

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

OP(C).No. 980 of 2015 (O)

(O.S.435/1990 OF PRINCIPAL SUB COURT, KOLLAM)

PETITIONER/THIRD PLAINTIFF:

KAIKKARA SHAMSUDHEEN,
KARBALA TRUST COUNCIL MEMBER,
KARBALA TRUST, KOLLAM.

BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI

RESPONDENTS/ADDITIONAL DEFENDANTS:

1. KARBALA TRUST, REPRESENTED BY ITS SECRETARY,
KARBALA COMPOUND, KOLLAM - 691 021.
2. A. ABDUL RASHEED, SECRETARY,
KARBALA TRUST, KARBALA COMPOUND, KOLLAM - 691 021.
3. A.A. SAMAD, PRESIDENT, KARBALA TRUST,
KARBALA COMPOUND, KOLLAM - 691 021.
4. M. SHAMSUDEEN, SANARA, POLAYATHODU,
VADAKKEVILA, KOLLAM - 691 010.
5. M.A. SALAM, ADVOCATE, KOLLAM - 691 013.
6. A. SHANAVAS KHAN, ADVOCATE, KOLLAM - 691 013.
7. AHAMMED KABEER, KAYYALAKKAL CHERRY,
ERAVIPURAM, KOLLAM - 691 011.
8. M. BADARUDEEN, MANIYAMKULAM HOUSE,
KOCHALUNGAL NAGAR, PALLIMUKKU, KOLLAM - 691 011.

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9. A. ABDUL AZEEZ,
MUKKADAYIL VEEDU, AYATHIL P.O.,
KOLLAM - 691 010.
10. ABDUL AZEEZ, NIZA MANZIL,
PATTARUMUKKU, UMayANALLOOR, KOLLAM - 691 589.
11. A.S. SADIK MOULAVI, KANEEKARA HOUSE,
UMAYANALLOOR P.O., KOLLAM - 691 589.
12. T.A.THAHA, THAHAS, THATTARUVILA,
KOTTIYAM, KOLLAM - 691 010.
13. A.NIYAZ, NIYAZ MANZIL, PATTARUMUKKU,
UMAYANALLOOR, KOLLAM - 691 589.
14. H. KABEER, HANEEFA DALE, UMayANALLOOR,
KOLLAM - 691 589.
15. A. SHAHUL HAMEED,
SHAHIN MANZIL, PATTARUMUKKU,
UMAYANALLOOR, KOLLAM - 691 589.
16. AYOObKHAN, ADVOCATE,
KOLLAM - 691 001.

R1 BY ADV. SRI.R.KRISHNA RAJ
BY ADV. SRI.BIJITH S.KHAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015
ALONG WITH O.P.(C) 994/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT. P1 : COPY OF DRAFT SCHEME SUBMITTED IN O.S.435/1995 BEFORE SUB COURT, KOLLAM DTD.27.3.2004.
- EXT. P2 : COPY OF DECREE DTD.7.4.04 IN O.S.435/1990 OF PRINCIPAL SUB COURT, KOLLAM.
- EXT. P3 : COPY OF (BALLOT PAPER) VOTERS LIST.
- EXT. P4 : COPY OF I.A.2076/2014 IN O.S.435/1990 FILED BY PETITIONER BEFORE SUB COURT, KOLLAM.
- EXT. P5 : COPY OF ORDER DTD.29.12.14 IN I.A.2306/14 IN O.S.435/90.
- EXT. P6 : COPY OF ORDER DTD.30.12.14 IN I.A.2357/2014 IN O.S.435/90.
- EXT. P7 : COPY OF ORDER DTD.30.12.14 IN I.A.2306/14 IN O.S.435/1990.
- EXT. P8 : COPY OF MINUTES OF MEETING PREPARED BY ADVOCATE COMMISSIONER ON 31.12.14.
- EXT. P9 : COPY OF MINUTES OF BOARD MEETING OF KARBALA TRUST HELD ON 31.12.14.
- EXT. P10 : COPY OF I.A.431/2015 IN O.S.435/90 FILED BY PETITIONER.
- EXT. P11 : COPY OF I.A.595/2014 IN O.S.435/90.
- EXT. P12 : COPY OF I.A.159/15 IN O.S.435/90.
- EXT. P13 : COPY OF ORDER DTD.23.03.2015 IN I.A.2076/14, 2837/14, 595/14, 431/15 AND 159/15 IN O.S.435/90 OF PRINCIPAL SUB COURT, KOLLAM.

RESPONDENT'S EXHIBITS:

- EXT. R1(a) : COPY OF SCHEDULE OF ELECTION DTD.NIL.
- EXT. R1(b) : COPY OF ELECTION NOTIFICATION DTD.4.4.15.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) Nos.980 & 994 OF 2015

Dated this the 10th day of April, 2015.

J U D G M E N T

Five Interlocutory Applications were disposed of by the court below by a common order dated 23.03.2015.

2. Without going into the unnecessary facts, the core issue that is agitated before this Court is regarding the election to be conducted in terms of clause 21(2) of Ext.P1. There is some dispute regarding the voters' list which is to govern the matter.

3. Clause 21(2) of Ext.P1 reads as follows:

"21. പലവക

1.

2. ഒഴിവുവരുന്ന ഔദ്യോഗിക സ്ഥാനങ്ങളിൽ -
ലേയ്ക്ക് യഥാകാലം ബോർഡ് കൂടി തെരഞ്ഞെടുപ്പ് നടത്തി ഒഴിവുകൾ നികത്തേണ്ടതും തെരഞ്ഞെടുക്കപ്പെട്ടവരെ ചുമതല ഏല്പിക്കേണ്ടതുമാണ്.

ബഹുമാനപ്പെട്ട കോടതി ഈ നിയമാവലി അംഗീകരിച്ച് ഉത്തരവായശേഷം ആദ്യം നടക്കുന്ന നിയമാനുസൃതവും വ്യവസ്ഥാപിതവുമായ

തെരഞ്ഞെടുപ്പ് ഈ കേസിൽ ബഹുമാനപ്പെട്ട കോടതി അംഗീകരിച്ചിട്ടുള്ള വോട്ടേഴ്സ് ലിസ്റ്റിന്റെ അടിസ്ഥാനത്തിൽ ആയിരിക്കു ന്നതാണ്. എന്നാൽ ജമാഅത്ത് പ്രതിനിധികളുടെ പേരുകളിൽ അതാതു ജമാഅത്തുകൾ മാറ്റം വരുത്തുന്ന പക്ഷം അത് അംഗീകരിക്കേണ്ടതുമാണ്”.

4. There shall be no grievance if an order is passed by this Court to conduct election in terms of the above clause.

These original petitions are disposed of setting aside Ext.P13 order of the court below and directing that election shall be conducted strictly in terms of Clause 21(2) of Ext.P1. If the court below finds it necessary to appoint a Commissioner, it may do so. The court below may also decide the person by whom the cost is to be met.

Sd/-

**P.BHAVADASAN
JUDGE**

smp