

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

OP(Civil).No. 1110 of 2015 (O)

AGAINST THE ORDER IN OS 435/1990 of SUB COURT,
KOLLAM, DATED 29.12.2014.

PETITIONER(S)/3RD PLAINTIFF:

KAIKARA SHAMSUDHEEN, AGED 77 YEARS,
KARBALA TRUST COUNCIL MEMBER, KARBALA TRUST, KOLLAM.

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

RESPONDENT(S)/1ST DEFENDANT AND ADDL. DEFENDANT:

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1. KARBALA TRUST
REPRESENTED BY ITS SECRETARY, KARBALA TRUST COMPOUND,
KOLLAM - 691 021.
 2. AYOOBKHAN,
ADVOCATE, KOLLAM, (RETURNING OFFICER,
KARBALA TRUST ELECTION COMMITTEE OFFICE,
KARBALA TRUST COMPOUND, KOLLAM - 691 021)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-04-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP(C).No. 1110 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE DRAFT SCHEME SUBMITTED IN O.S 435/1995
BEFORE THE SUB COURT, KOLLAM DATED 27/03/2004.
- EXHIBIT-P2- TRUE COPY OF THE BALLOT PAPER (VOTERS LIST)
- EXHIBIT-P3- TRUE COPY OF THE ORDER DATED 29/12/2014 IN I.A 2306/2014 IN O.S
435/1990.
- EXHIBIT-P4- TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 31/12/2014
PREPARED BY THE 2ND RESPONDENT on 05.12.2015.
- EXHIBIT-P5- TRUE COPY OF THE MINUTES OF THE BOARD MEETING OF KARBALA
TRUST HELD ON 31/12/2014.
- EXHIBIT-P6- TRUE COPY OF THE COMMON JUDGMENT DATED 10/04/2015 IN O.P(C)
980/2015 AND 994/2015.
- EXHIBIT-P7- TRUE COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT
DATED 04/04/2015.

RESPONDENT(S)' EXHIBITS

: NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

O.P. (Civil) No.1110 of 2015

Dated this the 24th day of April, 2015

J U D G M E N T

This petition is filed by the petitioner, challenging Ext.P7 notice issued by the Commissioner for conducting election for the first respondent trust under Article 227 of the Constitution of India.

2. It is alleged in the petition that, the petitioner is the third plaintiff in O.S.435/1990 of Principal Sub Court, Kollam and the above suit was filed for settlement of scheme for the first respondent trust along with two other persons. The suit was decreed, approving the scheme and Ext.P1 scheme has been framed as per decree dated 07.04.2004 and I.A.No.2306/2014 was filed against taking decision on no-confidence motion against the petitioner in that petition and that was disposed of by Ext.P3 order for supervising the meeting to be held on 31.12.2014 under the supervision of the second respondent, Advocate Commissioner appointed and not to consider the

no-confidence motion, as the petitioner in that petition submitted that, he is not pressing the prayer. Petitioner filed an application for conducting election as I.A.No.2076/2014 and that petition was dismissed by the Sub Court, against which the petitioner filed O.P.(C) No.980/2015 and this court by Annexure-P6 order directed, the election to be conducted as per clause 21(2) of Ext.P1 scheme, setting aside Ext.P13 order dismissing the application for conduct of election and the court also permitted the lower court to appoint a commissioner if necessary for that purpose. The present petition has been filed by the petitioner challenging Ext.P7 on the apprehension that second respondent, returning officer is going to conduct election not in accordance with the scheme or as per the directions given by this court, hence this petition.

Considering the fact that, the election notification was already been issued and the election has to be

conducted on 26.04.2015, this court feels that, it is not proper for this court at this stage to interfere with the election process that has already been commenced. Further if any violation has been committed by the second respondent, returning officer in conducting the election against the provisions of the scheme, the petitioner is at liberty to challenge that election before the appropriate forum in accordance with law. So under the circumstances, this court feels that, the petition can be disposed of with the above observation.

So the petition is disposed of with the above liberty for the petitioner to challenge the election, if it is not conducted in terms of the scheme framed or as per Ext.P6 order, before the appropriate forum in accordance with law.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge