

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

OP (WAKF).No. 9 of 2015 (R)

PETITIONER(S):

- 1. DARUSALAM MASJID, KODIYAMKUNNU,
EDATHANATTUKARA, PALAKKAD DISTRICT
REPRESENTED BY THE SECRETARY OF ITS MANAGING COMMITTEE.**
- 2. P.P.UNNEENKUTTY HAJI, AGED 75 YEARS
S/O HYDRU, PRESIDENT, DARUSALAM MASJID
KODIYAMKUNNU, EDATHANATTUKARA, PALAKKAD DISTRICT.**
- 3. V.T.HAMSA MASTER, AGED 65 YEARS
S/O HYDROSE, SECRETARY, DARUSALAM MASJID
KODIYAMKUNNU, EDATHANATTUKARA, PALAKKAD DISTRICT.**

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENT(S):

- 1. MOHAMMED HANEEFA
S/O KUNHAMMU HAJI, RESIDING AT KOLASSERY HOUSE
KODIYANKUNNU, EDATHANATTUKARA
PALAKKAD DISTRICT-678 002.**
- 2. SAKKEER HUSSAIN, AGED 43 YEARS,
S/O MOHAMMED, CHAKKAMTHODI HOUSE, EDATHANATTUKARA
PALAKKAD DISTRICT-678 002.**
- 3. KERALA STATE WAKF BOARD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
V.I.P. ROAD, KALOOR, KOCHI-682 017.**

**R1-R2 BY ADV. SRI.P.A.ABDUL JABBAR
R3 BY SRI.K.SHIBILI NAHA, SC, K.S.W. BOARD.**

**THIS OP (WAKF) HAVING BEEN FINALLY HEARD ON 18-03-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF PLAINT IN W.O.S.NO.1/2015 OF THE WAKF TRIBUNAL, ERNAKULAM.
- EXHIBIT P2: TRUE COPY OF THE I.A.NO.3/2015 IN W.O.S. 1/2015.
- EXHIBIT P3: TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN I.A.3/2015 IN W.O.S. 1/2015.
- EXHIBIT P4: TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE MASJID.
- EXHIBIT P5: TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE MADRASSA.
- EXHIBIT 6: TRUE COPY OF ORDER DATED 24.2.2015 IN I.A.3/15 IN W.O.S. 1/15 OF THE WAKF TRIBUNAL, ERNAKULAM.
- EXHIBIT P7: TRUE COPY OF MINUTES OF THE MEETING HELD ON 25.12.2014.
- EXHIBIT P8: TRUE COPY OF THE LIST OF THE NAME AND ADDRESS OF THE COMMITTEE KEPT THE OFFICE OF THE FIRST PETITIONER/FIRST DEFENDANT.
- EXHIBIT P8 (PRODUCED ALONG WITH THE REPLY AFFIDAVIT): TRUE COPY OF THE RELEVANT PAGES IN THE SOUVENIR PUBLISHED IN CONNECTION WITH THE CONFERENCE, AT PAGES 1, 37, 38 AND 50.
- EXHIBIT P9: TRUE COPY OF THE MEMBERS OF THE MEETING HELD ON 29.9.2011.
- EXHIBIT P10: TRUE COPY OF THE MINUTES OF THE GENERAL BODY AND ELECTION HELD ON 17.10.2014.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(a): COPY OF THE DOCUMENT NO.2874/1961 MANNARKAD S.R.O.
- EXHIBIT R1(b): COPY OF THE DOCUMENT NO.398/1963 MANNARKAD S.R.O.
- EXHIBIT R1(c): COPY OF THE DOCUMENT NO.2553/1963 MANNARKAD S.R.O.
- EXHIBIT R1(d): COPY OF THE I.A.NO.54/2015 IN W.O.S.NO.1/2015.
- EXHIBIT R1(e): COPY OF THE ORDER IN I.A.NO.54/2015 IN W.O.S.NO.1/2015.

/TRUE COPY/

P.A. TO JUDGE

VPV

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

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O.P.(Wakf)No.9 of 2015

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Dated this the 18th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioners are defendants 1 to 3 in W.O.S.No.1 of 2015 on the file of the Wakf Tribunal, Ernakulam. Respondents 1 and 2 are the plaintiffs and the third respondent is the fourth defendant therein. The relief sought in the plaint in W.O.S.No.1 of 2015 is to direct defendants 1 to 3 by way of a mandatory injunction to conduct a free and fair election to the managing committee of the first defendant Wakf through secret ballot under the supervision of a Returning Officer to be appointed by the Wakf Tribunal. Respondents 1 and 2 have also prayed for a permanent prohibitory injunction restraining defendants 1 to 3 from changing the present Imam and Khatheeb of the Darussalam Masjid and Teachers and other staff of the Madrassa and the Universal English Medium School and from stopping the Quran classes being conducted in the Mosque and the Madrassa by the scholar, Hamsakutty Salafi till a new managing committee is elected by secret ballot and the managing committee takes charge.

2. The substance of the averments in the plaint in W.O.S.No.1 of 2015 is that the Darussalam Masjid was established in the year 1961 in 1.33 acres of land which was dedicated by late Ayamu Haji. It is stated that thereafter the Wakf acquired other properties and that it is presently in possession of 4.5 acres of land wherein besides the Masjid, a Madrassa and an English Medium School known as Universal English Medium School is also functioning. It is stated that the Mahal consists of 400 families registered with the Masjid, that there is no written bye-law governing the administration of the first defendant Jama-ath, that once in three years a 21 member managing committee is elected, that the last election was held in September 2011 and the term of the committee thus elected came to an end in September 2014. The plaintiffs have also alleged that there is an attempt by an organisation known as the Kerala Naduvathul Mujahideen ("KNM" for short) to take over the administration and management of the first respondent Wakf. The plaintiffs have also expressed the apprehension that as the Imam and Khatheeb of the Mosque and Teachers and staff of the Madrassa and the school are not supporting the views of the organisation known as KNM, steps are afoot to change the Imam and Khatheeb and also the Teachers and staff of the Madrassa and

the school. It is in the background of these averments that the plaintiffs in W.O.S.No.1 of 2015 have sought the aforesaid reliefs. Along with the plaint in W.O.S.No.1 of 2015, the plaintiffs filed I.A.No.3 of 2015 for an interim order of injunction in terms of the relief of injunction prayed for in the plaint.

3. Upon receipt of notice in I.A.No.3 of 2015, defendants 1 to 3 entered appearance and filed Ext.P3 counter affidavit wherein they contended that since the year 1963 the Sakha Committee of the KNM is administering the Wakf and that they have been elected as office bearers of the Jama-ath by the state committee of the KNM in 2014. They also contended that the KNM is against all kinds of superstitious beliefs in the society, that recently some members of the KNM deviated from the said fundamental principle and started encouraging believers to approach persons engaged in black magic for treatment of diseases instead of approaching physicians and that the Imam, the Khatheeb, the Madrassa Teachers and Hamsakutty Salafi have joined the group which is engaged in propagating superstitious beliefs. It is also stated that the state committee of the KNM has taken disciplinary action against such members and many were suspended and dismissed from the KNM. They also contended that the plaintiffs who are not members of the KNM have

no right to question the authority of the committee headed by respondents 2 and 3 to administer and manage the Wakf. The Wakf Tribunal considered the rival contentions and by Ext.P6 order passed on 24.2.2015 directed that the ad interim order passed on 7.1.2015 shall continue until further orders. The Wakf Tribunal also held that the Police shall continue to provide assistance as directed in I.A.No.54 of 2015. Defendants 1 to 3 have aggrieved thereby filed this original petition under Article 227 of the Constitution of India.

4. We heard Sri.T.H.Abdul Azeez, learned counsel appearing for the petitioners, Sri.P.A.Abdul Jabbar, learned counsel appearing for respondents 1 to 3 and Sri.K.Shibili Naha, learned standing counsel appearing for the Kerala State Wakf Board. Sri.T.H.Abdul Azeez, learned counsel appearing for the petitioners contended relying on Exts.P9 and P10 minutes produced along with the reply affidavit dated 13.3.2015 that the elections to the managing committee of the Darussalam Mosque have already been conducted and therefore, a further election as required by the plaintiffs is unwarranted. The learned counsel submitted that as the Imam and the Khatheeb and the existing Teachers and staff of the Madrassa and English Medium School have deviated from the ideologies propagated by the KNM, the managing committee elected in the

meeting held on 17.10.2014 has decided to change the Imam and the Khatheeb of the Darussalam Masjid and Teachers and other staff of the Madrassa and the School. The learned counsel contended that the Wakf Tribunal has decided the issue against the petitioners on the short ground that the petitioners have not proved that an election to the managing committee was held in 2014 and therefore, having regard to the materials now produced before this Court, the impugned order may be set aside and I.A.No.3 of 2015 may be remanded to the Wakf Tribunal for fresh disposal.

5. Per contra, Sri.P.A.Abdul Jabbar, learned counsel appearing for respondents 1 to 3 contended that the Darussalam Masjid was established in the year 1961, that the dedication by way of Wakf was made in the year 1963, that later also the Wakf acquired properties, that the documents of title were produced along with the plaint and that the said documents would show that the Mosque was not established by the KNM as contended by the petitioners. The learned counsel contended that the mere fact that some members of the Mahal owe allegiance to the KNM is not a reason to hold that the KNM can interfere with the administration of the Mosque or impose its views on the members of the Mahal. The learned counsel contended that in the absence of any evidence to prove that

elections have been held as contended by the petitioners and as the elections have to be held once in every three years, no exception can be taken to the order passed by the Wakf Tribunal. Sri.K.Shibili Naha, learned standing counsel appearing for the Kerala State Wakf Board submitted with reference to the entries in the Register of Wakfs maintained by the Kerala State Wakf Board that as per the entries therein, the President of Edathanattukkara Kodyankunnu Darussalam Palli is the Mutawalli and the name of the Wakf institution is Edathanattukkara Kodyankunnu Darussalam and that in the register maintained by the Wakf Board, the KNM is not named as the organisation which has established the Mosque and its office bearers have not been recognised as the Mutawalli of the Mosque. The learned counsel contended that the case put forward by the petitioners that the Darussalam Masjid and Madrassa and the English Medium School were established by the KNM is a matter which can be decided only after trial and in the absence of any evidence to show prima facie that the Mosque and the Madrassa were established by the KNM, no interference is called for with the impugned order.

6. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone

through the pleadings and the materials on record. It is evident from the pleadings and the materials on record that the Darussalam Masjid was established in the year 1961. Even going by the case set out by defendants 1 to 3 in Ext.P3 objections that it is only in the year 1963 that the KNM started administering the Mosque. It is not in dispute that the KNM was registered in the year 1957. In the copy of the register of Wakfs handed over to us by the learned standing counsel for the Kerala State Wakf Board, the name of the Mutawalli is shown as President of Edathanattukkara Kodyankunnu Darussalam Palli. The fact that Mosque was established in the year 1961 pursuant to the dedication by late Ayamu Haji as per the original of Ext.A1 Wakf deed dated 26.12.1961 is not in dispute. The fact that as per Exts.A4 and A5 documents the Wakf also came into possession of other properties is also not in dispute. The entries in the register of Wakfs show that the registration as a Wakf was on 24.9.1963, the date of execution of Exts.A4 and A5 sale deeds. If as contended by the petitioners the Mosque was established by the KNM, certainly it would have found a place in the register of Wakfs. As matters now obtain it cannot therefore be said that the Mosque in question was one established by the KNM and that its bye-laws govern the administration and management of the Mosque. In our

opinion, in the absence of any evidence to show that the members of the Mahal have no voice in the selection of the committee and any material to show that the Mosque in question was established by the KNM, no exception can be taken to the order passed by the Wakf Tribunal, which only directed the respondents from changing the Imam and the Khatheeb of the Mosque and also the Teachers and other staff of the Madrassa and the English Medium School until elections are held through secret ballot to constitute a managing committee for the first defendant Mosque. The order impugned does not in our opinion prejudicially affect the rights of the petitioners. If, before the right of the petitioners over the Madrassa/Mosque/English Medium School is decided, they are permitted to change the Imam and the Khatheeb of the Darussalam Masjid and the Teachers and other staff of the Madrassa and the English Medium School it will lead to a situation where even without any right being found in their favour, the petitioners will have a free hand in the matter of appointing the Imam and the Khatheeb and also the Teachers and staff of the Madrassa and the English Medium School. Therefore for that reason also we are of the opinion that no interference is called for with the impugned order.

The original petition fails and it is accordingly dismissed, with

a direction to the Wakf Tribunal to try and dispose of the suit expeditiously and in any event within an outer limit of six months from today, untrammelled by the observations and findings in the impugned order and in this judgment. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**

vpv