

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP (WAKF).No. 41 of 2014 (R)

PETITIONER(S) :

MUHAMMED BASHEER, AGED 48 YEARS
S/O. MUHAMMED, MADAMPATT HOUSE, NIRAMARATHUR P.O.
NIRAMARATHUR AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT - 676 109.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S) :

1. CHARATHKOYA, AGED 58 YEARS
S/O. KUNHI BAVA, NIRAMARATHUR P.O.
NIRAMARATHUR AMSOM DESOM, TIRUR TALUK
MALAPPURAM DISTRICT, PIN - 676 109.
2. KERALA STATE WAKF BOARD,
REP. BY ITS CHIEF EXECUTIVE OFFICER,
V.I.P ROAD, COCHIN, ERNAKULAM DISTRICT,
PIN - 682 017.

R2 BY SRI. K. SHIBILI NAHA, SC

THIS OP (WAKF) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (WAKF) .No. 41 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - COPY OF THE PLAINT IN OS NO. 22/14 ON THE FILES OF WAKF TRIBUNAL, KOZHIKODE.

P2 - COPY OF THE AFFIDAVIT DT. 14.3.14 FILED BY THE PETITIONER IN OS NO. 22/2014 ON THE FILES OF WAKF TRIBUNAL, KOZHIKODE IN SUPPORT OF THE TEMPORARY INJUNCTION APPLICATION, IA NO. 129/2014.

P3 - COPY OF THE COUNTER AFFIDAVIT DT. 31.3.14 FILED BY THE FIRST RESPONDENT IN OS NO. 23/2014 ON THE FILES OF WAKF TRIBUNAL, KOZHIKODE.

P4 - COPY OF THE RELEVANT PORTION COMMISSION REPORT DT. 25.3.14 AND SKETCH IN OS NO. 22/2014 ON THE FILES OF WAKF TRIBUNAL, KOZHIKODE.

P5 - COPY OF THE ORDER IN IA NO. 129/2014 IN OS NO. 22/2014, PASSED BY THE WAKF TRIBUNAL, KOZHIKODE.

P6 - COPY OF THE JUDGMENT DT. 01.10.14 IN OP(WAKF) NO. 21/2014 OF THIS HON'BLE COURT.

P7 - COPY OF ORDER DT. 15.11.14 PASSED WAKF TRIBUNAL, KOZHIKODE IN IA 129/2014 IN OS NO. 22/2014.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

.....
OP(Wakf) No.41 of 2014
.....

Dated this the 31st day of August, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.Heard.

2.Petitioner has filed a suit before the Wakf Tribunal seeking a perpetual injunction against construction of septic tank very near to the khabarsthan and for other reliefs. The interlocutory application filed seeking an order of temporary injunction against activation of the septic tank was dismissed by the Tribunal.

3.Hearing the learned counsel for the petitioner, the learned counsel for the first respondent, and the learned standing counsel for the Wakf Board, the following order was minuted on 23.12.2014:

“Admit. Sri.K.K.Mohamed Ravuf, learned counsel takes notice for the first respondent. Sri.K.Shibili

Naha, learned standing counsel takes notice for the second respondent.

Heard learned counsel on both sides. Perused the records. After hearing learned counsel on both sides and on going through the records, we are satisfied that unless an interim order of injunction as prayed for is granted, the relief prayed for in the original petition will become infructuous. There will accordingly be an interim order of injunction restraining the respondents from using the septic tank and toilets constructed by the respondents in the lands situate adjacent to Khabarsthan comprised in Survey Nos.251/1 & 252/4 of Niramathur Village, Tirur Taluk, Malappuram District, until further orders.”

For the last nearly 9 months, the said order is in force.

4.As is apparent from the materials on record, the issue put for adjudication relates to matters which are intricately connected with the eligibility of the defendants to erect

the septic tank and to activate it. The status quo obtained as on today by the force of the aforementioned interim order dated 23.12.2014 passed by this Court will preserve the right of the parties for appropriate adjudication during the pendency of the suit. We follow this course. It would not be advisable to express either way on the different contentions raised in relation to the eligibility or otherwise to erect the septic tank. We only take note of the fact that, the Bench had, while granting order dated 23.12.2014, taken note of the fact that the matter would become infructuous, if relief of interlocutory nature is not granted. We are also of the view that the Wakf Board can also look into the problem in the locality in relation to the khabarstan in question and place its views before the Wakf Tribunal.

In the result, interlocutory order dated 23.12.2014 is made absolute till the disposal of O.S.No.22 of 2014 on the file of Wakf Tribunal, Kozhikkode and the said Tribunal is directed to dispose of the suit finally, at the earliest, untrammelled by anything stated

in the order impugned or in the interlocutory order quoted above or in this judgment . This original petition is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

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