

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&**

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

OP (WAKF).No. 30 of 2015 (R)

PETITIONER(S):

**HAMZA, AGED 53 YEARS,
S/O.MUHAMMED, MOORKANAD AMSOM, KOLATHUR DESOM,
KOLATHUR (PO), PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S):

- 1. A.KUNHIMUHAMMED MOULAVI,
S/O.KUNHIMOIDEN, AMARIYIL HOUSE,
KOLATHUR (PO), PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT,
SECRETARY KAVKIBUL ISLAM SANGAM & HAYATHUL ISLAM
SECONDARY MADRASA - 679 338.**
- 2. KAVKIBUR ISLAM SANGAM & HAYATHUL ISLAM
SECONDARY MADRASA,
A SOCIETY REGD. UNDER THE PROVISIONS OF REGN.
ACT REGD.NO.312/08. REPRESENTED BY ITS SECRETARY,
A.KUNHIMUHAMMED MOULAVI, S/O.KUNHIMOIDEEN,
AMARIYIL HOUSE, KOLATHUR (PO), PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.**
- 3. K.P.HAMZA,
S/O.MUHAMMED, KALLUPATATHINGAL HOUSE,
PRESIDENT KAVKIBUR ISLAM SANGAM & HAYATHUL ISLAM
SECONDARY MADRASA KOLATHUR (PO), 679338.**
- 4. KUHIMARAKKAR, ERUKKIN PARAMBIL,
S/O.MUHAMMED, KARUPPATHAL HOUSE, KOLATHUR P.O.,
PIN 679 338, PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.**
- 5. THE KERALA STATE WAKF BOARD,
REPRESENTED BY ITS C.E.O KALOOR, KOCHI 682 017.**

R5 BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

**THIS OP (WAKF) HAVING COME UP FOR ADMISSION ON 06-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: A TRUE COPY OF THE PLAINT IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 06.06.2010.
- P2: A TRUE COPY OF THE WRITTEN STATEMENT IN THE CASE OS.NO.27/2010 BEFORE THE WARKF TRIBUNAL KOZHIKODE DATED 21.07.2011.
- P3: A TRUE COPY OF THE COMMISSIONERS REPORT DATED 10.01.2013 IN OS.NO.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE.
- P4: A TRUE COPY OF THE AFFIDAVIT IN IA.NO.596/2015 IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 08.09.2015.
- P5: A TRUE COPY OF THE AFFIDAVIT IN IA.NO.597/2015 IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 08.09.2015.
- P6: A TRUE COPY OF THE COUNTER TO IA.NO.596/2015 IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 09.09.2015.
- P7: A TRUE COPY OF THE IA.NO.597/2015 IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 09.09.2015.
- P8: A TRUE COPY OF THE COMMON ORDER IN IA.596/2015 AND IA.597/2015 IN OS.27/2010 BEFORE THE WAKF TRIBUNAL KOZHIKODE DATED 23.09.2015.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

O.P (Wakf) No.30 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This original petition under Article 227 of the Constitution of India is filed challenging an interlocutory order whereby the Wakf Tribunal, constituted under the Wakf Act, 1995, allowed an application for re-opening of evidence and to recall PW1 for further examination. We have heard the learned counsel for the petitioner.

- 2.It is argued on behalf of the petitioner that the recording of evidence in the suit was over and arguments were expressed and it is thereafter that the application to re-open and recall the witness was filed. He says that what is sought to be brought in is something which would be against the pleadings which have been placed by the parties. We are of the view that having regard to the format of jurisdiction of the Wakf Tribunal and the nature of adjudication that carried through and also the availability of revision against all orders, whereby

any dispute, question or other matter has been determined by the Tribunal, an interference by way of Article 227 with the proceedings before the Tribunal will only result in mis-carriage of justice. Though what is sought to be prevented through an exercise under Article 227 would be to prevent abuse of process to ensure that there is no mis-carriage of justice, we see that on the whole, the proceedings before the Tribunal cannot be treated to have deflected from its course and its conclusions would be arrived at as an end for delivering the verdict. The petitioner, if so aggrieved will have the entitlement to challenge the impugned order as well, as part of any challenge to final order that may be issued. We preserve that.

3. Subject to what is aforesaid, this original petition fails.

In the result, this original petition is dismissed in limine.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG