

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

OP (WAKF).No. 1 of 2015 (R)

PETITIONER(S):

1. E.M.ISMAIL
S/O.MOHAMED KUNJU,
EDAVATTATH HOUSE, MARITHAZHAM P.O.
ERNAKULAM DISTRICT, PIN: 682 315.
2. C.K.MOHAMMED,
S/O.KOCHUNNI,
CHULIKOTIL HOUSE, KULAYETTIKKARA P.O.,
KANJIRAMATTOM
ERNAKULAM DISTRICT, 682 315.

BY ADVS.SRI.JOBI.A.THAMPI
SMT.M.KABANI DINESH

RESPONDENT(S):

1. B.M.JAMAL
MANAGER, KANJIRAMATTOM MOSQUE (CHIEF EXECUTIVE OFFICER,
KERALA STATE WAKF BOARD), KALOOR, COCHIN 682 017.
2. SALAM,
EXECUTIVE OFFICER, KANJIRAMATTOM MOSQUE (U.D.CLERK,
KERALA STATE WAKF BOARD), KALOOR, COCHIN 682 017.

(COMMISSION REPORT) BY ADV. SRI.P.M.SHAMEER
BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

THIS OP (WAKF) HAVING BEEN FINALLY HEARD ON 29-01-2015, ALONG WITH
OP(WAKF) NO.4/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (WAKF).No. 1 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: PHOTOCOPY OF THE I.A 198/2014.

EXT.P2: COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

EXT.P3: REPLY AFFIDAVIT FILED BY THE PETITIONERS

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

VPS

PS TO JUDGE

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

**O.P.(Wakf) No.1 of 2015 &
O.P.(Wakf) No.4 of 2015**

Dated this the 29th day of January, 2015

J U D G M E N T

P.N.Ravindran, J.

The disputes involved in these original petitions relate to the administration of Kanjiramattom Mosque. They were therefore heard together and are being disposed of by this common judgment. The brief facts of the case are as follows:

2. The petitioners in these original petitions are members of the Yogam of Kanjiramattom Mosque, the administration and management of which is governed by a scheme framed by the Anjikaimal District Court, Ernakulam in O.S.No.97 of 1101-M.E. The scheme, inter alia provides that the management of the Mosque shall be conducted by a Manager appointed by the Anjikaimal District Court. It is also stipulated that the Yogam shall meet once a month before the Kodikuthu festival and shall depute four members to help the Manager in the conduct of the celebrations. The first respondent herein, who is also the Chief Executive Officer of Kerala State Wakf Board is the present Manager of the Kanjiramattom Mosque. The second respondent, who is a U.D. Clerk in the office of the Kerala State Wakf Board at Ernakulam is the Executive Officer appointed by

the first respondent purportedly in exercise of the powers conferred on him under section 38 of the Wakf Act, 1995, with the permission of the Wakf Tribunal. In connection with the Kodikuthu Festival of the Kanjiramattom Mosque which commenced on 10.01.2015 and came to an end on 14.01.2015, the petitioners herein had filed I.A.No.198 of 2014 before the Wakf Tribunal, Ernakulam, praying for the following reliefs

"1. To direct the Manager to personally look after the affairs of the mosque and conduct the Kodikuthu Festival and all connected activities, in his presence.

2. To disperse with the post of Executive Officer which is absolutely unnecessary.

3. To remove the 2nd respondent from the post of the Executive Officer with immediate effect.

4. To realize from the 2nd respondent the loss sustained by the mosque due to the illegal cutting down of the valuable trees and damaging the same, without permission of the Court.

5. To direct the Manager to get previous orders from this Hon'ble Court in all matters involving the temporal affairs of the mosque.

6. To prevent the respondents 1 & 2 from interfering with the affairs of the Kanjiramattom Muslim Jamath and its lawful activities."

3. Such an application was filed on the averment that the first respondent Manager does not personally look after the affairs of the mosque and that the second respondent, the Executive Officer

appointed by him has committed many acts of malfeasance and misfeasance and is also not properly accounting for the income received in the mosque. The first respondent herein, the Manager of the mosque has filed a counter affidavit resisting the application. A copy thereof is on record as Ext.P2. In that affidavit, he had averred that he has appointed an Executive Officer after obtaining the permission of the Wakf Tribunal and it is not possible for him to carry out the administration of Kanjiramattom mosque by himself as he has to supervise and control thousands of Wakfs in his capacity as the Chief Executive Officer of the Kerala State Wakf Board. He had also refuted and denied the averments and allegations in the affidavit filed in support of I.A.No.198 of 2014. The petitioners filed a reply affidavit, raising various contentions. It appears that when I.A.No.198 of 2014 came up for consideration before the Wakf Tribunal on 05.01.2015 it was adjourned to 12.01.2015 for the purpose of enabling the learned Standing Counsel for the Kerala State Wakf Board to ascertain whether the Manager will be present at the Kanjiramattom Mosque on 14.01.2015. It was in such circumstances that the petitioners filed O.P.(Wakf) No.1 of 2015 contending that the very purpose of I.A.No.198 of 2014 will be defeated if it is not disposed of before the commencement of the festival on 10.1.2015.

4. When O.P.(Wakf) No.1 of 2015 came up for hearing before us on 9.1.2015, after hearing the learned counsel on both sides, we requested the learned Standing Counsel for the Kerala State Wakf Board (hereinafter referred to as 'the Board' for short) to get instructions from the first respondent Manager as to whether he will be personally present at least for a short time during the next four days at Kanjiramattom Mosque so that the grievances of the petitioners can be redressed to some extent. After getting instructions from the first respondent, the learned standing Counsel for the Kerala State Wakf Board submitted before us that the Chief Executive Officer, who is the first respondent, has filed a report dated 08.01.2015 in the Wakf Tribunal, Ernakulam, praying that a full time Manager may be appointed for the administration of the Kanjiramattom Mosque and the said Manager may be treated as a mutawalli under the Wakf Act, 1995. A copy of the said report was made available for perusal. In that report besides seeking the appointment of a Manager, the first respondent had also sought permission to withdraw the services of the second respondent on the averment that the Kerala State Wakf Board is facing shortage of permanent employees in its offices. Taking note of the aforesaid situation and the submission made by the learned standing counsel appearing for the first respondent that the first

respondent apprehends danger to his life if he goes to Kanjiramattom Mosque and therefore he should not be personally compelled to be present at Kanjiramattom Mosque, by interim order passed on 9.1.2015 in O.P.(Wakf) No.1 of 2015, we appointed Sri.P.M.Shameer, Advocate of this Court as Commissioner to oversee the functioning of the second respondent as the Executive Officer of the Kanjiramattom Mosque during the festival as also for supervising the conduct of the Kodikuthu Festival which commenced on 10.01.2015 and came to an end on 14.01.2015. We also issued a set of directions. We further directed the Wakf Tribunal, Ernakulam to pass appropriate orders on the report dated 8.1.2015 submitted by the first respondent Manager expeditiously, in any event, before 21.01.2015.

5. The pleadings and the materials on record disclose that shortly after we passed the interim order on 9.1.2015 in O.P.(Wakf) No.1 of 2015, the first respondent Manager filed a report dated 16.1.2015 in the Wakf Tribunal. The substance of the said report was to the effect that the first respondent Chief Executive Officer has no objection to continue as Manager of the Kanjiramattom Mosque if the Wakf Tribunal passes an order directing the Jama-ath committee not to cause any obstruction in the administration of the mosque. The report dated 8.1.2015 and 16.1.2015 were considered by the Wakf

Tribunal on 19.1.2015 and 21.1.2015. The Wakf Tribunal, Ernakulam thereafter issued Ext.P2 order in O.P.(Wakf) No.4 of 2015, whereby it directed that the Chief Executive Officer as well as the Executive Officer of the Mosque (Respondents 1 and 2) should continue in their official capacity as such for a period of three months till 21.4.2015. The Wakf Tribunal also directed that the persons who are aggrieved by the performance of the Manager and Executive Officer of the Kanjiramattom Mosque are at liberty to adduce evidence in I.A.No.198 of 2014 and in I.A.No.29 of 2015 in O.S.No.97 of 1101-M.E. The Wakf Tribunal further directed as follows:

18. Therefore, the point is decided as accordingly. Sri.B.M.Jamal, Chief Executive Officer, Wakf Board shall continue to act as the Manager of the Kanjiramattom Jama-ath and Sri.Salam who is at present the Executive Officer shall continue to act as the Executive Officer of Kanjiramattom Jama-ath till 21.4.2015. It is clarified that the Manager of the Mosque-Chief Executive Officer of the Wakf Board shall personally be present in the Kanjiramattom Mosque at least once in a month, preferably in the middle of the month between 10th and 20th after giving proper notice in the Mosque and shall hear grievances of the aggrieved persons and shall try to make out suitable solutions. The Executive Officer shall administer the Mosque as per the directions of the Chief Executive Officer of the Wakf Board and shall file periodical reports before the Tribunal through proper channel. If necessary, he can seek directions from the Tribunal at any time. It is informed that offering boxes (Bhandaram) are kept in the premises of the Mosque and in the Macbara without being accounted. The Manager shall take immediate steps for counting the money kept in the boxes through the officers of the bank concerned and shall file report before the Tribunal within 15 days from today. It is also made clear that money in the account of the Mosque

should be spent for the welfare of the beneficiaries. The Manager can take proper action in this regard in a transparent manner, after taking into confidence all concerned. Money kept idle in Fixed Deposit will not do any good for the beneficiaries. In this context, I would like to remind the Manager and the Executive Officer about the primary definition of money as "money is what money does". Therefore, amount kept in the bank should be used for the benefit of the Jama-ath members on the basis of a well prepared scheme and project."

