

(2012) 07 KL CK 0321

In the High Court Of Kerala

Case No : C.R.P. (Wakf) No. 191 of 2012

S.V.K Pookkoya, S.V. Sayed Muhammed Koya Thangal and
S.V.P. Sayed Hussain Thangal

APPELLANT

Vs

Lakshadweep State Wakf Board, Union Territory of
Lakshadweep, Kavaratti Island and S.V. Sayed Yousuf Koya
Thangal

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2012) 07 KL CK 0321

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : M.C. Sen, Sri. T. Sethumadhavan and Sri. P.A. Harish, for the Appellant; S. Radhakrishnan for R1 and R4, Sri. Shyam Padman, for R2, Sri. S.K. Saju and Sri. A. Ranjith Narayanan, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This matter relates to Androth Ujra Mosque. By a decree of the jurisdictional Munsiff's Court, followed by the decree of this Court in Second Appeal arising therefrom, the different thavazhies of Sheikinte Veedu Tharawad were held entitled to be in management and to take the income of the properties of that Mosque and that the office of Sheik is to be held by one qualified to hold that office, from among the members of that Tharawad. Pending the aforesaid, questions as to who, or, who all, ought to be the Mutawalli/ Mutavallies cropped up. It appears that immediately after the disposal of the first appeal against the decree granted by the Munsiff, the second respondent herein filed an application before the Wakf Board claiming that he be treated as the Mutawalli and Sheik. Following the verdict of this Court in the Second Appeal, members of the other five branches of the Tharawad also moved the Wakf Board claiming that their nominees are entitled to be joint Mutawallies. They also challenged the jurisdiction of the Wakf Board to make any appointment of Sheik, which, according to them, is essentially a spiritual matter and beyond the

jurisdiction of the Wakf Board in terms of the Wakf Act, 1995. The first defendant in that suit, against whom the other members had raised the charge of having held the entire authority by himself to the exclusion of others, died on 12.6.2009. The second respondent herein was a plaintiff in that suit. During the course of that litigation, he was transposed as a defendant, to be the next senior most member eligible to take over the right of the office then.

2. The Wakf Board held that the second respondent herein is entitled to be the Mutawalli to the exclusion of others, but kept that order stayed for a short term to facilitate revision. Wakf Board's order was challenged before the Tribunal. In that revision, the Wakf Board's order was stayed by the Tribunal. As per the order impugned, the Tribunal vacated the order of stay. Hence this revision.

3. At the time of admission of this matter, an interim order was issued on 25.5.2012, directing that the Wakf Board shall not issue any further proceedings on the basis of the order impugned in this revision. It was clarified that the pendency of this C.R.P. will not stand in the way of the Wakf Tribunal hearing and disposing of the matter, in accordance with law.

4. Thereafter, the revision petitioners filed and brought up two interlocutory applications on 31.5.2012 seeking certain directions to the SDO, Androth, since that authority allegedly proceeded to give effect to the decision of the Wakf Board. On that day, this Court passed the order directing the S.D.O. not to take any action to enforce the decision of the Wakf Board, however, leaving it to the wisdom of that authority to ensure that public order, peace and tranquility is maintained, including by invoking the provision of the Code of Criminal Procedure, if it becomes necessary.

5. On Board is I.A No. 1186 of 2012 and I.A No. 1310 of 2012 bringing on record, among other things, the allegation of the revision petitioners that the second respondent had under the power of the order of the Wakf Board trespassed into the Mosque and appropriated some wealth including offerings lying in the "Hundi"

6. By now it is quite certain that the law and order situation is being taken care of by the SDO since it is stated that the order issued u/s 145 Cr.P.C. is still in force. Under such circumstances, it is obvious that the affairs of the Mosque have to stand still for the time being since the police order was issued in connection with the assembly in connection with the Mosque.

7. For all intents and purposes, the assets of the Mosque have to be accounted. Though we do not propose to go into the question whether the Mosque in question and its properties amount to a Wakf, all parties to this litigation take the stand that it is essentially a Wakf governed by the provisions of the Wakf Act. If that were so, the Wakf Board is duty bound to control the assets of such an institution particularly when there is a scramble for possession as now disclosed.

8. The declaration by the Munsiff as confirmed by this Court in Second Appeal is

only to the extend noted above. It does not in any manner touch upon the manner of determination of the Mutawalli or team of Mutawallies or the persons who officiate as the Sheik of the Mosque in question.

9. As already noted, the order impugned in this revision is one vacating an order of stay. The main matter has to be gone into by the Wakf Tribunal. The focal issue is also stated to be to identify the person or persons to be treated as Mutawallies to be so reckoned and entered in the register maintained by the Wakf Board.

10. Taking all the aforesaid into consideration; in Supersession of the impugned order, we direct that the status quo obtained as on today shall be maintained by all parties concerned and the SDO, Androth is hereby directed to ensure that such status quo is obtained, if need be, under control of that authority. We are told that the Mosque is more than 4 centuries old. There cannot be any situation of wanton acts in connection with such an institution. We are told that as of now no prayers are going on. But that is the result of discord among the ordinary mortals who should have thought it better to go by the wisdom that they ought to have earned from the immortal Almighty in whose name the dedication is stated to have been made. We further direct the Wakf Board to immediately prepare appropriate inventory and statements of the assets of the Mosque and present it before the Wakf Tribunal. It is further ordered that no person to the litigation shall meddle with the affairs of the Mosque or its assets until the Tribunal grants its final verdict on the matter from which this revision arises.

11. It is clarified that we have not expressed anything on the merits of the case or the allegations contained in the above referred two interlocutory applications in which the revision petitioners charge the second respondent and his men of unlawful acts. We leave open all such issues and permit any person aggrieved in that regard to move the Tribunal, including for orders in the nature of restitution, which could be resorted to by the Tribunal, in accordance with law, if found necessary, in the interest of the Mosque and its wealth. The Wakf Tribunal will endeavour to decide the main matter at the earliest, at any rate, within a period of four months from the date of receipt of a copy of this judgment or availability of an officer to man the Tribunal whichever is later.