

(2006) 03 KL CK 0083
In the High Court Of Kerala
Case No : O.P. No. 2083 of 2000

Ansari Charitable Trust

APPELLANT

Vs

The Kerala Wakf Board

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Waqf Act, 1995 — Section 40(1), 40(2), 43, 83

Citation : (2006) 3 CivCC 643 : (2006) 2 ILR (Ker) 392 : (2006) 2 KLJ 192 :
(2006) 2 KLT 891 : (2006) 2 RCR(Civil) 218

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : K. Mohana Kannan, for the Appellant; Abdul Hassan (SC, KWB), for the Respondent

Judgement

Kurian Joseph, J.—What are the questions, matters or disputes to be adjudicated before the Wakf Tribunal is the main issue arising for consideration in this case. The writ petition is filed aggrieved by Ext. P5 notice issued by the respondent Wakf Board. The respondent directed the petitioner to take steps to register the property covered by Exts. P1 and P2 under the Wakf Board. Petitioner took the stand that it is a trust registered under the Indian Trust Act and not a wakf property and hence not liable to be registered under the respondent Board. The objections have been considered in detail and the respondent passed Ext. R1(a) order dated 22-11-1999 holding that the property covered by Exts. P1 and P2 is wakf property and that it is liable to be registered. Learned counsel for the petitioner placing reliance on Section 43 of the Wakf Act 1995 contends that being a trust registered prior to the introduction of Wakf Act, the property is not liable to be registered under the respondent Board. I am afraid the contentions cannot be appreciated. Section 43 of the Act reads as follows:

Wakfs registered before the commencement of this Act deemed to be registered:- Notwithstanding anything contained in this chapter, where any wakf has been registered before the commencement of this Act, under an law for the

time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

The contention of the petitioner is that the property is not wakf property. If that be so Section 43 has no application. Section 43 applies only when the wakf is registered as a trust prior to the commencement of Wakf Act, since there is a deemed registration under the Act as wakf.

That apart u/s 40(2) of the Wakf Act, 1995 "the decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final". The decision of the Board u/s 40(1) pertains to the question as to whether the property is wakf or not. Thus in case the petitioner has still any dispute, the remedy open to the petitioner is to get the same adjudicated before the Wakf Tribunal. The question whether a property is Wakf or not is certainly to be decided by the Tribunal u/s 83, being a dispute. Section 83 to the extent relevant reads as follows:

83. Constitution of Tribunals, etc.

1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

2) Any mutawalli person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

Thus any dispute, any question or any matter relating to a Wakf of Wakf property is liable to be determined by the Tribunal. And person aggrieved or mutawalli interested is entitled to approach the Tribunal against any order issued under the Act, within the prescribed period. Without prejudice to such liberty and making it clear that in the event of the petitioner approaching the Tribunal of competent jurisdiction against Ext. R1(a) within a period of two months from today, the same shall not be rejected on the only ground of delay, this writ petition is disposed of. In order to enable the petitioner to approach the Tribunal and workout the relief, including by way of an interim measure, the interim order passed by this court in C.M.P. No. 3303/2000 will continue for a further period of six months.