Orr,Ameen vs. Rasheed,Perera vs. Silva,Alima Natchiya vs. Marikar,</u> and referred to above, together with another case decided by Bonsor C. J.

In **Thilagaratnam vs. E. A. P. Edirisinghe 1982 (1) S. L. R. 56,** which is a case decided in 1982, and hence after Rustom vs. Hapangama& Co. decided in 1980, L. H. de Alwis J., in the Court of Appeal said,

> 'The Leave to Appeal application No. 50/81 as stated earlier, is admittedly out of time. Counsel for the petitioner however invited this Court to exercise its powers of revision ex mero motu or in application No. 1265/81 and grant the petitioner relief under section 759(2) of the Civil Procedure Code'.

Hence that was a case in which the interlocutory appeal was out of time, and the court was invited to exercise revisionary powers, by its own motion or in application No. 1265/81, which was a revision application, but which the court decided belated. L. H. de Alwis J., further stated,

> 'No exceptional circumstances thus have been made out by the petitioner as to why this Court should exercise its powers of revision ex mero motu. As regards the Revision Application No. 1265/81 itself, it has been made very belatedly. According to the motion dated 12.10.81 filed by the Attorney-at-Law for the respondent, it was pointed out by Counsel for the respondent in open Court on 5.8.81 that the application for Leave to Appeal was out of time. This statement has not been denied by the petitioner, so that even though the petitioner was well aware that her application for Leave to Appeal was out of time, she took no prompt steps to file an application for revision until the 23rd October, 1981. The order sought to be revised is dated 6.3.81 and in view of the inordinate delay of over seven months to file the application for revision No. 1265/81, it must be dismissed'.

Conversely, it seems to mean, that had a petitioner, having some defect in his leave to appeal application, filed an application for revision without such delay he may have a possibility of succeeding.

In the case of Bank of Ceylon vs. Kaleel and others 2004 (1) S. L. R. 284, too Justice Wimalachandra observed,

> 'The plaintiff has not chosen to apply for leave to appeal from the said order as provided by section 754(2) of the Civil Procedure Code. Nor has he set out in this petition for revision any exceptional circumstances why he failed to file leave to appeal application as provided by law'.

Hence it is seen that the afore cited cases are basically those either in which the applicants have not availed of the other remedy or instituted belated applications for revision when the appeal was found to be subject to some defect. It was in such cases, the court has observed that it would have been intervening, notwithstanding the lapse on the part of the applicant, had the order been ex facie wrong or which shocks the conscience of court.

It seems to this Court that the phrase ' shocks the conscience ' came to be used in United States of America and Canada. It is stated that the term originally entered into the United States case law with the decision in Rochin v. California in 1952. It is **Rochin v. California, 342 U.S. 165[2],** decided by the Supreme Court of the United States that added behavior that "shocks the conscience" into tests of what violates due process. This balancing test is often criticized as having subsequently been used in a particularly subjective manner. Justice Felix Frankfurter, wrote the opinion of the court, with which no one dissented, only one Justice abstaining, which overturned the decision of California Supreme Court, which said illegally obtained evidence is admissible on a criminal charge in this state. Today, the phrase ' shocks the conscience of court ' is defined in United States as something that invokes which is the court's equitable power to decide issues based on notions of fairness and justice. The **Black's Law Dictionary,** online edition, defines conscience of court as 'This occurs when a matter of equity is decided by the court and it uses its

[2]https://supreme.justia.com/cases/federal/us/342/165/case.html.

conscience to decide the issue'. Law Dictionary: What is CONSCIENCE OF THE COURT? definition of CONSCIENCE OF THE COURT (Black's Law Dictionary)

However, in Rustom vs. Hapangama& Co., itself, Ismail J., considered decisions that said that in appropriate cases revisionary powers will be exercised whether the other remedy was availed or not or if that fails on some technicality. For example the Supreme Court referred to the judgment of T. S. Fernando J., in **Sinnathangam v. Meera Mohideen, 60 NLR 393** where it was stated, that,

> 'The Supreme Court possesses the power to set aside, in revision, an erroneous decision of the District Court in an appropriate case even though an appeal against such decision has been correctly held to have abated on the ground of non-compliance with some of the technical requirements in respect of the notice of security'.