6. The said order is under challenge in O.P.(Wakf) No.4 of 2015 wherein a copy thereof is produced and marked as Ext.P2. The substance of the contention raised in O.P.(Wakf) No.4 of 2015 is that before Ext.P2 order was passed, the petitioners were not put on notice or heard. It is also contended that copies of the reports dated 8.1.2015 and 16.1.2015 were not furnished to the petitioners who had filed I.A.No.198 of 2014 in O.S.No.97 of 1101-M.E. It is contended that as the report dated 8.1.2015 was acceptable to the petitioners, when the first respondent deviated from the stand taken in that report by filing the report dated 16.1.2015, copies thereof should have been furnished to the petitioners and they should have been heard. The petitioners have in O.P.(Wakf) No.4 of 2015 challenged Ext.P2 order and sought a direction to the Wakf Tribunal, Ernakulam to accept report dated 8.1.2015 and to relieve respondents 1 and 2 from the post of Manager and Executive Officer of the Kanjiramattom Mosque respectively. They also seek the appointment of a full-time Manager

for the administration of the Mosque.

7. We heard Sri.T.M.Mohammed Youseff, learned Senior Advocate appearing for the petitioners and Sri.K.Shibili Naha, learned standing counsel appearing for the Kerala State Wakf Board. We have also gone through the pleadings and the materials on record. Shorn of details the substance of the submission made by the learned Senior Advocate appearing for the petitioners is that before the report dated 16.1.2015 submitted by the Manager of the Kanjiramattom Mosque was accepted and respondents 1 and 2 were permitted to continue as the Manager and the Executive Officer of the Mosque till 21.4.2015, the petitioners who had filed I.A.No.198 of 2014 in O.S.No.97 of 1101-M.E. seeking removal of the second respondent from the office held by him, should have been heard. The learned Senior Advocate also contended that the Wakf Tribunal ought to have heard I.A.No.198 of 2014 along with report dated 8.1.2015 and 16.1.2015, after directing the first respondent Manager to furnish copies of the said reports to the petitioners and after affording them an opportunity to file objections to the reports.

8. After hearing learned counsel on both sides and on going through the pleadings and the materials presently on record and also the order passed by the Wakf Tribunal on 21.1.2015 on the reports

dated 8.1.2015 and 16.1.2015 as also the interim order passed by this Court on 9.1.2015 in O.P.(Wakf) No.1 of 2015, we find that before the Wakf Tribunal passed the impugned order on 21.1.2015, the Wakf Tribunal had not heard the petitioners herein who had filed I.A.No.198 of 2014 seeking various reliefs referred to above. Since the petitioners had filed I.A.No.198 of 2014 seeking the removal of the second respondent from the post of Executive Officer and an order directing the Manager to personally look after the affairs of the Mosque and to conduct the Kodikuthu festival in his presence and the first respondent Manager, who had initially filed a report dated 8.1.2015 seeking an order relieving him from the post of Manager and the second respondent from the post of Executive Officer had later filed another report dated 16.1.2015 withdrawing the relief sought in report dated 8.1.2015, we are of the opinion that the Wakf Tribunal should have before passing orders on 21.1.2015 directed the first respondent to serve copies of the reports on the petitioners and heard the petitioners as well before passing orders on the reports. Having regard to the fact that the petitioners had filed I.A.No.198 of 2014, we are of the opinion that the petitioners should have been put on notice and heard before reports dated 8.1.2015 and 16.1.2015, praying for inconsistent reliefs, were considered and orders passed. We are therefore persuaded to

hold that Ext.P2 order dated 21.1.2015 passed by the Wakf Tribunal on reports dated 8.1.2015 and 16.1.2015 submitted by the Manager of the Kanjiramattom Mosque cannot be sustained.

We accordingly allow O.P.(Wakf) No.4 of 2015, set aside Ext.P2 order dated 21.1.2015 in O.S.No.97 of 1101-M.E. and direct the Wakf Tribunal to pass revised orders on reports dated 8.1.2015 and 16.1.2015 submitted by the Manager of the Kanjiramattom Mosque after directing him to serve copies thereof on the learned counsel appearing for the petitioners in I.A.No.198 of 2014 and in I.A.No.29 of 2015 in O.S.No.97 of 1101-M.E. and after affording them an opportunity to file objections if any to the said reports. The Wakf Tribunal shall pass revised orders on the reports dated 8.1.2015 and 16.1.2015 expeditiously and in any event within one month from today. Until such time as the Wakf Tribunal passes revised orders, respondents 1 and 2 shall continue to function as the Manager/Executive Officer respectively of the Kanjiramattom Mosque.

As regards O.P.(Wakf) No.1 of 2015, in view of the fact that the Kodikuthu festival is over, the first relief prayed for has become infructuous. As regards the second relief namely, to interdict the second respondent from withdrawing any amount from the bank account of the Mosque, the petitioners will be at liberty to move the

Wakf Tribunal for appropriate orders. We make it clear that we have not expressed any opinion as on the merits of the rival contentions and that the Wakf Tribunal will be free to pass revised orders having regard to the pleadings and the materials on record.

The original petitions are disposed of with the aforesaid directions. No costs.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps