

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP(C).No. 519 of 2015 (O)

I.A.NO.3352/2014 IN O.S.NO.302/2006 OF THE SUB COURT, KOZHIKODE

PETITIONER(S)/PETITIONERS/DEFENDANTS :

1. KANDILERI GOPALAKRISHNAN NAIR, AGED 68 YEARS,
S/O.ACHUTHAN NAIR, KODAL AMSOM DESOM, KOZHIKODE TALUK.
2. K.SETHUMADHAVAN, AGED 53 YEARS,
S/O.CHANDRAN NAIR, NIKKAM PURATH HOUSE,
KODAL AMSOM DESOM, KOZHIKODE TALUK.
3. OTHAYAMANGALATHU RAVUNNIKUTTY, AGED 63 YEARS,
S/O.RAMAN NAIR, NIKKAM PURATH HOUSE, KODAL AMSOM DESOM,
KOZHIKODE TALUK.
4. K.PEETHAMBARAN, AGED 43 YEARS,
S/O.SREEDHARAN NAIR, KOTTAPPURATH HOUSE, NIKKAMPURATH,
KOZHIKODE TALUK.
5. A.K.SUNILKUMAR, AGED 40 YEARS,
S/O.RAGHAVAN NAIR, KOYAVEETILMETHANVIDA,
NIKKAM PURATH HOUSE, KODAL AMSOM DESOM,
KOZHIKODE TALUK.
6. UNNIKRIISHNAN, AGED 58 YEARS
S/O.MADHAVAN NAIR, KUZHIKANDATHIL HOUSE,
KODAL AMSOM DESOM, KOZHIKODE TALUK.
- K.BALAKRISHNAN NAIR (DIED)
7. SUPPL: N.S.S.KARAYOGAM UNION, KOZHIKODE TALUK,
REPRESENTED BY SECRETARY, P.O.THALI,
KASABA AMSOM DESOM, KOZHIKODE TALUK.
8. SUPPL: N.S.S.KARAYOGAM UNION,
KOZHIKODE TALUK REPRESENTED BY PRESIDENT, P.O.THALI,
KASABA AMSOM DESOM, KOZHIKODE TALUK.

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**9. SUPPL: N.S.S.KARAYOGAM REGISTRAR,
NAIR SERVICE SOCIETY, HEAD OFFICE, PERUNNA,
CHANGANASSERY.**

**BY SMT.SUMATHY DANDAPANI (SENIOR ADVOCATE)
ADVS. SRI.MILLU DANDAPANI
SRI.PREMCHAND R.NAIR**

RESPONDENT(S)/RESPONDENT/PLAINTIFF :

**KODAL NADAKKAVU N.S.S. KARAYOGAM,
PANTHEERANKAVU, REGISTER NO.3002 KODAL AMSOM,
PANTHEERANKAVU DESOM, REPRESENTED BY SECRETARY,
V.C.VELAYUDHAN NAIR, AGED 71 YEARS, S/O.GOVINDAN NAIR,
VALAVEETIL CHIRUNGOTH HOUSE, KODAL AMSOM,
PANTHEERANKAVU DESOM, KOZHIKODE TALUK.**

**BY SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
ADVS. SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A TRUE COPY OF THE PLAINT IN O.S.NO.302/2006
DATED 09.12.2005.**
- EXT.P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY
THE PETITIONERS IN O.S.NO.302/2006, DATED 13.06.2013.**
- EXT.P3: A TRUE COPY OF THE I.A.NO.3352/2014 IN O.S.NO.302/2006
DATED 27.08.2014.**
- EXT.P4: A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT
IN O.S.NO.302/2006 DATED 26.09.2014.**
- EXT.P5: A TRUE COPY OF THE REPORT FILED BY THE ADVOCATE
COMMISSIONER IN O.S.NO.302/2006.**
- EXT.P6: A TRUE COPY OF THE ORDER DATED 02.02.2015 IN
I.A.NO.3352/2014 IN O.S.NO.302/2006 ISSUED BY THE SUB COURT,
KOZHIKODE.**
- EXT.P7: PHOTOCOPY OF AFFIDAVIT DATED 22.07.2013 FILED BY
V.C.VELAYUDHAN BEFORE THE SUB COURT I(A), KOZHIKODE
IN O.S.NO.302 OF 2006.**
- EXT.P8: PHOTOCOPY OF COURTER STATEMENT DATED 10.10.2013 FILED
BY THE DEFENDANTS BEFORE THE SUB COURT I(A), KOZHIKODE,
IN I.A.NO.3806 OF 2013 IN O.S.NO.302 OF 2006.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

.....
O.P.(C) No. 519 of 2015

.....
Dated this the 24th day of June, 2015

J U D G M E N T

Ext.P6 order in IA 3352/2014 in OS 302/2006 of the Subordinate Judge's Court, Kozhikode is under challenge. The defendants claim that they were duly elected as office bearers of NSS Karayogam, Kodal Nadakkavu, Kozhikode in the election held in the General Body on 11.12.2005. The said aspect is challenged by the plaintiffs. According to the plaintiffs, no such General Body was convened; 175 members allegedly participated in the the so called General Body had not participated in such a General Body, and 90% of those 175 members allegedly participated in the so called General Body were not even members of the Karayogam.

The defendants wanted to prove before the court below that the said members allegedly participated in such a General Body allegedly convened on 11.12.2005 were members of the NSS Karayogam. Therefore, in order to prove the said fact, the petitioners had filed Ext.P3 IA under Order XI Rule 14 of the Code of Civil Procedure, 1908.

2. It is true that the Commissioner was appointed by the court below to verify the list of members submitted by the petitioners with the records of the Karayogam. The Commissioner has filed Ext.P5 report by mentioning that most of the members whose names are shown in the list furnished by the petitioners were not members of the Karayogam. The said aspect is seriously challenged by the petitioners. According to the petitioners, those persons were also members of the Karayogam and they are not shown as members, solely with a view to defeating the election of the petitioners as office bearers of the Karayogam.

3. Heard the learned senior counsel for the

petitioners and the learned senior counsel for the respondents.

4. The convening of the General Body Meeting on 11.12.2005 is seriously under challenge. Respondents are seriously challenging such a General Body. According to them, the persons allegedly participated in such a General Body had never participated in such a General Body and most of such persons were not members also. When such a serious question is there to be decided, the court below ought not to have disallowed Ext.P3 IA. Let the Secretary produce those documents called for, which are in his possession or power. If any of such documents are not there in his possession or power, he is free to file an affidavit to that effect before the court below. Let the available documents be produced. To that extend, this Court is of the view that Ext.P3 can be allowed.

In the result, this Original Petition is allowed and Ext.P6 order passed by the court below is set aside. Ext.P3

stands allowed to the above extend. It seems that some of the documents called for have already been produced as is evidenced from the list furnished by the learned Senior Counsel for the respondents. The other documents noted in Ext.P3, which are in the possession or power of the respondents shall be produced before the court below, as expeditiously as possible, at any rate, within a period of three weeks from today. The court below shall take note of the fact that the suit is of the year 2006. Being an oldest suit, the court below shall take every endeavour to dispose of the suit as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge