IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 23RD DAY OF NOVEMBER 2020 / 2ND AGRAHAYANA, 1942

CRP(WAKF).No.68 OF 2019

AGAINST THE JUDGMENT IN OS 205/2019 DATED 18-09-2019 OF WAKF TRIBUNAL, KOZHIKODE

REVISION PETITIONER/DEFENDANTS 1 TO 9:

1 KUNHIMOIDEEN K.
AGED 58,
S/O.KUNHIMOOSA, KOOMULLIL HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

2 C.ASHRAF
AGED 33,
S/O.MAMMED, CHALIL HOUSE, MANIYOOR.P.O.,
MANIYOOR AMSOM DESOM, VADAKARA TALUK,
KOZHIKODE DISTRICT-673523.

3 ABDULLA.P.
AGED 48,
S/O.ASSAINAR HAJI, PARAYAMBATHODI HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

4 KUNHABDULLA CHALIL
AGED 50,
S/O.ASSAINAR HAJI, CHALIL HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

5 ABDUL GAFOOR.A.T.
AGED 48,
S/O.ALI CHERIYAPUTHUKODE, MANIYOOR.P.O.,
MANIYOOR AMSOM DESOM, VADAKARA TALUK,
KOZHIKODE DISTRICT-673523.

6 N.T.KUNHABDULLA
AGED 39,
S/O.AMMED KOTTAYIL HOUSE, MANIYOOR.P.O.,
MANIYOOR AMSOM DESOM, VADAKARA TALUK,

KOZHIKODE DISTRICT-673523.

7 KOOMULLIYIL SULAIMAN
AGED 52,
S/O.KUNHIMOOSA, PARAMBATH HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

8 AMMED THAYILKUNI
AGED 58,
S/O.KOYALI, AMBAYATHODITHAZHA HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

9 YOOSUF.K O P
AGED 45 YEARS
S/O.KUNHAMMED HAJI, MATTOL HOUSE,
MANIYOOR.P.O., MANIYOOR AMSOM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT-673523.

BY ADVS.
SRI.G.SREEKUMAR (CHELUR)
SRI.K.MUHAMMED THOYYIB

RESPONDENTS/PLAINTIFFS 1 TO 8 AND DEFENDANTS 10 AND 11:

1 A.P.ABOOBACKER MUSLIYAR,
AGED 69,
S/O.AHAMMED HAJI, PRESIDENT MISKATHUL HUDA
EDUCATIONAL COMPLEX MANIYOOR, PO.PALAYATTU NADA,
VADAKARA TALUK, KOZHIKODE DISTRICT-673521.

2 PURATHUMADATHIL ABDURAHIMAN MUSLIYAR,
AGED 47, S/O.KUNHABDULLA HAJI, GENERAL SECRETARY,
MISKATHUL HUDA EDUCATIONAL COMPLEX, MANIYOOR PO.
PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

3 V B SYEED ALI BAFAKHI THANGAL,
AGED 69, S/O.SYEED AHAMMED BAFAQUI, TREASURER,
MISKATHUL HUDA EDUCATIONAL COMPLEX MANIYOOR PO.
PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

4 P T ABDUL AZEEZ,
AGED 45, S/O.ABDULLA HAJI, SAFA MANZIL,
VICE PRESIDENT, MISKATHUL HUDA EDUCATIONAL COMPLEX
MANIYOOR PO.PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

5 P T ABOOBACKER SAQUAFI,
AGED 40, S/O.ABDULLA HAJI, JOINT SECRETARY,
MISKATHUL HUDA EDUCATIONAL COMPLEX MANIYOOR PO.
PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

6 T K MOIDEEN,
AGED 55, S/O.AMMED, NAZEEMA MANZIL,
MEMBER, MISKATHUL HUDA EDUCATIONAL COMPLEX
MANIYOOR PO. PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

7 SHARAFUDHEEN.M.M.,
AGED 33, S/O.MUHAMMED C.V., MUBARACK MANZIL,
MEMBER, MISKATHUL HUDA EDUCATIONAL COMPLEX
MANIYOOR PO. PALAYATTU NADA, VADAKARA TALUK,
KOZHIKODE DISTRICT-673521.

8 C K HANEEFA,
AGED 40, S/O.KUNHABDULLA HAJI, PUTHUKODU, MEMBER,
MISKATHUL HUDA EDUCATIONAL COMPLEX,
MANIYOOR, PO. PALAYATTU NADA,
VADAKARA TALUK, KOZHIKODE DISTRICT-673521.

9 THE CHIEF EXECUTIVE OFFICER,
KERALA STATE WAKF BOARD, VIP KALOOR,
COCHIN, ERNAKULAM DISTRICT-682017.

10 THE KERALA STATE WAKF BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
HEAD OFFICE, VIP ROAD,
KALOOR, KOCHI-682017.

R1-8 BY ADV. SRI.K.M.FIROZ
R9-10 BY ADV. SHRI.T.K.SAIDALIKUTTY, SC, WAQF BOARD

THIS CRP (WAKF ACT) HAVING BEEN FINALLY HEARD ON 23-11-2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

T.R.RAVI, J.

Heard Sri Sreekumar Chelur on behalf of the revision petitioner, Sri K.M.Firoz on behalf of respondents 1 to 8 and Sri T.K.Saidalikutty on behalf of respondents 9 and 10.

2. The respondents 1 to 8 (hereinafter referred to as the plaintiffs) filed O.S.No.205 of 2019 before the Waqf Tribunal, Kozhikode, praying for a decree of permanent prohibitory injunction against the revision petitioners. According to the plaintiffs, they are officer bearers of an unregistered Committee and the plaint schedule property originally belonged to one Abdul Salam, who executed a registered waqf deed in favour of the plaintiffs as Document No.3096 of 2007 of SRO Maniyoor. The contention is that the plaintiffs possess and enjoy the plaint schedule property as Mutawalli of the waqf. The cause of action stated is that the petitioners obstructed the construction of a library in the plaint schedule property by the plaintiffs. According to the defendants, the person who executed the waqf deed did not have any title or possession over the property. They contended that property originally belonged to Koyiparambath Moideen, the grandfather of

the 1st and 4th petitioners and the said Moideen has dedicated 10 cents of land in the year 1955 for the purpose of starting a Madrassa in the locality. The petitioners contended that the Madrassa named Imamudheen Madrassa was constructed by a Committee, of which they are the office bearers. It is further contended that Moideen had given a portion of the property to his son Assan, who got the same allotted to him at the partition effected on the death of Moideen. The petitioners contended that 13 cents of land adjacent to the 10 cents wherein the Madrassa building situated was given by Assan to the Madrassa Committee and the Imamudeen Madrassa Committee was hence in possession of 23 cents of land. It can thus be seen that the plaintiffs as well as the defendants claim that the property is wakf property, though by means of different documents. That is, they dispute the manner in which the property became waqf property. Sections 6 and 7 of the Wakf Act deal with the power of the Tribunal to determine disputes regarding the question whether a particular property, specified as Wakf property in the list of Auqaf is Wakf property or not; but does not take in disputes as to how the wakf was created.

3. The question whether a suit for injunction is maintainable before the Waqf Tribunal was considered by the

Hon'ble Supreme Court in **Punjab Wakf Board v. Sham Singh Harike and another** reported in **[(2019) 4 SCC 698]** and it was held that such a suit is not maintainable. The Hon'ble Supreme Court considered the earlier judgment in **Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji and others** reported in **[(2014) 16 SCC 65]** and held that the said decision is not in accord with the judgment of the Supreme Court in **Ramesh Gobindram vs Sugra Humayun Mirza Wakf** reported in **[(2010) 8 SCC 726]**.

4. The counsel for the respondents 1 to 8 relied on a Division Bench judgment of this court in **Muthulakshmi Ammal v. Seethimarakkarakath Alikoya Wakf and another** reported in **2016 (3) KHC 955,** to submit that the decision of the Tribunal need not be interfered with. **Muthulakshmi (supra)** was rendered in a case relating to eviction of a tenant and the Division Bench was dealing with a situation where the Waqf Tribunal which did not earlier have jurisdiction, subsequently got jurisdiction by way of an amendment of the Wakf Act, pending the appellate proceedings. In the above circumstances, the Court noted that even if the order impugned is set aside for want of jurisdiction, fresh proceedings will have to be initiated in the very same forum

over again. This was found to be a hyper-technical exercise. The above decision will not in any way help the cause of the respondents, since both prior and after the amendment of the Wakf Act in 2013, the Tribunal did not have jurisdiction to entertain a suit for injunction. Further though both parties claim it to be wakf, admittedly it is not registered with the Board. Even a decision as to whether a property is a wakf or not can be agitated before the Tribunal under Sections 6 or 7 of the Act, if the same is included in the list of Auqafs. We hence hold that the Waqf Tribunal would not have jurisdiction to entertain the suit, O.S.No.205 of 2019.

5. In the result, the revision petition is allowed. The decree and judgment of the Waqf Tribunal in O.S.No.205 of 2019 is set aside. The Waqf Tribunal is directed to return the plaint to the plaintiffs for presenting the same before the appropriate forum. The parties shall bear their respective costs.

Sd/-
K. VINOD CHANDRAN
JUDGE

Sd/-
T.R. RAVI
JUDGE

dsn