

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

OP (WAKF).No. 31 of 2015 (R)

PETITIONER(S):

- 1. DARUSSALAM MADRASSA COMMITTEE,
AYENCHERI.
REPRESENTED BY ITS FORMER PRESIDENT MUTHAVALLY.
MOOPATTA MUHAMMED ALI HAJI, RAMATH HOUSE.
AYENCHERI AMSOM DESOM, P.O.AYENCHERI, VADAKARA TALUK,
KOZHIKODE DISTRICT.**
- 2. DARUSSALAM MADRASSA COMMITTEE AYENCHERI,
REPRESENTED BY ITS PRESENT PRESIDENT/MUTHAVALLY,
PUTHIYOTTIL, A.P.KUNHISEETHI THANGAL,
S/O. MUTHUKOYA THANGAL, PUTHIYOTTIL HOUSE,
RAMATH HOUSE, AYENCHERI AMSOM DESOM, P.O.AYENCHERI,
VADAKARA TALUK, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.C.VATHSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V**

RESPONDENT(S):

- 1. T.KUNHABDULLA, AGED 56 YEARS,
S/O. T.KUNHAMMED, AYANCHERI AMSOM DESOM, P.O.AYENCHERI,
VATAKARA TALUK, KOZHIKODE DISTRICT, PIN-673 544.**
- 2. K.P.SEbastian , AGED 40 YEARS,
S/O. ULAHANNAN POULOSE, GMF ASSOCIATES, NEAR BUS STAND,
KANNUR ROAD, PERAMBRA, SHOP NO.1/906,
MENHANNIAM AMSOM DESOM, KOYILANDY TALUK, PIN-673 525.**

R1 BY ADV. SRI.R..RAMADAS (CAVEATOR)

**THIS OP (WAKF) HAVING COME UP FOR ADMISSION ON 15-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

OP (WAKF).No. 31 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 : COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE WAKF BOARD.

P2 : COPY OF THE DECREE DTD.29.11.2004 IN OS NO.24/2002 ON THE FILE OF WAKF TRIBUNAL.

P3 : COPY OF THE ORDER OF DISMISSAL OF APPEAL BY HON'BLE SUPREME COURT.

P4 : COPY OF THE ORDER DTD.23.6.2006 IN OS NO.23/2002.

P5 : COPY OF THE ORDER DTD.12.6.2015 IN EP NO.7/2005.

P6 : COPY OF THE PETITION FILED BY THE PETITIONER TO HAND OVER KEY.

P7 : COPY OF THE PETITION ALONG WITH AFFIDAVIT OF THE 1ST RESPONDENT IN EA NO.101/2014.

P8 : COPY OF THE ORDER IN EA NO.101/2014.

P9 : COPY OF THE ORDER IN EA NO.83/2015.

P10: COPY OF THE ORDER IN EP NO.7/2005 IN OS NO.24/2005.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

PA TO JUDGE

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

O.P (Wakf) No.31 of 2015
&
C.R.P (Wakf) No.550 of 2015

Dated this the 15th day of October, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.The captioned revision petition and the original petition invoking Article 227 of the Constitution of India relate to a wakf and certain elections to the Wakf Committee.

- 2.Though we have heard the learned counsel for the rival parties and also the learned counsel for the Wakf Board, one abundantly important matter that surges is that the Wakf Board had heard the matter on 15.4.2006 but had issued the order only on 5.3.2013. It appears that in the meanwhile, a party to the proceedings has also died. With that scenario in hand, we think that the further adjudication by the Wakf Tribunal on the correctness or otherwise of the Wakf Board would have been deferred till the Wakf Board takes a decision de novo. With this, we put it to the parties as to whether it would be appropriate for us to set aside the decisions of the

Wakf Tribunal and the Wakf Board and remit the entire matter to the Wakf Board for reconsideration of the matter that was filed before it. The parties do not have any objection to this course being adopted. However, it also needs to be noted that, with the passage of time, many events have gone through and it would not be permissible for restoring any anti-dated fact situation to prevail at this point of time. Otherwise, another course that could be opted is to appoint an officer of the Wakf Board as the receiver of the wakf in question. In the meanwhile, the parties chose to have the option of having an order of status quo as on today in deciding matters in relation to the management of the Wakf Bord, however, under the superintendence of the Wakf Board.

In the result, without expressing anything on the merits of the rival contentions, the order impugned in the C.R.P and the orders impugned in the original petition are vacated and O.A.No.4 of 2013 of the Wakf Tribunal is answered by making an order of remand by vacating the order that was challenged in that original application. As a consequence, the Wakf Board will take up the proceedings which was pending before it as Enquiry Proceedings No.B3-2072/2004 and would decide on it

de novo after issuance of notice to the necessary parties and ensuring that all necessary parties are notified of the said proceedings. Pending such action at the hands of the Wakf Board, the administration of the wakf in question will be carried out in the manner in which it is now proceeding, that is to say, the status quo as on today shall be maintained and if there is any controversy in any such matter, it will be open to the Wakf Board to issue necessary directions to maintain the available status quo. The Wakf Board will decide on the issue untrammelled by anything stated in the orders of the Wakf Tribunal, which are impugned in the revision petition and the original petition, as also its earlier decisions rendered on 5.3.2013. We are sure that the Wakf Board will make an endeavour for expeditious consideration and disposal of the matter being remitted hereby.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG