

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 19775 of 2015 (V)

PETITIONERS:-

1. PUTHUKKODI ABOOBACKER, AGED 52 YEARS,
S/O. MUHAMMED, PUTHUKUDI HOUSE,
VADAKKUMPURAM P.O., VALANCHERRY,
MALAPPURAM - 676 552.
2. PALAKKAL SHEREEF, AGED 45 YEARS,
S/O.MUHAMMEDKUTTY, PALAKKAL HOUSE,
P.O. EDAYOOR NORTH, VALANCHERRY,
MALAPPURAM - 676 552.
3. VALIYAPARAMBIL SASDAKATHULLA, AGED 63 YEARS,
S/O.KUNJU MARAKKARA, VALIYAPARAMBIL HOUSE,
P.O. EDAYOOR NORTH, VALANCHERRY,
MALAPPURAM, PIN - 676 552.

BY ADVS.SRI.BABU KARUKAPADATH,
SMT.M.A.VAHEEDA BABU,
SRI.K.A.NOUSHAD,
SRI.P.U.VINOD KUMAR,
SRI.MITHUN BABY JOHN,
SRI.J.RAMKUMAR.

RESPONDENTS:-

1. THE SUB INSPECTOR OF POLICE,
VALANCHERY POLICE STATION,
VALANCHERY, PIN - 676 552.
2. KERALA STATE WAKF BOARD,
REPRESENTED BY IS AUTHORIZED OFFICER,
SHRI.RAHMATHULLA NALAKATH, DIVISIONAL OFFICER,
KERALA STATE WAKF BOARD OFFICE, KSEB BHAVAN,
MANJERI-KOZHICODE ROAD, MALAPPURAM - 676 552.

R1 BY PUBLIC PROSECUTOR SMT.P. MAYA.
R2 BY ADV. SRI.K.SHIBILI NAHA, SC.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-10-2015, ALONG WITH WP(C).NO.26480 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. A TRUE COPY OF THE LEDGER EXTRACT OF MOONAKKAL JUMA MASJID PERTAINING TO THE DAILY DEPOSIT OF THE RENT FROM 05.02.2008 TO 09.07.2014 MADE BY SHRI.MUHAMMED KUTTY PERINGODAN.**
- EXHIBIT P2. A TRUE COPY OF THE ORDER DATED 30.07.2009 IN I.A.NO.96/2007 IN O.P.127/2007 OF THE KERALA STATE WAKF BOARD.**
- EXHIBIT P3. A TRUE COPY OF THE ORDER DATED 17.08.2010 OF THE CHIEF EXECUTIVE OFFICER OF THE WAKF BOARD.**
- EXHIBIT P4. A TRUE COPY OF THE ORDER DATED 05.04.2014 IN E.P.NO.6041 OF CR OF THE KERALA STATE WAKF BOARD.**
- EXHIBIT P5. TRUE COPIES OF THE RETURN/STATEMENT OF ACCOUNTS APPROVED BY THE WAKF BOARD FOR THE YEARS 2008-2009 TO 2012-2013.**
- EXHIBIT P5(A). A TRUE COPY OF THE ASSESSMENT ORDERS ISSUED BY THE WAKF BOARD FOR THE YEARS 2008-2009 TO 2012-2013.**
- EXHIBIT P6. A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 2ND RESPONDENT AND NUMBERED THE SAME AS IAPS-90091/2015 OF VALANCHERY POLICE STATION.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

[CR]

B. KEMAL PASHA, J.

.....
W.P.(C) Nos.19775 & 26480 of 2015
.....

Dated this the 14th day of October, 2015

J U D G M E N T

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Through W.P.(C) No.19775/2015, the petitioners have sought for getting Ext.P6 complaint quashed. Through W.P.(C) No.26480/2015, the petitioner has sought for a direction to the 2nd respondent to file a complaint against respondents 3 to 5 before the Judicial First Class Magistrate's Court, Tirur under Section 52A of the Wakf Act, 1995 for misappropriating, alienating and transferring the properties of Moonakkal Jama-ath Palli Committee Wakf. The 2nd respondent in W.P.(C) No.26480/2015 is the Chief

Executive Officer of the Kerala State Wakf Board. Respondents 3 to 5 are the petitioners in W.P.(C) No.19775/2015.

2. Alleging an offence committed by the petitioners in W.P.(C) No.19775/2015, the Kerala State Wakf Board, represented by its Authorised Officer, has filed Ext.P6 complaint in W.P.(C) No.19775/2015 before the Station House Officer, Valanchery Police Station.

3. Much discussion is not required to conclude that the course adopted by the Kerala State Wakf Board to file Ext.P6 complaint before the Station House Officer, Valanchery Police Station is *per se* illegal. When an offence under Section 52A of the Wakf Act, 1995 is alleged, as per Section 52A(3) of the Wakf Act, no court shall take cognizance of any offence under the Section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

4. What is contemplated under the aforesaid

provision is not a police report alleging an offence under Section 52A of the Wakf Act, 1995. A court cannot take cognizance on a police report in the matter. The court can take cognizance of such an offence on a complaint filed by the Wakf Board or any officer duly authorised by the State Government in that behalf only. Therefore, Ext.P6 is of no use at all and the same is nothing but an idle exercise.

5. The learned counsel for the petitioner in W.P.(C) No.26480/2015 has sought for a direction to the Kerala State Wakf Board to act in accordance with law by filing a complaint within the meaning of Section 52A(3) of the Wakf Act. When Ext.P6 complaint in W.P.(C) No.19775/2015 is *per se* illegal, Ext.P6 is liable to be quashed. Similarly, the relief sought for by the petitioner in W.P.(C) No.26480/2015 is only to be granted.

In the result, both of these writ petitions are allowed and Ext.P6 in W.P.(C) No.19775/2015 stands quashed. The Kerala State Wakf Board is directed to proceed with in the

WPC.19775&26480/2015

: 4 :

matter under Section 52A(3) of the Wakf Act, in case where an offence under Section 52A of the Wakf Act will lie in the matter.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/14/10

// True Copy //

PA to Judge