

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP (WAKF).No. 3106 of 2013 (R)

PETITIONER(S) :

1. C.I.MAJEED, AGED 58 YEARS,
S/O. LATE C.B.ISMAIL,
CHUNDAKKATTU HOUSE, KANJIRAMATTOM.
2. P.A.MOHAMMED SHA,
S/O.K.B.ABOOBACKER, PUTHENPURACKAL HOUSE
PULAYATTIKARA P.O., KEECHERY, KANJIRAMATTOM.
3. V.P.LATHEEF, S/O.LATE PAREETH,
VADAKKEPEEDIKAYIL, KANJIRAMATTOM.
4. P.K.SAIDMUHAMMED, S/O.KHALID,
PANATTIL HOUSE, KANJIRAMATTOM.P.O.
5. K.M.IBRAHIM, S/O.MOHAMMEDKUTTY,
KARIPPATTU HOUSE, P.O.MARITHAZHAM,
KANJIRAMATTOM.

BY ADVS.SRI.K.ASHOK SARAN
SRI.S.V.BALAKRISHNA IYER (SR.)

RESPONDENT(S) :

1. THE KERALA STATE WAKF BOARD,
REPRESENTED BY CHIEF EXECUTIVE OFFICER,
V.I.P.ROAD, KALOOR, KOCHI-682017.
2. THE CHIEF EXECUTIVE OFFICER,
KERALA STATE WAKF BOARD, V.I.P ROAD, KALOOR
COCHIN-682017.
3. THE WAKF TRIBUNAL, ERNAKULAM-682016.

OP (WAKF) 3106/13

*ADDL.R4. KANJIRAMATTOM MUSLIM JAMA-ATH
REPRESENTED BY ITS GENERAL SECRETARY
NOUSHAD T.A, AGED 45 YEARS,
S/O.K.M.ABDUL RAHMAN, THURUTHIYIL HOUSE
KANJIRAMATTOM PO - 682 315.

*ADDL.R5. SULAIMAN K.P, AGED 61 YEARS,
PRESIDENT, KANJIRAMATTOM MUSLIM JAMA-ATH
S/O.PAREED M.M., THAVAKKAL MANZIL,
NARIPPARAYIL, KANJIRAMATTOM - 682 315.

**ADDL.R6 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
WAKF MATTERS, THIRUVANANTHAPURAM - 695 001.

*(ADDL.R4 AND R5 ARE IMPEADED AS PER ORDER DATED 17.12.2014
IN IA 15852/14.)

** (ADDITIONAL SIXTH RESPONDENT IS IMPEADED AS PER ORDER DATED
26.11.2015 IN I.A.NO.10842 OF 2014)

R1 & 2 BY ADV. SRI.K.SHIBILI NAHA, SC,
KERALA STATE WAKF BOARD
ADDL.R4 & R5 BY ADV. SRI.SHAJI THANKAPPAN
ADDL.R6 BY ADV.SOJAN JAMES, GOVERNMENT PLEADER

THIS OP(WAKF)HAVING BEEN FINALLY HEARD ON 26-11-2015, ALONG
WITH OP(WAKF) NO.3158 OF 2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

OP (WAKF) .No. 3106 of 2013 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: COPY OF THE RELEVANT PAGES OF THE JUDGMENT PASSED BY THE DISTRICT COURT, ANJIKAIMAL IN O.S NO.97/1101 (M.E)

EXT.P2: COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN WPC NO.32328 OF 2010 DATED 20/12/2010.

EXT.P3: COPY OF THE JUDGMENT DATED 27/5/2013 PASSED BY THE WAKF TRIBUNAL, ERNAKULAM IN W.O.A NO.11 OF 2011.

EXT.P4: COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN WPC NO.33269 OF 2009 DATED 04/01/2011.

EXT.P5: COPY OF THE ORDER DATED 19/04/2013 PASSED BY THE WAKF TRIBUNAL IN I.A NO.383 OF 2012 IN O.S NO.97/1101 ME.

EXT.P6: COPY OF THE ORDER DATED 03/05/2013 PASSED BY THE WAKF TRINUNAL IN I.A NO.383 OF 2012 IN O.S NO.97 OF 1101 ME.

EXT.P7 : COPY OF ORDER DATED 14.03.2013 PASSED BY R1 IN A.A.NO.64 OF 2012.

EXT.P8 : COPY OF THE WAKF CONTRIBUTION STATEMENT OF ASSESSMENT, REVISION OF APPEAL AND REMITTANCE OF CONTRIBUTION FOR THE YEAR 1962-63 TO 2010-11.

EXT.P9 : COPY OF LETTER DATED 26.03.2012 OF SENIOR SUPERINTENDENT, WAKF BOARD, ERNAKULAM ACCEPTING THE PAYMENTS MADE FOR THE PERIOD FROM 2006-07 TO 2010-11.

EXT.P10 : COPY OF DEMAND NOTICE DATED 10.01.2013 FOR THE ASSESSMENT PERIOD 2011-12.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
MARY JOSEPH, JJ.

.....
OP(Wakf) Nos.3106 and 3158 of 2013
.....

Dated this the 26th day of November, 2015.

'C.R.'

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. The management of Kanjiramattom Jama-ath Mosque, hereinafter referred to as the 'Wakf', was subject matter of O.S.No.97 of 1101 M.E. in the Court of the District Judge, Anjikaimal; hereinafter 'Anjikaimal Court'; filed after obtaining the Diwan's sanction under Section 523 CPC as it then stood. That led to framing of a Scheme approved by that Court; for short, 'Scheme'; for future management of that Wakf. That Scheme provided, inter alia, that the management of the Wakf shall be conducted by the manager appointed by Anjikaimal Court and he shall be subject to the control of that Court and shall be liable to be dismissed only by the order of that Court. He was required to keep correct account of the income and expenditure and submit the accounts to that Court for scrutiny. The Yogam of the said Wakf is a body

composed of the heads of the family ties mentioned in Annexure E to that Scheme. That Yogam was to depute four members, hereinafter referred to as the 'Scheme members', of whom two members shall be from family ties of defendants 1 and 2 in the suit, to help in the management of the Kodikuthu festival. The Scheme further provided that Anjikaimal Court had a general power of supervision over the temporal affairs of the Wakf.

2. These original petitions are instituted by the 'Scheme members' of the Wakf stated to have been appointed in terms of the Scheme framed by Anjikaimal Court. They challenge the order issued by the Wakf Tribunal by which permission was granted to conduct audit of the accounts of the Wakf under Section 47 of the Wakf Act, 1995; for short, '1995 Act', and direction was issued to the Chief Executive Officer of the Kerala State Wakf Board; 'Board', for short, to frame a scheme for administration of that Wakf as provided under Section 69 of the 1995 Act and to produce it for approval of the Tribunal.

3. Heard the learned senior counsel for the petitioners in these original petitions and the learned standing counsel for the Board.

4. The Wakf is covered by the aforementioned Scheme framed by Anjikaimal Court. That Wakf is one in relation to which that Scheme had been made by that court of law much before the commencement of the 1995 Act and also the Act of 1954 which preceded it on the subject of wakfs. Therefore, it is a Wakf for the purpose of Sub-section (1) of Section 32 of the 1995 Act, going by the explanation to Section 32(1). So much so, the provisions of Section 32 of the 1995 Act confer power on the Board and enjoin on it the function to be in superintendence of that Wakf as well; and to ensure that the said Wakf is properly managed, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which that Wakf was created or intended. The provision in Sub-section (1) of Section 32 of the 1995 Act authorising the Board and conferring it with the duty to ensure that the income of that Wakf is duly applied to the objects and for the purposes for which that Wakf

was created and intended, definitely carries with it the power to conduct audit; since otherwise, the power to ascertain and ensure that the income has been duly applied for such purposes cannot be stated with precision; as is expected of the Board, in terms of that statutory provision. Reverting to Section 47 of the 1995 Act providing for audit of accounts, it unequivocally applies to Kanjiramattom mosque. With these findings, we overrule the argument on behalf of the petitioners that the accounts having been submitted to audit and are being subjected to judicial scrutiny in terms of the Scheme framed by Anjikaimal Court, no further audit by the Board is permissible.

