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

CA/WAKFS/01/2011

Wakfs Board No.WB/SP-197/2010/D

In the matter of an Appeal under Section 755(3) of the Civil Procedure Code read with Section 55(A) of the Muslim Mosque and Charitable Trust or Wakfs Act No.51 of 1956 as amended by Act No:21 of 1962 and Act No:33 of 1982.

1. Al-Hadji Seeni Mohamed Shahul Hameed.
2. Al-Hadji Ahamed Lebbe Abdul Samad.
3. Moulavi Meera Mohideen Uthumalebbe.
4. Ahamed Lebbe Sulaiman Lebbe.

All persons-in-charge of Al-Masjidul Sabooriya, New Road, Kalmunai Kudy-14.

Petitioners.

Vs.

1. A.H. Aliyar, No. 139B, Town Hall Road, Kalmunai-14.
2. A.L. Fowzer, No. 316B, Zahira College Road, Kalmunai-14.
3. A.L. Ibralebbe, No. 219/A, New Road, Kalmunai Kudy-13.
4. A.L. Naffeer, No. 232/A, New Road, Kalmunai Kudy-14.
5. M.M.M. Gaffoor, No. 289/B, Balika Lane, Kalmunai Kudy-14.
6. M.H. Jaufer, No. 155/A, Town Hall Road, Kalmunai Kudy-13.
7. M.H.M. Ibrahim, No.94/A, Town Hall Road, Kalmunai Kudy-13.
8. M.H. Issath, No. 252, New Road, Kalmunai Kudy-14.
9. M.M.M. Ramzeen, No. 315, Zahira College Road, Kalmunai Kudy-14.
10. S.H.A. Naleemm No. 242/A, New Road, Kalmunai Kudy-14.
11. U.L. Sainu Labdeen, No. 152/1, New Road, Kalmunai Kudy-13.

Respondent-Respondents.

1. Al-Hadji Seeni Mohamed Shahul Hameed.
2. Al-Hadji Ahamed Lebbe Abdul Samad.
3. Moulavi Meera Mohideen Uthumalebbe.
4. Ahamed Lebbe Sulaiman Lebbe.

All persons-in-charge of Al-Masjidul Sabooriya, New Road, Kalmunai Kudy-14.

Petitioner-Appellants-Appellants.

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11 U.L. Sainu Labdeen, No. 152/1, New Road, Kalmunai Kudy-13.

Respondent-Respondents.

And now Between.

1. Al-Hadji Seeni Mohamed Shahul Hameed.
2. Al-Hadji Ahamed Lebbe Abdul Samad.
3. Moulavi Meera Mohideen Uthumalebbe.
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Respondent-Respondents-

Respondents.

BEFORE : Sisira de Abrew, J.,
Anil Gooneratne, J. &
A.W.A. Salam, J.

COUNSEL : Farook Thahir with A.L.N. Mohamed, N.M. Reyaz and N.L. Yusuf for the Petitioners-Appellants-Appellants.
M. Yusuf Nasar for the Respondents-Respondents-Respondents.
ARGUED ON: 06.05.2013.
DECIDED ON: 26.06.2013.

A W A Salam, J

The Muslim Mosque and Charitable Trusts or Wakfs Act (hereinafter referred to as the "Act") provides, inter alia, for the registration of Mosques, Muslim Shrines and Places of Religious Resort. For the purposes of the Act a "Wakfs Board" consisting of a Director and seven other Members are appointed by the Minister in charge of the subject of Muslim Affairs. Confirmation and appointment of Trustees of Registered Mosques are some of the primary duties of the Wakfs Board.

Certain decisions of the Wakfs Board including an order of confirmation and appointment of trustees of a Mosque are appealable to the Wakfs Tribunal. The Members of the Tribunal are appointed by the Judicial Service Commission. The Tribunal is obliged to follow the procedure of a District Court and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code.

Every order made by the Tribunal shall be deemed to be an order made by a District Court and the provisions of the Civil Procedure Code governing appeals from orders and judgments of a District Court shall, *mutatis mutandis*, apply to and in relation to appeals from orders of the Tribunal. For the purposes of dealing with offences of contempt against the authority of the Tribunal, the Provisions of Section 55 of the Judicature Act, No. 2 of 1978, shall, *mutatis mutandis*, apply as though the references therein to a District Court were references to the Tribunal.

Having briefly referred to the composition, duties and the conduct of the affairs of the Board and the Tribunal with a brief account of the nature of the right of appeal available from the decision of the Tribunal, I propose to set out the background to the present appeal in some detail.

The Petitioner-Appellants-Appellants (hereinafter referred to as the "appellants") together with 7 others were

appointed as the Trustees of Masjudul Saburiya[1] by the Wakfs Board and upon the expiry of their term of office, they continued to function as persons in-charge of the Masjid and carried on with the management of its affairs. While acting as persons in charge of the Masjid as empowered under Section 14 (3) of the Act, the appellants were re-elected in their former capacity by the congregation on 24.12.2009, amidst an objection raised by the congregation against the election of one M H M Ibrahim. At that point of time the representative of Wakfs Division who was present at the meeting of the congregation undertook to bring it to the notice of the Wakfs Board. Thereafter, by letter dated 23.2.2010, the Director of the Wakfs Board, requested the Trustees of the Kalmunaikudy Jumma Masjid to administer and manage the Masjid in question for a period of 2 months as the selection of the Trustees for the particular Masjid on 24.12.2009 could not be completed due to unavoidable circumstances.

Notwithstanding the request made by the Director, the Trustees of the Kalmunaikkudy Jumma mosque had requested the appellants to continue with the administration and management of the said mosque. While the status quo remained as such, the appellants received a letter dated 11.5.2010, requesting them to handover the administration and documents to the Jumma Mosque Kalmunaikkudy, but the appellants had

[1] Saburiya Mosque

not complied with the said direction as they felt that the said direction is contrary to law. Subsequently, the appellants had visited the Wakfs Division and were informed that the Wakfs Board had appointed 11 Trustees who are the respondents-respondents-respondents, referred to hereinafter as "respondents".

Aggrieved by the said decision of the Wakfs Board the appellants preferred an appeal, which was dismissed by the Wakfs Tribunal. Being dissatisfied with the said order of the Tribunal delivered in the exercise of its appellate jurisdiction on 28.5.2011, the appellants have preferred the present appeal to this court, *inter alia* on the following grounds.

1. That the judgement of the Wakfs Tribunal is contrary to law.
2. At the time the said order dated 5.5.2010 was made appointing the respondents as Trustees, the Wakfs Board was not in existence, and the Director had made the said order allegedly acting for and on behalf of the Wakfs Board, on the basis that he is empowered to do so, under section 9 (8) (b) of the Act.
3. That under section 9 (8) (b) of the Wakfs Act, the Director has no authority or power to appoint Trustees, in as much as only under Section 7 of the Wakfs Act, the Director has some powers.
4. That the Tribunal erred in interpreting section 9 (8) (b) and section 7 of the Wakfs Act when it came to the conclusion that the Director has power to perform the function of the Wakfs Board, in the absence of the Board.

5. In any event the Tribunal has failed to appreciate that the said order dated 5.5.2010 has been made without regard to the past practices relating to the appointment of Trustees.
6. The Wakfs Tribunal failed to address its mind to the fact that the said order has been made in violation of the rules of natural justice in that the appellants were not given a hearing before the Wakfs Board.
7. The Wakfs Tribunal has failed to address its mind to the authorities cited by the appellants resulting in a misdirection of law and facts.

At the hearing of the appeal the learned Counsel for the Respondents raised two preliminary objections as regards the maintainability of the appeal. The first objection was that that a direct appeal does not lie from the order of the Wakfs Tribunal and an aggrieved party has to resort to a "leave to appeal" application in the event of his being desirous of challenging the validity of an order of the Wakfs Tribunal.

On this question both Counsel cited different judgements wherein conflicting views had been expressed on the point of law raised. The bench at that time was comprised of a single judge which elected to refer the appeal to His Lordship the President of the Court to consider the constitution of a Divisional Bench to hear and dispose of the appeal with a view to resolve the conflict. Consequent upon such reference, His Lordship the President was pleased to constitute the present bench to hear and dispose of the appeal. Being mindful of what prompted

the constitution of the divisional bench, I now venture to discuss briefly the pivotal question as to whether a direct appeal is available against the final order of the Wakfs Tribunal or such an order is impugnable only by way of an interlocutory appeal with the prior leave of the court first had and obtained. Undoubtedly, if the answer to the question is in favour of a direct appeal, then a party aggrieved by a final decision of the Tribunal shall enjoy the full right of appeal. If on the other hand, the answer is to the contrary, then the resultant position would be that only a restricted right of appeal shall lie with the leave of Court first had and obtained.

At this stage, it is useful to make a reference to the two lines of decisions in a nutshell, as it transpired in the course of the argument. In point of time the first ever decision on this issue pronounced was on 1st December 1988 in Ameer & others (Special Trustees Devatagaha Mosque & Shrine) Vs Salie and others[2] where a bench of two judges headed by Jayawiickrama J, resolved the issue with Vigneswaran, J concurring in favour of the availability of a direct appeal. This followed a decision on 1st November 1991 in which S.N.Silva, Judge of the Court of Appeal (later Chief Justice) sitting as a single judge of the Court of Appeal expressed a different view in Halwan Vs Kaleelul Rahaman[3]. Later in Rahman Vs Ajmal[4]

[2] 1999-3 SLR 312 (Court of Appeal)
[3] 2000 SLR Volume 3 at page 350
[4] Bar Association Law Journal 2004 at page 15, Al-Ameen Law Report Vol III page 91 and Sri Lanka Law Report Volume 2 Page 250)

decided on 5th October 2004 Saleem Marsoof J, President - CA (presently Judge of the Supreme Court) with S. Sri Skansarajah J. (presently President of the Court of Appeal) associating, followed the reasoning in Halwan's case and laid down that an interlocutory appeal against an order of the Wakfs Tribunal is not misconceived. Yet another decision touching upon the right of appeal from the Wakfs Tribunal to the Court of Appeal is reported in Ameen & others Vs Mohideen & others[5] where Chandra Ekanayaka, J (presently Judge of the Supreme Court) with S. Sri Skansarajah J took a different view.

In Ameer & others (Special Trustees Devatagaha Mosque & Shrine) Vs Salie and others 1999 3 SLR 312 (Court of Appeal) dealt with the nature of the right to challenge an order of the Wakfs Tribunal. In that case the appellants sought to canvass the order of the Wakfs Tribunal dismissing an appeal. It was contended by the respondents (as a preliminary objection) that the proper procedure was to challenge the same by way of leave of court first had and obtained as required under Section 55 (A) of the Wakfs Act read with regulation 37 and Section 754 (2) of the Civil Procedure Code. Jayawickrama, J displaying an admirable meticulousness, interpreted the relevant Provisions of the Act, read with the pertinent Provisions of the Civil procedure Code, **as a Statutory right of appeal conferred on an aggrieved party which**

[5] 2006 2 SLR 107

cannot lightly be disturbed or snatched away[6]. In a well-reasoned out judgment His Lordship held that regulation 37 which purports to lay down that a party aggrieved by any final order made by Wakfs Tribunal may apply by petition to the Court of Appeal for "leave to appeal" against such order, is ultra vires.

It is worthwhile to observe at this juncture, that the Act of Parliament provided a right of appeal under Section 55 (A) and therefore the Court held that regulations cannot be framed in respect of a matter specifically provided for in the Act. His Lordship further elaborating on it, observed that Section 754 (1) of the Civil Procedure Code is applicable to a judgment whereas Section 754 (2) is applicable to an order made in the course of any civil action, proceeding or matter. Hence, the order appealed against in Ameer & others (Special Trustees Devatagaha Mosque & Shrine) Vs Salie (supra) was held to be a decision that emanates from an order which is the final expression of the Wakfs Tribunal and therefore an appeal under Section 754 (1) of the Civil Procedure Code was available.

The basis of this decision was that when a substantive Act provides a right of appeal as in the case of Section 55[A], no regulation can be framed to provide for a procedure disentitling such a right. The Court of Appeal in this case quite rightly, after considering the Provisions

[6] Emphasis is mine

of the Civil Procedure Code relating to appeals held that section 55(A) embraces both "leave to appeal" and a "direct appeal" and in this particular instance, since this was a final order made by the Wakfs Tribunal that an appeal lies from the said order.

At the hearing of the present appeal the respondents relied on the judgement of the Court of Appeal in Halwan Vs Kaleelul Rahaman 2000 3 SLR 50 where S.N Silva J (later Chief Justice) expressed an opinion that Section 55(A) read with the Provisions of the Civil Procedure Code contemplates only one type of appeal that is "leave to appeal" and does not provide for a direct appeal.

The circumstances that led up to the filing of Halwan's case and the binding effect of the decision in that case need to be referred to at this stage. Halwan's case was filed for a writ of *cetiorari* and *mandamus* against the final order of the Wakfs Tribunal. In the course of the hearing the application for prerogative writs applied for in Halwan's case, it came to light that Halwan, the petitioner had previously filed a direct appeal and a "leave to appeal" application but did not pursue the same. As the petitioner Halwan had failed to disclose his having previously invoked the appellate jurisdiction, the Court of Appeal refused the application for writ of *cetiorari* and *mandamus* on the ground of suppression of material particulars or failure to disclose material facts. Quite significantly, whether the order of the Tribunal attracted

a direct appeal or "leave to appeal" was not an issue before court in Halwans's case. Therefore the opinion expressed by Sarath N Silva J in Halwan's case is nothing but an opinion voiced by His Lordship on a point of law not directly bearing on the case in question and therefore not binding as it had been expressed obiter.

In Amin Vs Mohideen the petitioner filed a revision application in the Court of Appeal which was dismissed on the ground that no revision lies when there is an alternative remedy. It was also observed in this case that the petitioner had previously filed a "leave to appeal" application in the Court of Appeal and the revision application was therefore refused on the ground that the correct remedy is to come by way of "direct appeal" and not by way of "leave to appeal".

The respondents also cited the judgment of the Court of Appeal in Rahuman Vs Ajmal (supra) where Saleem Marsoof P/CA then, took the view that the "leave to appeal" application against the order of the Wakfs Tribunal was not misconceived and that no "direct appeal" lies against an order of the Wakfs Tribunal.

In deciding as to the non availability of a direct appeal from the order of the Wakfs Tribunal in Rahuman Vs Ajmal, Saleem Marssoof J, appears to have followed the obiter dictum and the reasoning adopted by Sarath Silva J, in Halwan's case where the court expressed the

opinion that no "direct appeal" lies against an order of the Wakfs Tribunal. In coming to this conclusion Saleem Marsoof, J has considered the impact of regulation 37 which was subsequently approved by Parliament on 14 September 1997.

Even if the regulation 37 dealt by Jayawickrama, J in Ameer & others (Special Trustees Devatagaha Mosque & Shrine) had been approved by Parliament even at that time yet the proposition of law that the subordinate law cannot supersede the substantial law cannot be disregarded.

In Ranbanda Vs River Valley Development Board 71 NLR 25, the Minister, purporting to act under the rule-making powers conferred on him by certain Sections of the Industrial Disputes Act, made Regulation No.16 of the Industrial Disputes Regulations-1958. Regulation 16 provided that every application under paragraph (a) or (b) of section 31B (1) of the Industrial Disputes Act shall be made within 3 months of the date of termination of the services of a workman. The appellant, whose services were terminated by his employer (the respondent) in the year 1957, filed an application before a Labour Tribunal on 14 August 1965, seeking relief against his dismissal. His application was rejected by the Labour Tribunal on the ground that the date of dismissal was more than three months anterior to the application.

In appeal, it was held that the Regulation 16 is ultra vires of the rule-making powers conferred on the Minister by sections 31A (2), 39 (1) (a), 39 (1) (b), 39 (1) (ff) and 39 (1) (h) of the Industrial Disputes Act inasmuch as it had taken away from the workman, on the expiry of the stated period of three months, the right given to him by the Legislature to apply to a Labour Tribunal for relief, and to that extent nullifies or repeals the principal Enactment.

The duty of interpreting the regulation and the parent Act in order to see whether the former falls within the scope allowed by the latter devolves on the courts alone and it was held that the regulation made under Industrial Disputes Act cannot supersede the Provisions of the Law.

In the judgement of Rahuman Vs Ajmal, the Court has also failed to consider the concept of finality test recognised in the case of Siriwardene Vs Air Ceylon Ltd [7].

It is now settled law that when an order had finally disposed of the rights of the parties it gives rise to a direct appeal, irrespective of the fact whether it is an order or judgment. Undoubtedly, quite often there are very many orders are made by courts having the effect of judgments. as in the case of section 754 (2) of the Civil Procedure Code. In such cases although it is called an

[7] ([1984] 1 Sri L.R. 286)

"order" it has the effect of a "judgement" which attracts a "direct appeal".

Ranjit Vs Kusumawathie and others- Supreme Court - 1998 SLR Vol 3 232 is another decision that cannot be simply disregarded. This judgment deals with the question as to the meaning to be given to the word judgment for purposes of an appeal under Partition Law, No. 21 of 1977, when the district court makes an order under Section 48 (4) (a) (iv) of the partition Law. It was held in that case that when the District Court rejected an application made by a defendant in terms of Section 48 (4) (a) (iv) of the Partition Law, No. 21 of 1979, such an order of the District Court is not a judgment within the meaning of Sections 754 (1) and 754 (5) of the Civil Procedure Code for the purpose of an appeal but it is an order within the meaning of Section 754 (2) of the Code from which an appeal may be made with the leave of the Court of Appeal first had and obtained.

As regards the test to ascertain whether a decision has to be treated as final or interlocutory order two different tests have been adopted in the past. In White vs. Brunton (1984) 2 All ER 606, Sir John Donaldson MR labelled the two tests as order approach and application approach. The order approach was adopted in Shubrook Vs. Tufnell (1882) 9 QBD 621 and (1881-8) All ER 180) where Jessel, MR and Lindely, LJ, held that an order is final if it finally determines the matter in litigation. Thus the issue

of finality and interlocutory depended on the nature of the order made.

In this context, it is appropriate to refer to the judgment in Ranjit vs Kusumawathi and others (supra) once again, where Justice Dheeraratne considering the test that should be adopted to decide a final judgment or order or an order in terms of section 754(5) of the Civil Procedure Code, went on to refer to the two tests, which were referred to as the 'order approach' and the 'application approach' by Sir John Donaldson MR., in White vs Brunton ([1984] 2 All E.R. 606). As stated above the order approach had been adopted in Shubrook vs Tufnell ((1882) 9 Q.B.D. 621) whereas the application approach was adopted in Salaman vs Warner (supra). Later in Bozson vs Altrincham Urban District Council (supra), the Court had considered the question as to whether an order made in an action was final or interlocutory and reverted to the order approach. In deciding so, Lord Alverstone, C.J., stated that the real test for determining this question is whether the judgment or order, as made, finally disposes of the rights of the parties? His Lordship then went on to state that it does, then it ought to be treated as a final order.

The judgment in Ranjith Vs Kusumawatie was endorsed by a five bench division of the Supreme Court headed by His Lordship Asoka de Silva CJ, in Rajendran Chettiar Vs

Narayanan Chettiar where the judgment was written by Shirani Bandaranayake, J (later Chief Justice)[8]. When the principles and guidelines enunciated in S. Rajendran Chettiar's case are applied to the facts of the present case, it is abundantly clear that the impugned order of the Wakfs Tribunal has finally disposed of the rights of the parties with regard to the impugned decision of the Wakfs Board and Wakfs Tribunal and therefore ought to be treated as being final in the strict sense of the word.

As has been submitted by the appellant, the judgment in Rahuman Vs Ajmal has been decided following the obiter dictum in Halwan's case and I am not inclined to follow the decision in Rahuman's case or Halwan's case in so far as the question of the right of appeal is concerned. In the circumstances, I am totally in agreement with the contention of the learned Counsel for the appellants' on this aspect of the matter and therefore rule out the preliminary objection. Hence, it is my considered view that a "direct appeal" lies against the order of the Wakfs Tribunal to the Court of Appeal in terms of Article 138 of the Constitution, if such an order has finally disposed the rights of the parties and an interlocutory appeal lies to the Court of appeal against an incidental order made by the Wakfs Tribunal in the course of hearing an appeal.

The other preliminary objection raised by the respondents was that the Court of Appeal has no jurisdiction to hear

[8] S.C. (Appeal) No. 101 A /2009 S.C. H.C. (C.A.) L.A. No. 174/2008

and determine the appeal, inasmuch as no right of appeal is available against an order of the Wakfs Tribunal to the Court of appeal and if at all any such appeal should have been preferred to the Civil Appellate High Court of the Provinces in terms of the High Court of Provinces (Special Provisions) Act No 19 of 1990 read with Section 5 (A) of Act No 54 of 2006.

The learned Counsel of the respondents contended that the exclusive jurisdiction to hear and determine an appeal from the Wakfs Tribunal is vested in the Civil Appellate High Courts of the Provinces and if I had understood the Counsel correct, his contention was that the Wakfs Tribunal sits in Colombo and an appeal against the order of the said Tribunal should be made to the Civil Appellate High Court holden in Western Province. As far as I am aware the Wakfs Tribunal exercises Island wide jurisdiction and it can sit anywhere in the Island within any judicial district unlike a District Court which exercises territorial jurisdiction only over its judicial district. His argument was that that under Section under 55 (A) Wakfs Act every order made by the Wakfs Tribunal shall be deemed to be an order made by a district court and the Provisions of the Civil Procedure Code governing appeals from orders and judgements of the district court shall *mutatis mutandis* apply as references made therein to district courts were references to the Wakfs Tribunal.

The contention of the learned Counsel arises from Section 55 A of the Muslim Mosques and Charitable Trust or Wakfs Act. In terms of Section 55(A) of the Act, every order made by the Tribunal shall be deemed to be an order made by a district court and the provisions of the Civil Procedure Code governing appeals from orders and judgements of a district court shall *mutatis mutandis* apply as though the reference therein to district courts were references to the Tribunal.

It was submitted by the learned Counsel for the appellant that 55A of the Act, does not state that the Wakfs Tribunal is deemed to be a district court but only states that the orders made by the Wakfs Tribunal are deemed to be orders of the district court.

It is to be noted that in terms of the High Court of Province's (Special Provisions) Act No 19 of 1990 read with Section 5 (A) of the amending Act No 54 of 2006 the High Court established by Article 154P of the Constitution shall exercise appellate and revisionary jurisdiction in respect of judgements, decrees and orders delivered and made by the district or family courts within such province.

The expression "deemed" or the legal fiction used in several Statutory Provisions has been the subject of discussion in many authorities. The meaning of the word 'deemed' was considered and explained by Ranasinghe, J.

(later Chief Justice) in Jinawathi Vs. Emalin- 1986 2 Sri LR 121 in the following words....

> "In statutes, the expression deemed is commonly used for the purpose of creating a statutory fiction so that a meaning of a term is extended to a subject-matter which it properly does not designate. Thus, where a person is deemed to be something it only means that where he is in reality not that something but the Act of Parliament requires him to be treated as if he were. Thus, where in pursuance of a Statutory direction a thing has to be treated as something which in reality it is not or an imaginary state of affairs is to be treated as real, then not only will it have to be treated so during the entire course of the proceedings in which such assumption is made but all attendant consequences and incidents, which if the imagined state of affairs had existed would inevitably have flowed from it have also to be imagined or treated as real"

The above statement of law adopted by Ranasingha, J was followed in the case of Kotagala Plantations Ltd Vs Kularatna and others reported in 2002 SLR Volume 2 at page 392. In Adhikaram Vs Rathnawathie Bandara 1990 SLR Volume 1 at page 129 the Court of Appeal held that the fiction created by a deeming Provision must be given

effect to by the Courts in the form and in the manner contemplated by the relevant Statute.

In the light of the interpretation adopted to unfold the meaning of the deeming Provisions in the Wakfs Act, the order made by the Wakfs Tribunal shall be extended as an order made by a district court and it only means that it is an order of a district court although it is not in reality a district court order. This does not mean that the Wakfs Tribunal is a district court. To be accurate only the orders made by the Tribunal has to be treated as an order of the district court particularly for purpose of appeals. In terms of the High Court of Provinces (Special Provisions) Act No 19 of 1990 read with section 5 (A) of the amending Act No 54 of 2006, the High Court established by article 154P of the Constitution shall exercise appellate and revisionary jurisdiction in respect of judgements, decrees and orders delivered and made by the district or family courts within such Province. As far as the district courts are concerned there are several district courts within every province but as regards the Wakfs Tribunal there is only one Tribunal for the whole Island.

Members to the Wakfs Tribunal are appointed by the Judicial Service Commission in terms of Section 9 D of the Act. The Wakfs Tribunal is expected to hear cases from all nine provinces covering every judicial district in the Island. In such a situation, it is impracticable to

ascertain in which province or judicial district the Wakfs Tribunal falls to ascertain to which High Court of the Province an appeal should be preferred to invoke the appellate jurisdiction against the orders of the Wakfs Tribunal.

According to the deeming provisions of the Wakfs Act as it is only the order delivered by the Tribunal is deemed to have been pronounced by a district court and not that the Tribunal which pronounced the order is deemed to be a district court, it is untenable to assume that an order of the Wakfs Tribunal is appealable to the High Court established by Article 154P exercising civil appellate jurisdiction.

In the circumstances, the enabling Provisions to invoke the appellate jurisdiction from an order of the Wakfs Tribunal should mean the appellate jurisdiction of the Court of Appeal, as contemplated by Article 138 of the Constitution and not the appellate jurisdiction of the High Court under Section 5A of Act No 54 of 2006. Therefore my conclusion is that the Wakfs Tribunal cannot be deemed to be district court of any such Province as contemplated by the High Court of Provinces (Special Provisions) Act No 19 of 1990 read with section 5 (A) of the amending Act No 54 2006.

Therefore the contention of the respondents that the exclusive jurisdiction to hear appeals from the Wakfs

Tribunal is vested in the Civil Appellate High Court is not only unsustainable but does not render the objectives of the several provisions of the Wakfs Act meaningful or workable either. Therefore, it is my considered view that only the Court of Appeal has the jurisdiction to hear and determine an appeal from the Wakfs Tribunal unlike in the case of an order or judgement of the district court or family court, the appellate powers and revisionary jurisdiction over which the High Courts of the provinces exercise a concurrent jurisdiction along with the Court of Appeal.

The preliminary objection therefore is ruled out subject to costs fixed at Rs. 5250/- and the appeal is noted to be set down for argument in due course on its merits.

Judge of the Court of Appeal

I agree
Sisira de Abrew,J

Judge of the Court of Appeal

I agree
Anil Gunaratna, J

Judge of the Court of Appeal

NR/-