

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP (WAKF).No. 32 of 2015 (R)

PETITIONER(S)/COUNTER PETITIONER/PLAINTIFF:

**VAVVAKKAVU MUSLIM JAMA-ATH,
REPRESENTED BY ITS JAMA-ATH SECRETARY, ABDUL LATHEEF,
S/O.IBRAHIMKUTTY, ZEN VILLA, KOTTAPPURAM,
KULASEKHARAPURAM VILLAGE, KARUNAGAPPALLY TALUK,
PIN 690 528.**

**BY ADVS.SRI.B.RENJITHKUMAR
SRI.D.THILAKAN**

RESPONDENT(S)/PETITIONERS/DEFENDANTS 1 TO 3:

- 1. SUJATHA,
D/O.PANCHAMI, MOHANA SADANAM, VETTIYARMURI,
MAVELIKKARA TALUK,
RESIDING FROM PULAYANTAYYATHU VEEDU,
THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK, 690 523.**
- 2. UNNIKRISHNAN,
S/O.PARAMU, PULAYANTAYYATHU VEEDU, THAZHAVA VILLAGE,
KARUNAGAPPALLY TALUK, 690 523.**
- 3. GOPALAKRISHNAN,
S/O.PARAMU, PULAYANTAYYATHU VEEDU, THAZHAVA VILLAGE,
KARUNAGAPPALLY TALUK, 690 523.**

**THIS OP (WAKF) HAVING BEEN FINALLY HEARD ON 02-12-2015, ALONG
WITH OPWT. 35/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DG

OP (WAKF).No. 32 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. COPY OF THE ORDER DATED 11.9.15 IN IA 394/13 IN OS 34/13 IN THE
FILE OF WAKF TRIBUNAL, KOLLAM.
- EXHIBIT P2. COPY OF THE PLAINT IN O.S 34/13 OF THE WAKF TRIBUNAL KOLLAM.
- EXHIBIT P3. COPY OF THE MAHAZAR REPORT AND ROUGH SKETCH SUBMITTED BY
THE COMMISSIONER, ADVOCATE BEFORE THE COURT BELOW
(UNDATED).
- EXHIBIT P4. COPY OF THE IA 394/13 IN OS 34/13 DATED 31.10.14.
- EXHIBIT P5. COPY OF THE OBJECTIONS TO THE IA 394/13 FILED ON 20.11.14.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A TO JUDGE

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

O.P.(Wakf) Nos.32 & 35 of 2015

Dated this the 2nd day of December, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. These original petitions under Article 227 of the Constitution of India are filed challenging the order dated 11.9.2015 in I.A.No.394 of 2014 in O.S.No.34 of 2013 of the Wakf Tribunal, Kollam. O.P (Wakf) No.32 of 2015 is by a Jama-ath, which is the plaintiff before the Tribunal and O.P.(Wakf) No.35 of 2015 is by the defendants.
2. Heard the respective learned counsel for the parties.
3. In the suit which is for perpetual injunction in relation to immovable properties belonging to the Wakf, the defendants pleaded that a portion of the land claimed by the Wakf belongs to the Government. At the instance of the plaintiff, an

Advocate Commissioner conducted a local inspection and submitted a mahazar, report and a sketch, without reference to the revenue records and the plan available with the revenue department in relation to the lands in the area. Though the defendants did not file objections to that, they filed a separate application to identify the property of the plaintiff in the light of the defendants' contentions that part of the property claimed by the plaintiff Jama-ath as belonging to the Wakf belongs to the government. The court below allowed that application in part. These original petitions are filed by both sides challenging that order.

4. The fact of the matter remains that the Wakf Board which is entitled to be heard in relation to issues regarding title and possession of Wakf properties was not a party to the interlocutory application from which these original petitions arise. The Wakf Board was also not heard in that matter, though it is a party to the suit.

5. For one thing, when possession which is asserted by a plaintiff for the purpose of perpetual injunction against trespass is

impeached by the defendants challenging the title and possession; at least as regards a part of the plaint schedule property; it would become incumbent on the trial court or the tribunal to ultimately consider the question as to title and possession, which would be relevant to decide the question as to whether perpetual injunction as sought for could be granted. The Wakf Board ought to have a say on the issue as to whether the possession projected by the plaintiff Jama-ath is true possession and if so, whether it is based on title and as part of the Wakf.

6. In the fitness of things, we are of the view that ends of justice require that the impugned order is vacated enabling the court below to reconsider I.A.No.394 of 2013 after giving opportunity of hearing to the plaintiff and the defendants. The learned Tribunal will issue orders afresh on that interlocutory application, also taking into consideration what has been stated above.

In the result, these original petitions are allowed, vacating the impugned order and directing that the learned Tribunal will

reconsider the interlocutory application in accordance with law, in the light of what is stated above. Parties are directed to mark appearance before the tribunal on 18th January, 2016.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG

