

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937**

**WP(C).No. 19093 of 2015 (J)**  
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**PETITIONER :**  
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**HIDAYATHUL ISLAM MASJID  
(FORMERLY KNOWN AS IRSHADUL MUSLIMEEN THYKAVU PALLI)  
PALAKKAL, THEVALAKKAVU P.O., KOLLAM DISTRICT  
REPRESENTED BY ITS SECRETARY IBRAHIMKUTTY  
AGED 56 YEARS, S/O.ISMAIL KUNJU, MUKKODIYAL HOUSE  
PALAKKAL, THEVALAKKARA P.O.**

**BY ADV. SRI.P.K.MOHAMMED PUZHAKKARA**

**RESPONDENT(S) :**  
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- 1. THEVALAKKARA-CHALIYATH MUSLIM JAMA-ATH  
THEVALAKKARA  
REPRESENTED BY ITS PRESIDENT MR.ISMAIL KUNJU  
S/O.MUHAMMED KUNJU, AGED 68 YEARS,  
THEVALAKKARA P.O., KOLLAM-671 001.**
- 2. THE CHAIRMAN,  
KERALA STATE WAKF BOARD, V.I.P. ROAD, KALOOR  
KOCHI - 682 017.**
- 3. KERALA STATE WAKF BOARD  
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER  
V.I.P. ROAD, KALOOR, KOCHI - 682 017.**

**R1 BY ADV. SRI.BABU KARUKAPADATH  
R2 & R3 BY ADV. SRI.K.SHIBILI NAHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**Mn**

**APPENDIX**

**PETITIONERS' EXHIBITS :**

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- EXT. P1 - TRUE COPY OF THE DOCUMENT NO.1248/1977.
- EXT. P2 - TRUE COPY OF THE DOCUMENT NO.1543/2004.
- EXT. P3 - PHOTOCOPY OF THE BYELAW OF THE THYKAVU-MASJID.
- EXT. P4 - TRUE COPY OF THE MINUTES DATED 12.4.2015 OF THYKAVU PALLI COMMITTEE.
- EXT. P5 - TRUE COPY OF THE DECISION DATED 3.5.2015 OF THE GENERAL BODY OF THYKAVU PALLI.
- EXT. P6 - TRUE COPY OF THE MINUTES DATED 22.5.2015.
- EXT. P7 - TRUE COPY OF NOTICE DATED 12.6.2015 AMONG THE MAHAL MEMBERS OF 5 JAMA-ATHS AS WELL AS THE MEMBERS OF THYKAVU PALLI.
- EXT. P8 - TRUE COPY OF THE PETITION DATED 11.6.2015 FILED BY THE COUNCIL SECRETARY OF CHALIYATHU MUSLIM JAMA-ATH BEFORE THE ADDITIONAL DISTRICT MAGISTRATE (A.D.M) GENERAL, CIVIL STATION, KOLLAM.
- EXT. P9 - TRUE COPY OF THE ABOVE PETITION DATED 12.6.2015.
- EXT. P10 - TRUE COPY OF THE PETITION IN I.A.57/15 IN O.P.NO.90/2015 FILED BY THE 1ST RESPONDENT.
- EXT. P11 - TRUE COPY OF THE ORDER IN I.A.NO.57/15 IN OP.90/15 ISSUED BY THE 2ND RESPONDENT.
- EXT. P12 - TRUE COPY OF THE LETTER DATED 7.5.2015.
- EXT. P13 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE MEMBERS OF PETITIONER MASJID ON 19.6.2015 BEFORE THE 2ND RESPONDENT.
- EXT. P14 - PHOTO OF THE GATHERINGS ATTENDED IN THE MASJID.

**RESPONDENT(S)' EXHIBITS : NIL**

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**//TRUE COPY//**

**P.A. TO JUDGE**

**Mn**

**K. VINOD CHANDRAN, J.**

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W.P.(C) No. 19093 of 2015 (J)  
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Dated this the 25<sup>th</sup> day of June, 2015

**J U D G M E N T**

The petitioner is aggrieved with Ext.P11 order passed by the Wakf Board in the matter of carrying on of Juma prayers in the petitioner Mosque, which the petitioner asserts is entitled to carry on such prayers.

2. The learned counsel appearing for the 1<sup>st</sup> respondent however, claims that the document by which the Wakf was created would itself indicate that the petitioner is a Thykav coming under the 1<sup>st</sup> respondent. In such circumstance, the petitioner cannot hold Juma prayers without the permission of the 1<sup>st</sup> respondent and when the 1<sup>st</sup> respondent is conducting the Juma prayers. The learned counsel for the petitioner however asserts that the Juma prayers having commenced on 12.06.2015, the Wakf Board has no authority to stop it.

3. Admittedly, the Chairman of the Wakf Board, as per a notification issued by the Board under Section 27 of the Waqf Act, 1995 (for brevity the 'Act') has exercised the powers delegated; to pass an interim order which is impugned herein. The matter is said to be posted on 27<sup>th</sup>, when the Board would be convened, immediately after Ramzan, and the petitioner would also be heard in the Board before confirming the orders impugned herein.

4. One other submission is with respect to the appellate remedy also being available to the petitioner under Section 83(2) of the Act by which the petitioner could approach the Tribunal against the interim order passed.

5. Since the petitioner's own contention is that the Juma prayers were started on 12.6.2015 alone and there are factual disputes as to whether the petitioner comes under the 1<sup>st</sup> respondent or not, it may not be proper for this Court to exercise the extra ordinary jurisdiction to go into such

matters. It would be appropriate that the Board look into it when the matter is posted for hearing; definitely after affording an opportunity to the petitioner. The petitioner also has a further remedy by way of an appeal to the Tribunal which the petitioner could invoke even during the festival season.

Writ Petition would stand dismissed, reserving the liberty to the petitioner.

Sd/-  
K.VINOD CHANDRAN,  
JUDGE