5. Stated to be in obedience with the directions of the District Court as if it is the Court enforcing the Scheme, the Manager pleads to have placed accounts before the District Court, Ernakulam for audit in terms of Ext.P2 as per the Scheme. Section 47 of the 1995 Act does not make any distinction between Wakfs for which Schemes are framed by the Courts and other Wakfs. Therefore, the power to audit conferred on the Board in terms of Section 47

of the 1995 Act includes the power to audit the accounts of Wakfs governed by the Schemes framed by Courts. The resulted situation in law is that even if a wakf is governed by a scheme framed by a Court of competent jurisdiction, at any point of time hereinbefore; including prior to or after the 1954 Act; such scheme and the wakf to which it relates would be subservient to the provisions of 1995 Act for all purposes whatsoever. Having said that, we clarify that this subservience includes the power to modify and regulate a scheme so made earlier by a court, to the extent permissible under the 1995 Act.

6. Hence, even though the Wakf in relation to which these original petitions are filed is governed by the Scheme framed by Anjikaimal Court, its accounts have to be audited under the authority of the Board. Therefore, the accounts, which have been tendered by the then manager before the District Court, Ernakulam, have to be transmitted to the Board for being subjected to audit in strict conformity with the provisions of Section 47 read with Section 32 of the 1995 Act. It is so directed

and Clause (6) in the impugned order is modified to that effect.

7. We record the submission of the learned senior counsel appearing for the then manager that situations may arise where there is deficiency in the availability of the accounts, which were maintained and produced. Those are issues which would arise only during the course of the audit and the Board has to find solution to any such problem after affording the then manager an opportunity of hearing and also having in view Sections 47 and 48 of the 1995 Act.

8. As regards Clause (7) of the impugned order requiring the Chief Executive Officer of the Board to frame scheme and place it before the Court, the learned senior counsel appearing for the petitioners, including the erstwhile manager, argued that Section 66 of the 1995 Act is a provision which stands by itself and is one intended to apply to cases where schemes have already been framed for management of any particular Wakf. The provision relating to repeal of the 1954 Act for enactment of the 1995 Act

carries with it a saving clause. The 1954 Act was also born only after the scheme in the case in hand was framed way back in 1101 M.E. which corresponds to 1926 AD. We may also recall that Section 69 of the 1954 Act which included further exclusion of Section 92 of the Code of Civil Procedure, among other provisions from applicability to Wakfs, also carried with it a saving clause through the proviso to Sub-section (2) of Section 69 of that Act.

9. Bearing in mind the differential zones of executive, legislative and judicial functions in terms of the Scheme of the Constitution of India and having regard to the terms of Section 66 of the 1995 Act, it is certain that the legislative wisdom contained in Section 66 by providing the exercise of modifying the scheme to be within the exclusive domain of the Government is to ensure that it does not go into the hands of the Board which is statutorily inferior to the Wakf Tribunal in terms of the 1995 Act as well. That position notwithstanding, the scheme that was framed in relation to the Wakf in question was made under Section 92 CPC and therefore, it

is predominantly judicial in content. That could have been disturbed only by a legislative sanction and the primary legislation contained in Section 66 of the 1995 Act has authorised the Government to carry out such exercise. Therefore, the power to modify the Scheme in relation to Kanjiramattom mosque which is a Wakf involved in these original petitions can be done only by the appropriate Government. Hence, we vacate direction No.(7) in the impugned order and direct the Government of Kerala to consider the question whether the Scheme of the Wakf involved in these original petitions calls for modification or for any further provision. This shall be decided upon by the Government after taking into consideration the requisite materials and extending an opportunity of hearing to the Board and the existing members of the committee in terms of the Scheme (Scheme members) and also the present manager of the Kanjiramattom mosque. To enable this process to be carried out smoothly and effectively, without delay, the Board is directed to place a detailed note before the appropriate authority in Government.

10. This judgment will not stand in the way of the Wakf Tribunal or the Board passing any order without affecting the contents of the Scheme for the continued administration of the Wakf, in terms of the Scheme, which is now in existence. All such actions will be subject to any modification of the Scheme that may be brought by the Government.

These original petitions are ordered as above.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

(MARY JOSEPH, JUDGE)