

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRP.No. 511 of 2006 ()

AGAINST THE ORDER/JUDGMENT IN AS 1/2002 of WAKF TRIBUNAL,
KOZHIKODE DATED 28-09-2005

REVISION PETITIONER(S)/IST RESPONDENT:

K.V.MOYINKUTTY @ MOYIN BAPPU
S/O.VALIYATHODI MOHAMMED, VALIYATHODI HOUSE
CHERUVAYOOR AMSOM AND DESOM, POST CHERUVAYUR
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT(S) :/APPELLANTS & RESPONDENTS 2 & 3

1. A.P.KUNHAYISHA, D/O.SAINUDHEENKUTTY,
SAJ HOUSE, VANMUGHAM AMSOM AND DESOM,
POST KADALUR
KOYILANDY TALUK, KOZHIKODE DISTRICT.
2. CHERUKUTTY LEELA, D/O.KELAPPAN,
RESIDING AT ARAVATH THAZHENILATH
KUNIYIL THIRIKKOTTUR AMSOM AND DESOM,
POST THIKKODI
KOYILANDY TALUK, KOZHIKODE DISTRICT.
3. A.P.RAZEENA, D/O.LATE KUTTIMAMMU,
'RAFA', THRIKKOTTUR AMSOM, PALOOR DESOM
THIKKODI POST, KOYILANDY TALUK,
KOZHIKODE DISTRICT.
4. P.V.MUHAMMED JAFER, S/O.KUTTIMAMMU,
SAJ HOUSE, VANMUGHAM AMSOM AND DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

5. P.V.AFEEFA, D/O.KUTTIMAMMU,
VALIYAPARAMBA HOUSE, THRIKKOTTUR VILLAGE
POST THIKKODI, KOYILANDY TALUK,
KOZHIKODE DISTRICT.
6. K.P.MOHAMMED, S/O.KUNHAMMED,
PALAPPURAM HOUSE, VAZHAKKAD AMSOM AND DESOM
POST VAZHAKKAD, ERNAD TALUK,
MALAPPURAM DISTRICT.
7. KERALA WAKF BOARD HAVING ITS OFFICE
SITUATED AT PARAMARA ROAD, ERNAKULAM
COCHIN-682 018 AND
REPRESENTED BY ITS SECRETARY.

R1 TO 3 & 5 BY ADV. SRI.C.KHALID
R1 TO 3 & 5 BY ADV. SRI.R.O.MUHAMED SHEMEEM
R1 TO 3 & 5 BY ADV. SRI.T.P.SAJID
R4 BY ADV. SMT.P.VANDANA
R7 BY ADV. SRI.K.SHIBILI NAHA, SC,
KERALA STATE WAKF BOARD
R7 BY ADV. SRI.M.M.SAIDU MUHAMMED, SC, WAKF BOARD

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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CRP No.511 of 2006
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Dated this the 4th day of December, 2015.

O R D E R

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel for the revision petitioner, the learned counsel for the contesting respondents and the learned standing counsel for the Wakf Board.
2. K.V.Moyinkutty @ Moyin Bappu filed an application before the Wakf Board contending that a particular item of property has been transferred by the then mutawalli of a wakf in violation of the restrictions under the Wakf Act, 1995, 'the Act', for short. The Wakf Board considered objections to that application and held that the transfer is in violation of the Act. It virtually ignored the fact that the transferee under the impugned transaction had obtained certificate of purchase through the Land Tribunal in terms of the provisions of Act 1 of 1964. It, accordingly, proceeded to request the District Collector for dispossession of

the persons in occupation. On appeal, the Wakf Tribunal held that the register maintained by the wakf does not include a particular property as part of the wakf properties and that the transaction stood with certificate under the Kerala Land Reforms Act, 1963.

3.No oral evidence was tendered by either side before the Wakf Tribunal. The Advocate Commissioner's report and the plan were marked as Exts.C1 and C2. Ext.X1 is a book produced by the parties who were appellants before the Tribunal to evidence collection of funds etc. One thing is certain. The Wakf Board could not have requested the District Collector to intervene in the matter, unless it had moved the appropriate authority under Act 1 of 1964 against the certificate of purchase. That apart, there ought to have been a definite enquiry as to whether the property claimed by the applicants before the Wakf Board was actually included in the register of wakfs and wakf properties. We are of the view that a further enquiry in this line needs to be made by

the Wakf Board.

For the aforesaid reasons, this revision is allowed setting aside the impugned decision of the Wakf Tribunal and the order of the Wakf Board dated 08.01.2002, which was challenged before the Tribunal, and the case is remitted to the Wakf Board for reconsideration of the application, in accordance with law, after affording an opportunity of hearing to the petitioners. If any further evidence is to be tendered or any further pleading is to be placed on record, that will also be entertained by the Wakf Board. Parties are directed to appear before the Wakf Board on 28.01.2016.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)