Ismail J., further referred to the dictum of Pulle J., in **Abdul Cader v. Sittinisa 52 NLR 536,** which said,

> 'The respondents have not been in any manner prejudiced by the fact that the appellant in applying for the typed-written copy paid only Rs. 20/- instead of Rs. 25/-. Nonetheless we have in mind that the hearing was, as a matter of indulgence, by way of revision. In the ultimate result we have the satisfaction of knowing that we have interfered with the judgment of the Learned District Judge substantially on a point of law only'.

It was seen that the 'shocking the conscience of court' test, and considerations whether the order is ex facie wrong have been often applied when the petitioner failed to avail himself of the other remedy or when that fails on a technicality. However, as Ismail J., says in Rustom vs. Hapangama& Co.,

> 'The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these

powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise these powers in revision. If the existence of special circumstances does not exist then this Court will not exercise its powers in revision'.

For example, in Thilagaratnam vs. E. A. P. Edirisinghe 1982 (1) S. L. R. 56, considered above, where the petitioner's appeal failed due to a technicality, the Court of Appeal refused to exercise powers of revision in the revision application on the ground that it was belated.

In Sinnathangam v. Meera Mohideen, 60 NLR 393, referred to above, the appeal has failed, 'on the ground of non-compliance with some of the technical requirements in respect of the notice of security', but the Supreme Court decided to exercise revisionary powers.

In Abdul Cader v. Sittinisa 52 NLR 536, considered above, the court exercised revisionary powers taking into account, among other things, that the technical failure of the appeal has not prejudiced the respondents.

The question then is whether there are such special circumstances in the present case. The aforesaid authorities show that an erroneous decision has been considered as such a circumstance.

In the aforesaid case of Sinnathangam v. Meera Mohideen, 60 NLR 393, T. S. Fernando J., also said,

'The first of these is the case of Abdul Cader v. Sittinisa [1(1951) 52 N.L.R. 536.], where this Court, notwithstanding that an appeal had abated, heard the appellant by way of revision observing that it did so as a matter of indulgence and interfered with the judgment appealed from on a point of law. The other is a more recent and hitherto unreported decision- S. C. 309/D. C. Colombo 36064/M- S. C. Minutes of 17th March 1958-in which this Court while rejecting an appeal for non-compliance with the provisions of sections 755 and

756 of the Civil Procedure Code stated that it would be prepared to deal with the questions raised by way of revision as important questions of law arose on the appeal'.

Quite apart from aforesaid reasons, it may also be noted that in **FERNANDO v. CEYLON BREWERYS LTD. (1997) 1998 (03) S. L. R. 61,** decided by Upali de Z. Gunewardane J., in Court of Appeal, it was observed,

> 'It is to be observed that, if as argued by the counsel for the defendant-respondent, an application in revision in respect of an order is precluded by or in virtue of the fact that an appeal too lies in respect of the same order, then that would entail a dismissal or rejection of the application in revision and the two grounds, stated therein ie (a) and (b) above, impeaching the correctness of the order of the learned District Judge, would not arise for consideration'.

Having considered the dictum of Abrahams, CJ in Ameen v. Rasheed, that ' I can see no reason why the petitioner should expect us to exercise our revisional powers in his favour when he might have appealed and I would allow the preliminary objection and dismiss the application with costs ', His Lordship Gunewardane J., further observed,

> 'But the validity of the above reason for denying the relief in revision can no longer be accepted with favour inasmuch as the Court of Appeal in consequence of the amendment of section 753 by Act No. 79 of 1988 is now clothed with greater amplitude of power in making orders and is not confined, as formerly, ie before the aforesaid amendment, to making the same order which it might have made had the matter been brought before it by way of appeal. Since, prior to the amendment of section 753 the court could whilst acting in revision only make the same order as it could have made in the exercise of its appellate jurisdiction - the right of appeal and right in revision were justifiably treated as more or less, alternative remedies - available, more or less, in such a way that when one was

accepted or made available the other had to be rejected or refused. When, as was the case prior to the amendment of section 753 of the Civil Procedure Code, the reliefs available or the orders that could be made by the court, by way of appeal and revision, were conterminous or the same - it could legitimately and even logically be inquired or queried, as had been done by His Lordship, Abrahams, CJ, in the excerpt of the judgment cited above, as to why the revisionary process, which may be described as a privileged procedure, was invoked in preference to that of appeal,several advantages or benefits being attendant on the revisionary process which would not be available to one who seeks relief by way of an appeal (for instance one need not furnish security or keep to certain prescribed time-limits as in the case when one appeals against an order) - the recourse to revision was treated as an extraordinary procedure in contradistinction to the procedure of appeal which was considered to be the normal remedy, when the order in question was appealable - as is the order in this case before me'. Page 66

The amendment to which His Lordship referred to was that to section 753 made by Amendment Act No. 79 of 1988. Justice Gunewardane observed,

'The essence of the difference between the two forms of section 753 ie in its original and amended form is this: as the said section stood originally, the Court of Appeal or the Supreme Court in the exercise of its revisionary powers could have only made the same order which it might have made had the case been brought before it by way of an appeal**whereas in the amended form the section empowers** the Court of Appeal, in the exercise of its powers of revision, **to make any order as the interests of justice may require'.** Pages 64,65

His Lordship concluded,

'Thus it would be noticed that the amended section enables the court to be more flexible and less legalistic in its means and in approach in dealing with a matter for section 753 in its amended form seems to exalt not so much the rigour of the law but unalloyed justice, **in the sense of good-sense and fairness.** So that the basis of the rationale for insistence on the requirement of special circumstances as a condition - precedent to the exercise of revisionary powers had disappeared as a consequence of the amendment of section 753 of the Civil Procedure Code by virtue of which amendment the Court of Appeal is now freed from the duty or rather the necessity of making the same order as it would have made in appeal and is empowered to make any order as the interests of justice may require'. Page 65

In deciding FERNANDO v. CEYLON BREWERYS LTD., in 1997, Justice Gunewardane lamented that he has not been referred to any decision of superior courts on this question made after the aforesaid amendment.

The judgment in Rustom vs. Hapangama& Co. 1978-79-80 (1) S. L. R. 352, in which several other cases they also cite, had been referred to by Ismail J., was decided in 1980. The decision in Bank of Ceylon vs. Kaleel and others 2004 (1) S. L. R. 284, although decided in 2003, has not considered FERNANDO v. CEYLON BREWERYS LTD. It is so in several other cases such as Somindra vs. Surasena and others 2000 03 S.L.R. 159, Leslie Silva vs. Perera 2005 02 S.L.R. 184 and also in BengamuweDhammalokaThero vs. Dr. Cyril Anton Balasuriya S.C. Appeal No. 09/2002, S.C. spl. L.A. No. 242/2001 in favour of availability of revision too.

It appears to this Court hence, that in addition to reasons given for the aforesaid decision to exercise revisionary powers, based on considerations of traditional views requiring exceptional or special circumstances, including the existence of important question of law or possible existence of an error in the decision, the judgment in FERNANDO v. CEYLON BREWERYS LTD., is a strong

persuasive authority in favour of availability of revision, especially as the decision is based on the very construction of the words in the amended legal provision enacted by the legislature in its wisdom.

This reasoning apply in analogy to Article 138 of the Constitution also because the said Article does not say, like the old section 753, that, in revision the Court can make the same order, but gives wide powers to Court.

Though the decision in The Ceylon Brewery Limited vs. Jax Fernando, Proprietor, Maradana Wine Stores, 2001 decided in the Supreme Court by Mark Fernando J., overruled the above decision of U. de Z. Gunewardane J., it was done only in respect of the decision in the latter that an application made under section 86(2) of Civil Procedure Code can be allowed even if that was made one day after the stipulated time of 14 days. The Supreme Court said, " I therefore set aside the judgment of the Court of Appeal on that point". The decision pertaining to wider powers given by amended section 753, the ability of the court to make a justifiable order in revision and hence revision not being only an additional remedy granted on mere discretion was hence not set aside.

It must be said that the authorities based on section 753 of the Civil Procedure Code applies to the Court of Appeal on analogy, in this case, on two grounds,

(1) Article 138 of the Constitution, which gives revisionary powers to the Court of Appeal being on same lines, it says,

"138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be[committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things

[of which such High Court, Court of First Instance] tribunal or other institution may have taken cognizance :…"

(2) As the respondents too admits, in terms of section 9G of Mosques and Muslim Charitable Trusts or Wakfs Act No. 51 of 1956, the procedure applicable to the Wakfs Tribunal is the Procedure of the District Court, which is the Civil Procedure Code,

The Preliminary Objection in (iv) is "Does appeal lie from an Order emanating from a settlement?"

Now, apart from the allegations made by the petitioners in respect of the purported "settlement", this application is not only an application for revision. **The petitioners have invoked the power of restitutio in integrum of this Court.**

The petitioners in this respect cites, **Abeysekere vs. HaramanisAppu, 1911, 14 NLR 353.** There Wood Renton J., with Grenier J., said,

> "(1) Applications for restitutio in integrum should be made in open Court by petition supported by affidavit and by all the materials necessary for the purpose of making out a prima facie case for relief, such application being made to a Bench of one Judge, or of two Judges, according as the tribunal of first instance is the Court of Requests or the District Court, and not by petition addressed to the Judges in Chambers ; (2) the application should be in the first instance ex parte ; (3) if the Court is of opinion that a prima facie case for relief has been made out, notice must be given to the other side ; (4) if after hearing both sides the Supreme Court is satisfied that restitution should be granted, the case should be remitted for further inquiry and adjudication in the court of first instance ; (5) such adjudication, subject to an appeal where a right of appeal exists, is final".

The petitioners state, that, "although the Court of Appeal (Appellate Procedure) Rules, 1990 have superseded the procedure laid down by Wood Renton

J.,…there is still no requirement to plead exceptional circumstances in applications for restitutio in integrum”. This s correct.

But, indeed, there is an exceptional circumstance and that is the Wakfs Tribunal having issued an interim order ex parte giving a date seven weeks later as the notice returnable date. Even the Court of Appeal (Appellate Procedure) Rules, 1990 on which the respondents rely say, if the interim order is issued ex parte, the notice returnable date should be not later than 14 days.

In the circumstances, this Court is of the view that CA/WAKFS/01/2011 delivered on 26.06.2013 by Justice A. W. A. Salam, the Supreme Court case of SC Appeal 210/2015, Sikkandar Abdul Samad vs. Moosajee 1988 (2) CALR 147 at 148 and Wijesinghe vs. Tharmaratnam, Srikantha’s Law Reports (IV) at page 48 cited for the respondents have no application.

The respondents, neither in their oral submission (made by their learned counsel) nor in their above written submissions have denied that on 22nd March 2023 the control and management of the said Mosque washanded over to the petitioners by the Special Trustees.

Therefore, the status quo has to be maintained. The allegation of the respondents in their unnumbered page 5-6 of written submissions that on 14th March 2023, the Wakfs Board without taking into consideration the direction given by the Wakfs Tribunal (on an earlier occasion) haphazardly proceeded to appoint 01st to 05th respondent petitioners as Trustees cannot be considered at this stage. Since this application is not only revision but also restitutio in integrum this Court had jurisdiction to issue the interim orders it made on 06th April 2023 and extended up to today, i.e., 02nd May 2023, on 20th April 2023. Furthermore, even if this were a revision application alone there were exceptional circumstances, which shocked the conscience of the Court.

Hence, the preliminary objections are overruled and the interim orders are extended until the final determination of this application. There is no order on costs.

Judge of theCourt ofAppeal.