

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRP(WAKF).No. 156 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN OS 56/2011 of WAKF TRIBUNAL, KOZHIKODE
DATED 28-01-2012

PETITIONER:

SEETHI MARAKKARAKATH ALIKOYA WAKF,
A WAKF REGISTERED BEFORE THE KERALA
STATE WAKF BOARD, (REG.NO.6139/RA),
REPRESENTED BY ITS MUTHAVALLY
S.V.IMBICHI PATHUMABI, RESIDING AT
PREMIER VILLA, 15/691,
MANANTHALAPALAM, KALLAI,
NAGARAM AMSOM, KOZHIKODE - 3.

BY ADVS.SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.S.IMTHIYAZ AHAMMED

RESPONDENTS:

1. KANCHANA,
D/O.SREEBAI, RETIRED TEACHER 17/1363, PULIKKAL
PARAMBA, CHATAVALAPPU, KASABA AMSOM AND
DESOM, KOZHIKODE TALUK AND DISTRICT, PIN - 673 001.
2. THE KERALA STATE WAKF BOARD,
BY ITS CHIEF EXECUTIVE OFFICER, KERALA STATE WAKF
BOARD, REGIONAL OFFICE, EROTH CENTRE, BANK ROAD,
KOZHIKODE-1, KASABA AMSOM, DESOM, KOZHIKODE
TALUK, PIN - 673 001.

R1 BY ADV. SRI.AVM.SALAHUDIN
R2 BY SC SRI.SHIBILINAH

THIS CRP (WAKF ACT) HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

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C.R.P.(Wakf) No.156 of 2012

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Dated this the 15th day of October, 2015

ORDER

Thottathil B.Radhakrishnan, J.

- 1.The first defendant in a suit filed by the first respondent before the Wakf Board is the revision petitioner. The plaintiff filed the suit challenging a decision of the Wakf Board. The first defendant pleaded that the suit is not maintainable. The Tribunal, through the impugned order, held that the suit is maintainable.
- 2.Heard the learned counsel for the revision petitioner, the learned counsel for the first respondent and the learned Standing Counsel for the Wakf Board.
- 3.Sub-section (5) of Section 83 of the Wakf Act, 1995 enjoins that the Wakf Tribunal shall be deemed to be a civil court and the provisions of the Code of Civil Procedure shall apply, while

trying the suit and executing a decree or order. Therefore, the provisions of Order XIV C.P.C would govern settlement of issues and determination of suits on issues of law or on issues agreed upon, in proceedings before the Tribunal as well. Sub-rule 2 of Rule 2 of Order XIV clearly stipulates that an issue can be tried as a preliminary issue, that is to say, an issue can be tried first only if the court is of the view that the suit can be disposed of on an issue of law only. As is vivid from the impugned order, the conclusion of the learned Tribunal that the suit is maintainable does not result in disposal of the suit on that issue of law only. Therefore, recourse to that provision could not have been made to pass an order on the issue of maintainability at the threshold. Secondly and more importantly, the issues of law on which the suit could be disposed of are only issues relating to jurisdiction and bar of suit created by any law for the time being in force. It obviously means that any mixed question of fact and law when called upon to determine to answer an issue of jurisdiction or bar to suit cannot be considered as a preliminary issue, even if the resultant decision of the Tribunal or Court would be dismissal

of the suit. This way also, the impugned order has to go.

4. For the aforesaid reasons, the impugned order is liable to be vacated paving way for the learned Tribunal to decide the question on maintainability at the final adjudication of the suit pending before it.

In the result, the CRP is allowed, vacating the impugned order and the suit will stand remitted for reconsideration of all issues, including the issue of maintainability, in the light of what is stated above. The parties are directed to mark appearance before the Tribunal on 29.10.2015.

Thottathil B. Radhakrishnan, Judge

Anu Sivaraman, Judge