

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No.9173 of 2015 (V)

PETITIONER:

**EAST PATHANAPURAM CHERIYA JUMA-ATH PALLI,
MAHALLU JUMA-ATH SANGAM,
REPRESENTED BY ITS SECRETARY,
C.P.ABDULLAKUTTY,AGED 40 YEARS,
PATHANAPURAM,KIZHUPARAMBA,
MALAPPURAM - 673 639.**

BY ADV.SRI.M.KRISHNAKUMAR

RESPONDENTS:

- 1. THE CHIEF EXECUTIVE OFFICER,
KERALA STATE WAQF BOARD,
VIP BOARD,KALOOR,KOCHI - 682 017.**
- 2. THE KERALA STATE WAQF BOARD,
REPRESENTED BY IS CHIEF EXECUTIVE OFFICER,
VIP ROAD,KALOOR,KOCHI - 682 017.**
- 3. K.P.ASHRAF,KOLAPATTA HOUSE,
PATHANAPURAM,VALILLAPUZHA P.O-673 639.
MALAPPURAM.**

**R1 & R2 BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD
R3 BY ADVS.SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1:TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE
KIZHUPARAMBA GRAMA PANCHAYATH DATED 12.12.14.**

EXHIBIT P2:TRUE COPY OF THE COMPLAINT DATED 27.06.2014.

**EXHIBIT P3:TRUE COPY OF THE NOTICE ISSUED BY THE BOARD
DATED 28.06.2014.**

EXHIBIT P4:TRUE COPY OF THE REPLY BY THE PETITIONER DATED 19.12.14.

EXHIBIT P5:TRUE COPY OF THE ENQUIRY REPORT OF THE WAQF INSPECTOR.

EXHIBIT P6:TRUE COPY OF THE ORDER DATED 24.02.2015 OF THE BOARD.

RESPONDENT'S EXHIBITS:

**EXT.R3(a):A TRUE COPY OF THE OP 181/2014 FILED BY SOME OF THE MEMBERS
OF THE MAHAL TO THE KERALA STATE WAKF BOARD FOR FRAMING
A SCHEME FOR ADMINISTRATION OF THE WAKF.**

**EXT.R3(b):A TRUE COPY OF THE EXTRACT OF WAKF REGISTER OF
REGISTRATION NO.5616 OF PATHANAPURAM NISKARA PALLI.**

**EXT.R3(c):A TRUE COPY OF THE PETITION SUBMITTED BY THE RESPONDENT
AGAINST ANY GRANT OF BOARD SANCTION FOR CONSTRUCTION IN
THE KHABARSTAN ON 15.12.2014 TO THE DIVISION OFFICE OF 1ST
RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

pk

K. VINOD CHANDRAN, J

W.P(C) No. 9173 of 2015

Dated this the 21st day of May, 2015

J U D G M E N T

The petitioner, the Muthavally of a Waqf, is aggrieved with the rejection of approval of an application under Rule 95 B of the Rules framed under the Waqf Act, 1995; as indicated by Ext.P6. The petitioner's contention is that the Waqf in which the petitioner is the Muthawally namely East Pathanapuram Cheriya Juma-ath Palli having registration No. 5616/RA urgently requires construction of four rooms to accommodate the students who are residing in the property as also for facilitating more convenience to the worshippers and the students who come to the Madrasa, which is also carried on in the Waqf property. An application was filed under Rule 95B before the Waqf Board which stood rejected as per Ext.P6.

2. The learned counsel for the petitioner specifically urges, on the basis of Ext.P5 report, that the inspection report is completely in favour of the petitioner and has demolished the objection raised by the 3rd respondent. The learned counsel for the 3rd respondent per contra, vehemently contends that there is no need for a construction to be carried out in the property and the subject Waqf and the other Waqf from which the present one was bifurcated has only one “Khabarsthan” which is in the property of the subject Waqf. There would be, in course of time need for an extension of the area earmarked for “Khabarsthan”; is the specific contention raised by the 3rd respondent.

3. By Ext.P6, however, none of these contentions were taken into consideration by the 1st respondent who has passed Ext.P6 order merely rejecting the grant of approval on the basis of the existing disputes between the parties. In fact, when specific power has been granted under Rule 95 B to grant

approval, the same should be on a consideration of the disputes, if any, raised by the parties before the authority. A rejection merely on the existence of disputes is not what is intended by the power conferred on the authority to grant approval, which takes within its ambit the power to reject an application for approval, but, however, only on valid reasons stated therein.

4. The learned Standing Counsel for the Waqf Board has taken up a contention that the Muthawalli, under sub section (2) of 83 of the Act, could as well move the Tribunal against Ext.P6 order and hence the invocation of Article 226 is not warranted. However, it is to be noticed that there is absolutely no reason stated in Ext.P6 and on the mere finding that there are disputes existing between parties, the application for approval has been rejected. The order at Ext.P6, is vitiated by total non-application of mind.

5. In such circumstance, Ext.P6 would stand set aside

and the 1st respondent shall, after hearing both parties, that is, the petitioner and the 3rd respondent pass an order under rule 95 B in accordance with law. The 1st respondents shall issue notice to the petitioner and the 3rd respondent and after hearing both parties as also looking into the materials produced, expeditiously dispose of the application.

Writ petition disposed of. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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//true copy//

P.A to Judge