

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

OP(C).No. 1483 of 2015 (O)

AGAINST THE JUDGMENT IN OS 141/2012 of PRINCIPAL MUNSIFFS COURT, KOCHI

AGAINST THE JUDGMENT IN OS 243/2012 of PRINCIPAL MUNSIFFS COURT, KOCHI

PETITIONERS:

- 1. SHIBU T.C., AGED 43 YEARS
S/O.CHITHAMBARAN, THIRUMANGALATH, KONAM PANDINJARU
PALLURUTHY.P.O,KOCHI-682006.**
- 2. SUNIL.T.S, AGED 49 YEARS
S/O SUNDARAN, THOZHUTHINKAL, THAZHUPPU VADAKKU
PALLURUTHY.PO, KOCHI-682006.**
- 3. SUDHEER.B.S, AGED 39 YEARS
S/O.SIVARAJAN, BLAPPARAMBIL, VALIYAPPULLARA
PALLURUTHY.P.O,KOCHI-682006.**
- 4. K.K.MAHESH, AGED 34 YEARS
S/O.KABEER DAS, KAMMATHI MADOM, KONAM KIZHAKKU
PALLURUTHY.P.O,KOCHI-682006.**

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS:

- 1. SREE DHARMA PARIPALAYANA YOGAM,
PALLURUTHY, KOCHI-682006
REPRESENTED BY ITS PRESIDENT.**
- 2. K.K.KESAVAN,
S/O.KRISHNAN, KUNNAMVEETIL CHERIYA PULLARA DESOM
PALLURUTHY.P.O,KOCHI-682006.**
- 3. A.A.PUSHKARAN,
S/O.AYYANKUNJU, ANIMALIPARAMBU, VALIYA PULLARA DESOM
PALLURUTHY.P.O,KOCHI-682006.**
- 4. P.N.RADHAKRISHNAN,
S/O.NARAYANAN, PATTUVEETIL, PANCHAYATH RAJ ROAD
PALLURUTHY.P.O,KOCHI-682006.**

5. I.C.GANESH,
S/O CHELLAPPAN, PUNNAKAPALLI, SDPY ROAD
PALLURUTHY.P.O,KOCHI-682006.

R4 BY ADV. SRI.DINESH R.SHENOY
R4 BY ADV. SMT.K.K.JYOTHILAKSHMY
R4 BY ADV. SRI.SANIL JOSE
R2-R3 BY ADV. SRI.V.M.KURIAN
R2-R3 BY ADV. SRI.MATHEW B. KURIAN
R2-R3 BY ADV. SRI.K.T.THOMAS
R2-R3 BY ADV. SRI.LITTO VARGHESE PALATHINKAL
R5 BY ADV. SRI.M.D.SASIKUMARAN
R5 BY ADV. SRI.K.S.HARIHARAPUTHRAN
R5 BY ADV. SRI.GEORGE MATHEW
R5 BY ADV. SRI.SUNIL KUMAR A.G
R5 BY ADV. SRI.DIPU JAMES
R1 BY ADV. SRI.T.MADHU
R1 BY ADV. SRI.K.V.BINOD

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 19-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 THE TRUE COPY OF THE PLAINT IN O.S.243/2012 NOW PENDING ON THE FILES OF THE MUNSIFF'S COURT,KOCHI.
- P2 THE TRUE COPY OF THE PLAINT IN O.S 256/2012 NOW PENDING ON THE FILES OF THE MINSIFF'S COURT,KOCHI
- P3 THE TRUE COPY OF THE PLAINT IN O.S.141/2012 NOW PENDING ON THE FILES OF THE MUNSIFF'S COURT,KOCHI.
- P4 THE TRUE COPY OF THE PLAINT IN O.S.239/2012 NOW PENDING ON THE FILES OF THE MUNSIFF'S COURT,KOCHI
- P5 THE TRUE COPY OF THE JUDGMENT DATED 26-9-2012 IN O.P.3106/2012 ON THE FILES OF THIS HON'BLE COURT
- P6 THE TRUE COPY OF THEJUDGMENT DATED 27-9-2013 IN O.P(C)2573/2013 ON THE FILES OF THE HON'BLE COURT
- P7 THE TRUE COPY OF THE JUDGMENT DATED 3-12-2013 IN O.P(C)4160/2013 OF THE FILES OF THE HON'BLE COURT
- P8 THE TRUE COPY OF THE JUDGMENT DATED 11-8-2014 IN O.P(C)4320/2013 ON THE FILES OF THIS HON'BLE COURT
- P9 THE TRUE COPY OF THE COMMON JUDGMENT DATED 20-2-2015 IN O.P(C) 184/2015 AND 297/2015 ON THE FILES OF THIS HON'BLE COURT
- P10 THE TRUE COPY OF THE ORDER DATED 19/12/13 IIN O.P(C)4160/2013 BY THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

P.BHAVADASAN, J.

O.P.(C) No. 1483 of 2015

Dated this the 19th day of August, 2015

J U D G M E N T

This original petition is directed against the order dated 20.02.2015 in O.P.(C) No.297 of 2015 whereby, this Court disposed of the original petition, the operative portion of which reads as follows:

“i. The persons who are elected unopposed as per Ext.P5 series in O.P.(C) 297 of 2015 are allowed to assume office and carry on the administration of the Yogam in accordance with the bye-law.

ii. The persons whose membership are disputed and is subject matter of the suits are precluded from exercising any rights as members till the suits are finally disposed of.”

2. The grievance of the petitioners is that they were not heard in the matter and they were not party to the original petition and their rights are vitally affected by the order passed by this Court. It is also pointed out that on the previous occasion, they were allowed to vote in the election.

3. The first of the contention that they were not parties to the proceedings has no legs to stands. The suit was in a representative capacity and there were publication under Order I Rule 8. Even assuming that the name of the petitioners do not appear in the cause title of the petition, they will be deemed to have been parties by virtue of provisions of Order I Rule 8. So, it could not be said that they were not heard in the matter.

4. The mere fact that they were allowed to vote on the previous occasions do not mean that, that should continue. The very challenge in the suit was regarding the membership of certain persons which is the core issue which to be tried in the suit and which needs to be resolved for the smooth functioning of Yogam. On finding that even after repeated direction from this Court to dispose of the suit, it was not being done, this Court was constrained to pass the order referred to above.

5. This Court felt that when the membership of the very persons is under challenge, it will be inappropriate to permit them to avail the right of the member pending the suit. It was under those circumstances, this Court was of the view that the suit be disposed of at the earliest, that the above order has been made. The contention now taken that the petitioners were not parties to the proceedings and their rights are affected have no basis at all.

This original petition is without any merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge