

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No. 339 of 2017

JUDGMENT: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

This writ appeal is against the judgment issued in a writ petition in which the limited relief that was sought for was a direction to the first respondent – Wakf Board through its Chief Executive Officer to consider a complaint in the form of a representation. The learned Single Judge refused to interfere.

2. According to the appellant-writ petitioner, an item of property, which is described in his representation, is a wakf and it became one so nearly four decades ago. Learned Standing Counsel for the first respondent-Wakf Board says that it would even relate to 150 years ago.

3. The issue is whether the property referred to by the writ petitioner in his complaint is a wakf property. We say this in the context of the fact that the learned counsel for the second respondent submits that the said property is essentially private property of the second respondent and there is no element of dedication to treat it as a wakf or to treat the property as wakf property. The second respondent is espousing the cause of a registered society, which is stated to be holding the property. Learned counsel for the second respondent is justified in saying that the writ petitioner could have straight away instituted the proceedings before the Wakf Board in accordance with relevant provisions of the Wakf Act, 1995. That position notwithstanding, the Chief Executive Officer and the Wakf Board are also entitled to take due action to protect the interest of any wakf including by protecting the wakf properties. Therefore, if the first respondent finds that the property in relation to which a complaint is

made is a wakf property, it has to take appropriate action in accordance with law. Obviously, such course can be resorted to only after affording the second respondent an opportunity of hearing on the question as to whether the property referred to by the writ petitioner is a wakf property and whether it is accountable as a wakf property to be brought under the supervision of the first respondent.

4. We clarify that we have not expressed anything on the claim of the second respondent that the property is not a wakf property and it belongs to a trust of which the second respondent is a Correspondent.

5. The writ appeal is therefore ordered vacating the judgment of the learned Single Judge and directing that the representation of the writ petitioner shall be taken up by the first respondent and decided upon in accordance with law in the light of what is stated above, after affording adequate opportunity of hearing to the second respondent. It is directed that proceedings in this regard shall commence within a period of one month from the date of receipt of a copy of this judgment.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 20.07.2018
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