

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 24177 of 2015 (V)

PETITIONER:

**ABOOBACKER, AGED 48 YEARS,
S/O.MOIDEEMKUTTY, KUNDILPEEDIKAYIL HOUSE,
P.O.PONNANI, THEYYANGADU DESAM,
EAZHAVATHURUTHY VILLAGE, PONNANI TALUK,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.G.SURESH
SRI.G.SUDHEER (THURAVOOR)
SRI.RAJAN VISHNURAJ
SRI.V.HARISH**

RESPONDENT(S):

- 1. THE CHIEF EXECUTIVE OFFICER,
KERALA STATE WAQF BOARD, ERNAKULAM,
V.I.P.ROAD, KALOOR P.O,
ERNAKULAM DISTRICT, PIN-682 017.**
- 2. ABDUL GAFOOR, AGED 35 YEARS, S/O.ABDULLA,
VALIYAPARAMBATH HOUSE, P.O.PONNANI,
THEYYANGADU DESOM, EAZHAVATHURUTHY VILLAGE,
PONNANI TALUK, MALAPPURAM DISTRICT-679 576.**
- 3. THE MUTHAVALLY, VALIYAPARAMBATH
THITHACHUMMA WAQF, P.O.PONNANI,
MALAPPURAM DISTRICT-679 576.**
- 4. THE ADDITIONAL TAHSILDAR,
PONNANI TALUK OFFICE, P.O.PONNANI,
MALAPPURAM DISTRICT-679 576.**
- 5. THE VILLAGE OFFICER,
EAZHAVATHURUTHY VILLAGE, PONNANI,
MALAPPURAM DISTRICT-679 576.**

**R1 BY SRI.K.SHIBILI NAHA, SC,
R4 & R5 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 24177 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1- THE TRUE PHOTOCOPY OF THE BUILDING TAX RECEIPT
DATED 7.2.2014 ISSUED BY PONNANI MUNICIPALITY.
- EXT.P2- A TRUE PHOTOCOPY OF THE CASH RECEIPT DATED 10.2.2014 FOR
THE PAYMENT OF LICENSE FEE.
- EXT.P3- TRUE PHOTOCOPY OF THE TAX ASSESSMENT REGISTER KEPT WITH
THE OFFICE OF PONNANI MUNICIPALITY FOR THE BUILDING NO.860
(OLD NO.729).
- EXT.P4- A TRUE PHOTOCOPY OF THE NOTICE FOR APPEARANCE IN
E4-4715/2014 DATED 14.11.2014.
- EXT.P5- A TRUE PHOTOCOPY OF THE OBJECTION DATED 6.1.2015 FILED BY
THE PETITIONER HEREIN IN E4/4715/2014 BEFORE THE
1ST RESPONDENT.
- EXT.P6- A TRUE PHOTOCOPY OF THE ORDER DATED 4.7.2015 IN E4/4715/2014
PASSED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.24177 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

The petitioner has approached this Court challenging the proceedings of the Chief Executive Engineer, Waqf Board in a proceedings initiated under Section 54(2) of the Waqf Act, 1995.

2. In the Waqf Act, the Chief Executive Officer has a power to remove the encroachment in a Waqf property (see the provisions under Section 54 of the Waqf Act). The Chief Executive Officer initiated proceedings under Section 54 by issuing notice to the petitioner. The Chief Executive Officer is also obtained a report from the Additional Tahsildar. The Additional Tahsildar stated that the petitioner has encroached Waqf land in Survey No.162/8 of Eazhavathuruthy Village, Ponnani Taluk.

3. The dispute now being raised by the petitioner that the Tahsildar has identified the property without any notice to the petitioner. Admittedly, the attempt of the Waqf Board is to find out the land owned by Valiya Parambath Thithachumma Waqf as

referred in the document No.1211/1948. There can be any dispute regarding the power of the Chief Executive Officer to remove the encroachment.

This Court is of the view that there should be an identity of the property after issuing notice to the petitioner that while the Chief Executive Officer directing the Tahsildar to identify the property ought to have asked the Tahsildar to give notice to the petitioner or to the alleged encroachers. Any exercise done by the Tahsildar without notice to the encroacher to identify the property would amount to denial of principles of natural justice. In such circumstances, following directions are issued:

- i. The fourth respondent shall issue a notice to the petitioner as well as the officials of the Waqf Board and identify the property in the presence of the petitioner.
- ii. This shall be done within two months from the date of receipt of a copy of this judgment.
- iii. Thereafter, the fourth respondent shall send a report regarding demarcation of the Waqf property to the first respondent.

- iv. Thereafter, the first respondent is free to proceed under Section 54(2) of the Waqf Act to remove any encroachment.
- v. Needless to say that the Waqf Board while passing any further orders, shall issue a notice to the petitioner.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln