
(2014) 07 KL CK 0263
In the High Court Of Kerala
Case No : WP (C). No. 5305 of 2014 (R)

K.K. Kunhi Muhammed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Waqf Act, 1995 — Section 83, 83(4)

Citation : (2014) 07 KL CK 0263

Hon'ble Judges : K.T. Sankaran, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : Pulikkool Abubacker, Rehana Shukkur and P.A. Aneesha, Advocate for the Appellant; K.D. Babu, SC, Adv., K.M. Firoz, Adv., M. Shajna, Advocate and K. Shibili Naha, SC, Government Pleader, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—The petitioner has filed this Writ Petition for the issue of a writ of mandamus to the first respondent to constitute a Wakf Tribunal in accordance with Section 83 of the Wakf Act as amended by the Amendment Act, 2013 and to issue a direction against the Corporation of Kozhikode not to issue any permit for construction or renovation of any building situated in the property mentioned in the Writ Petition.

2. The petitioner claims that he is a person interested in the activities relating to wakfs. He is aggrieved by the proceedings initiated by the second respondent to conduct an auction in respect of 2.25 cents of land belonging to wakf.

3. The petitioner filed O.A.No.9 of 2013 before the Wakf Tribunal. In O.A.No.9 of 2013, an interim order was also granted by the Tribunal. The petitioner states that he came to know that the fourth respondent approached the Kozhikode Corporation for changing the ownership of the property in his name. According to the petitioner, Exhibit P4 stay order was being violated. However, it is stated that the petitioner cannot approach the Tribunal since the Tribunal was not constituted as per Section 83(4) of the Wakf Act as amended. It is submitted by the learned counsel appearing for the Wakf Board that a batch of Writ Petitions in

which the question of constitution of the Wakf Tribunal under Section 83(4) as amended came up for hearing and the Writ Petitions were heard.

4. A Division Bench of this Court in O.P.(Wakf) No. 23 of 2014 held as follows :

8. We now proceed to notice as to what is happening as of now, as regards the Wakf Tribunals. In 2012, a question arose as to whether an officer who is put in charge of a Tribunal by the High Court or who is covered by general transfer orders issued by the High Court and posted to man the Tribunal has to be further energised by a notification of the State Government to act, function and discharge the functions of the Tribunal. The situation was one of stalemate owing to the delay in issuing government notifications. The constitutional and statutory situation therefore became focal issues and it was held that government notifications were not necessary in such situations. It was therefore declared by this Court that following general transfers and other transfer orders of judicial officers of the subordinate judiciary from time to time, the person manning any Wakf Tribunal, on transfer, will hand over charge as may be ordered by the High Court in its proceedings on the administrative side and such handing over charge is sufficient to clothe the person put in charge of the Tribunal to discharge all functions and powers of the Tribunal in terms of the provisions of the Act. See *Abdulla Shahul Hameed, M.S. and another Vs. State of Kerala and others*, .

9. The amending Act has changed only the composition of the Tribunal as provided in sub- section 4 of section 83 of the parent Act. The amendment made to sub-section 1 of section 83 only enlarges the subject matter jurisdiction. For all other purposes, it continues to be what it was before the amendment. Though the amending Act has enlarged the subject matter jurisdiction of the Tribunal and has modified the composition of the Tribunal by the amendment to sub-section 4 of section 83, there is no transitory or other provision in the amending Act which deals with matters pending before the Tribunal as it stands under the parent Act, until the composition of the Tribunal gets modified, through statutory notifications, in terms of the amended provisions. This is clear legislative material to infer that the constitution the Tribunal by notifications issued under the parent Act shall continue to be in vigour notwithstanding the amendments, and, modifications if any to the constitution of the Tribunal in terms of the amendments to the parent Act by the amending Act, would become operational only if and when such compositions are notified in conformity with the amended section 83(4). As already noted, this can be done only after the rules are prescribed and made in accordance with law, by the State Government and infrastructure is provided, without tinkering with the existing judicial establishment, and, to the satisfaction of the High Court, since any modification of the constitution in terms of the amended section 83(4) would call for the deputation of a judicial officer from the State Judicial Service. Therefore, any Tribunal already notified under the provisions of the parent Act would continue to stand with authority, and, with enlarged subject matter jurisdiction in terms of the amendment to sub-section 1 of Section 83, however that, the composition of

the Tribunal cannot be modified except by a notification in terms of the amended sub-section 4 of that section.

10. No citizen has a right to ask for a particular composition of Tribunal; the law being well settled that one has only a vested right of action but no vested right to a forum; and, even if in a particular case there is a right to a vested forum, that does not extend to any particular composition of the forum. See *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, , Ittavira Mathai Vs. Varkey Varkey and Another, .*

11. It appears to be appropriate that we indicate now that we can foresee some practical problems that may arise due to the lack of any provision following the amendment to section 83(4), to take care of actions taken by the Tribunal in the absence or vacancy of members. It is a normal legislative tool to clothe situations of vacancy of members by a protective legislative covenant. As part of judiciary, we would abide by our limitations and would not venture to lay down or issue any direction in that regard since that is a matter in the legislative domain.

12. The conclusion of the aforesaid discussion is that all Tribunals exercising functions under the Act before its amendment will continue to do so, taking it that their subject matter jurisdiction has been enlarged in terms of what is provided as per the amended sub-section 1 section 83 of the Act. They have to necessarily follow the declaration and directions contained in *Abdulla Shahul Hameed's* case (supra) for all intents and purposes. They shall not wait for any re-composition of the Tribunal in terms of sub-section 4 of section 83 of the Act, as amended, unless they are notified by the High Court to do so, on fulfilment of the conditions precedent for operating any composition of Tribunal in terms of the amended provisions, as explained above and declared hereby.

13. Going by their own showing, the petitioners have come to this Court only on the plea as to non-availability of Tribunal in view of the amendment to the Act. That having been found against, they would be free to seek remedy from the Tribunal in accordance with law and subject to their entitlement to any such relief.

14. In the result, this original petition is closed preserving the right of the petitioners to move the appropriate Tribunal for such reliefs, if any, as would be available to them in accordance with law, as may be decided by that authority.

In view of the judgment in *O.P.(Wakf) No. 23 of 2014*, we are of the view that the petitioner can seek appropriate reliefs before the Wakf Tribunal, Kozhikode. Accordingly, the Writ Petition is closed reserving the right of the petitioner to move the Wakf Tribunal in accordance with law.