

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 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

OP (WAKF).No. 12 of 2015 (R)

PETITIONER/3RD PLAINTIFF:

ANSARI, AGED 48 YEARS
S/O.MYTHEEN SHA, KAMALIA COTTAGE
CANTONMENT SOUTH NAGAR, CHINNAKKADA P O,
KOLLAM TALUK
KOLLAM DISTRICT

BY ADVS.SRI.ANEESH JOSEPH
SRI.NIRMAL V NAIR
SRI.RILGIN V.GEORGE

RESPONDENTS/DEFENDANTS/PLAINTIFFS 1 & 2:

1. CHINNAKKADA MUSLIM JAMA-ATH,
REP BY ITS PRESIDENT, A A SAMAD, AGED 76 YEARS
CHINNAKKADA P O
KOLLAM TALUK, KOLLAM DIST-676015
2. A A SAMAD, AGED 76 YEARS
S/O.ABDUL LATHEEF, NEELAGIRI, KOTTAMUKKU
CHINNAKKADA P O, KOLLAM TALUK, KOLLAM DISTRICT-676015
REP BY ITS PRESIDENT
CHINNAKKADA MUSLIM JAMA-ATH
3. AHMMED KABEER, AGED 57 YEARS
S/O.ABDULLA RAWTHER, REPRESENTED BY SECRETARY
CHINNAKKADA MUSLIM JAMA-ATH, CHINNAKKADA P O
KOLLAM DIST-676015
4. RIFAYI
T K M C P O, KUTTICHIRA, KOTTANKARA VILLAGE
KOLLAM, REP BY ITS SECRETARY
JUMA MASJID LOCAL COMMITTEE-676002
5. NAZIR, AGED 45 YEARS
S/O.SHAMSUDEEN, MANGALUVILAYIL VEEDU, T K M C P O
KUTTICHIRA, KOKTTANKARA VILLAGE
KOLLAM (MASJID COMMITTEE SECRETARY) 676002

6. ANZAR, AGED 48 YEARS
S/O.ABDUL KHADER, AJAS DALE, T K M C P O
KUTTICHIRA, KOTTANKARA VILLAGE
KOLLAM (MASJID COMMITTEE PRESIDENT) 676002
7. KERALA STATE WAKF BOARD
REP BY THE CHIEF EXECUTIVE OFFICER, VIP ROAD, KALOOR
P O 682017, ERNAKULAM
8. NISSAMUDEEN
AGED 48 YEARS,
S/O.MUHAMMED KUNJU, KATTAYYATHU VEEDU, ASRAMAM
KOLLAM TALUK, KOLLAM DIST-676001
9. NIHAS, AGED 42 YEARS
S/O.ABDUL SATHAR, STAR MANZIL, THAMARAKKULAM
KOLLAM TALUK, KOLLAM DIST-676001

THIS OP (WAKF) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (WAKF).No. 12 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- TRUE COPY OF THE ORDER IN IA 58/2015 IN OS 6/2014 DTD 5/3/2015 OF THE WAKF
TRIBUNAL, KOLLAM

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

VPS

PS TO JUDGE

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

O.P.(WAKF) No.12 of 2015

Dated this the 9th day of April, 2015

J U D G M E N T

P.N.Ravindran, J.

The petitioner is the third plaintiff in O.S.No.6 of 2014 on the file of the Wakf Tribunal, Kollam. Respondents 8 and 9 are plaintiffs 1 and 2 respectively therein. The suit instituted by the petitioner along with respondents 8 and 9 is one for a declaration that the administration and management of the fourth defendant Juma Masjid and the institutions associated with it is vested with the managing committee of the first defendant. The petitioner and the other plaintiffs have also prayed for an order directing defendants 5 and 6 to conduct the Andu Nercha in the fourth defendant Juma Masjid only with the permission of the managing committee of the first defendant Jama-ath and under the supervision of the Kerala State Wakf Board. They have also prayed for a decree directing defendants 5 and 6 to produce the accounts relating to the fourth defendant Masjid before defendants 1 to 3.

2. In the cause title of the plaint, the fourth defendant is described as Rifayi Juma Masjid, T.K.M.C.P.O., Kuttichira, Kottankara

Village, Kollam District, represented by the Secretary of the Pradeshika Local Committee. The plaintiffs have in paragraph 1 of the plaint admitted the fact that defendants 5 and 6 are office bearers of the committee of the fourth defendant Juma Masjid. After the suit was instituted, the plaintiffs filed I.A.No.58 of 2015 in O.S.No.6 of 2014 praying for the appointment of an observer from the Kerala State Wakf Board to submit a report of the Andu Nercha proposed to be held in the fourth defendant Juma Masjid on March/April, 2015 and to restrain respondents 4 to 6 from conducting the Andu Nercha without the presence of an observer appointed by the Wakf Board. On that application, the Wakf Tribunal passed Ext.P1 order dated 5.3.2015 by directing the Kerala State Wakf Board to appoint one of its officers as an observer to observe the Andu Nercha proposed to be conducted from 12.3.2015. In the unnumbered paragraph 2 of that order, the Wakf Tribunal held as follows:

"It is not in dispute that the administration of the 4th defendant Jama-at is now being carried on by a committee under the leadership of the defendants 5 and 6. It is submitted by the parties that the Andu Nercha is proposed to held from 12.3.15 onwards. Since the Jama at Committee under the leadership of the defendants 5 and 6 are administering the 4th defendant Wakf, I consider that they are entitled to conduct the Andu Nercha. Hence the injunction against the conducting of the same without the presence or participation of the Wakf Board cannot be allowable."

3. The petitioner has filed this original petition under Article 227 of the Constitution of India aggrieved by the observation in the aforesaid paragraph that the administration of the fourth defendant Juma Masjid is being carried on by the committee of defendants 5 and 6. It is submitted that the said statement is factually incorrect. In this original petition, the petitioner prays for an order directing the Wakf Tribunal, Kollam to try and dispose of the suit untrammelled by the observations made in the order passed on 5.3.2015 in I.A.No.58 of 2015 in O.S.No.6 of 2014.

4. We heard Sri.Aneesh Joseph, learned counsel appearing for the petitioner. We have also gone through the impugned order as also the plaint in O.S.No.6 of 2014. It is evident from paragraph 1 of the plaint as also the relief sought therein that the affairs of the fourth defendant Juma Masjid are being managed by the committee of which defendants 5 and 6 are the Secretary and President respectively. We therefore find nothing objectionable in the impugned order. The only exception which the petitioner can legitimately take in our opinion is to the description of the fourth respondent Juma Masjid as the Jama-ath. After hearing learned counsel for the petitioner and on going through the plaint as also the impugned order, we are not satisfied that the observations in the impugned order will in any way stand in the way of

the plaintiffs from pursuing the suit or from pressing the contentions raised by them in the plaint. Ext.P1 order is only an interlocutory order and the observations and findings therein cannot be said to be conclusive as regards the rights of parties.

We therefore find no reason to grant the relief prayed for. The original petition fails and is accordingly dismissed.

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

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

vps