

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

CRP.No. 456 of 2011  
-----

AGAINST THE JUDGMENT IN OS 4/2010 of WAKF TRIBUNAL, KOZHIKODE DATED 14-07-2011

REVISION PETITIONER:  
-----

- 1.PERUVALLUR SIDHIKKABAD NUSRATHUL ISLAM  
SANGHAM, JUMA-ATH PALLI COMMITTEE  
REPRESENTED BY PRESIDENT KUNHAMMED HAJI  
S/O.MOIDEENKUTTY HAJI, PERUVALLUR AMSOM  
KERTHALLUR DESOM, THIRURANGADI TALUK  
MALAPPURAM DISTRICT.
- 2.PERUVALLUR SIDHIKKABAD NUSRATHUL ISLAM  
SANGHAM, JUMA-ATH PALLI COMMITTEE  
REPRESENTED BY SECRETARY CHERANCHERY ABDULLA HAJI  
S/O.KHADER, PERUVALLUR AMSOM KERTHALLUR DESOM  
THIRURANGADI TALUK MALAPPURAM DISTRICT.

BY ADVS.SRI.R.RAMADAS  
SRI.T.SIVADASAN

RESPONDENTS:  
-----

- 1.KAMMUKKUTTY HAJI  
S/O.MOIDEENKUTTY HAJI, PAMANGADAN HOUSE  
PERUVALLUR AMSOM, KERTHALLUR DESOM, THIRURANGADI TALUK  
MALAPPURAM DISTRICT 676 306.
- 2.ALAVIKUTTY HAJI, S/O.ALI  
MATTARA KANNACHERRY, PERUVALLUR AMSOM  
THIRURANGADI TALUK, MALAPPURAM DISTRICT 676 306.
- 3.KERALA STATE WAKF BOARD  
REPRESENTED BY CHIEF EXECUTIVE OFFICER  
NEAR KALOOR STADIUM, KALOOR, ERNAKULAM -17.

R1 BY ADV. SRI.K.M.FIROZ  
R1 BY ADV. SMT.M.SHAJNA  
R3 BY ADV. SRI.A.A.ABUL HASSAN, SC, WAKF BOARD  
R3 BY ADV. SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-10-2015, ALONG WITH CRP. 480/2011, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

THOTTATHIL B.RADHAKRISHNAN &  
ANU SIVARAMAN, JJ.

=====

C.R.P.Nos.456 & 480 of 2011

=====

Dated this the 29<sup>th</sup> day of October, 2015

ORDER

**Thottathil B.Radhakrishnan, J.**

1. Questions as to how a dedication amounting to a Wakf is effectuated; when does it take effect; and, as to what is the effect of a purported subsequent substitution of the dedicated corpus by the Waqif are raised for decision in these revisions under the proviso to Section 83(9) of the Wakf Act, 1995, for short, the Act, preferred against the decision rendered by the Wakf Tribunal in a suit. Defendants 1 and 2, jointly; and, the third defendant have instituted separate revisions. Heard the respective learned counsel for the petitioners in both the revisions; for the contesting respondent, the plaintiff and for the Wakf Board.

2. Ext.A1 is a dedication of 1997 resulting in a Wakf as defined in Section 3(r) of the Act. The plaintiff sued alleging that the property of that Wakf has been transferred by defendants 1 and 2 to defendant No.3. The defendants contended that on 17.10.2002, there were different transactions under which the Waqif of Ext.A1 gave another property in exchange to the property covered under Ext.A1 and that property has to be now treated as the Wakf property and on the same day, the Muthawalli had transferred the property covered by Ext.A1 to the third defendant. The expression by the Waqif of Ext.A1, through different communications, was relied on by the defendants to point out that the Waqif had always required the Muthawalli not to act upon Ext.A1.

3. The Tribunal repelled the aforementioned defence and held that by the clear terms of Ext.A1, there was permanent dedication for purposes which are recognized by the laws relating to Muslims, including, as pious, religious, charitable etc. in terms of the definition of Wakf in Section 3(r) of the Act. As a consequence, the transaction in favour of the third defendant was declared as

void and the third defendant was directed to deliver vacant possession of the Wakf property covered by Ext.A1 in a time bound manner.

4. Supporting these revisions by the defendants, it is argued that the clear intendiment of the Waqif is discernible from the different communications and that it is to the effect that the property covered by Ext.A1 was highly encumbered and therefore it would depreciate heavily in terms of land value and it was therefore that the exchange on 17.10.2002 was effected. It is hence argued that the contemporaneous transactions on 17.10.2002, taken together, would lead to a situation which may be considered as one where the Wakf Board could consider this case as eligible for ex post facto sanction in terms of Section 51 of the Act.

5. Per contra, the learned counsel appearing for the contesting plaintiff argued that the Wakf is a permanent dedication and that having been made as per Ext.A1, the finding of the Tribunal does not warrant interference by this Court in revisional jurisdiction.

6. We have assimilated the contents of Ext.A1. As noticed by the Tribunal, through the impugned order, there is not much of a dispute that Ext.A1 constitutes a permanent dedication for purposes which fall under Clause (r) of Section 3 of the Act. That being so, the content of the dedication made as per Ext.A1 of 1997 had become final and such dedication stands. They get effectuated, enforced; and, operate eo instanti contemporaneous with such dedication.

7. It was not the requirement of the Act, even at that point of time; that is to say, before the amendment of 2013; that all Wakfs should be registered. The provision in Section 51, as it then stood, was only a measure by which the Wakf Board could regulate Wakfs which had registered with it. Such registration may be voluntary or the Wakf Board may suo motu also register Wakfs. The administration of such Wakfs would then fall within the continued gaze of the Wakf Board and then without the sanction of the Wakf Board, no transaction can be effected in relation to such registered trusts. This is the content of Section 51.

8.The concept of sanction in Section 51 is such that there is absolutely no scope to read into that provision any room for ex post facto sanction for transactions which have already concluded. The concept of ex post facto sanction is never linked, jurisprudentially, as available in contra-distinction to prior sanction which is legislatively mandated; unless, may be, in matters relating to fundamental rights issues pithily falling, within the domain of Article 21 of the Constitution of India. The nice distinction between sanction, approval and prior sanction has been decided upon through different judgments of the Hon'ble Supreme Court of India and that is part of the law laid down in terms of Article 141 of the Constitution of India. See for support, the decisions in **Asok Kumar Das v. University of Burdwan** [(2010) 3 SCC 616] and **Asok Kumar Sahu v. Union of India** [(2006) 6 SCC 704]. Those decisions apply against the petitioners.

9.Not only that, while examining the scheme of the Act as it originally stood and the change in law that has been brought in 2013; the clear indication is that there was always a

legislative thrust to preserve the wakf properties insulating it from transfers. The pre-amended law specifically used the term 'transaction' and enjoined that transactions which were made without prior sanction would be void. That being so in law, the decision in **P.S.Abdul Kadir v. The Mahlarathul Kadira Sabha** [AIR 1953 Mad.143=(1952)2 MLJ 657] cited by the learned counsel appearing for the revision petitioner in C.R.P.No.480 of 2011 does not appeal to us on the premise of basic principles. We are unable to act upon that as a contextual precedent of persuasive prudence.

10.With the coming into force of 2013 amendments, all transfers except creating certain leases are statutorily declared as void. Such increase in statutory restrictions through amendments to the Act, that have come into force by 2013 is a clear indication against a judicial approach that ex post facto sanction could be granted by the Wakf Board under Section 51 of the Act.

11.More importantly, we have to honour the legislative wisdom of not having clothed the Wakf Board to grant such ex post

facto sanction, particularly, when it uses the words prior sanction in the relevant legislative piece. The extent of abuse of any power for ex post facto sanction can be easily visualised, having regard to the strict and restrictive covenants introduced, and, the objects sought to be achieved by the sweeping amendments of 2013; which is that the depletion of Wakf properties by encroachment and by unauthorised transfer ought to be prevented, because dedication and creation of a Wakf as defined in Section 3(r) is the prime and potent instrument through which one makes a dedication for purposes which are enumerated in that clause. Having this view as to the legislative intendiment of object of protection of Wakfs, we see that no power of ex post facto sanction can be read into the provisions of Section 51 of the Act even as it stood before the 2013 amendment; more particularly, in contra-distinction to the legislative prescription for prior sanction.

12.For the aforesaid reasons, the Tribunal was justified in holding that in view of the crystallization of Ext.A1 as a Wakf

in terms of Section 3(r) of the Act, the plaintiff was entitled to the reliefs sought for. In such situation, there is no question of any equitable consideration overriding the legislative impact and the application of statute law. These revisions therefore fail.

In the result, these revisions stand dismissed.

sd/-  
**Thottathil B.Radhakrishnan, Judge**

sd/-  
**Anu Sivaraman, Judge**

sj