

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

CRP (WAKF) NO. 44 OF 2019

AGAINST THE ORDER OA 13/2019 OF WAKF TRIBUNAL, KOZHIKODE

PETITIONER/S:

- 1 NAFEEESATH BEEVI AGED 38 YEARS DOOR NO.VII/226A,
P.M.MAMMU HAJI WAQF BUILDING COURT ROAD, CALICUT-
673032
- 2 P.A.NASSER AGED 55 YEARS S/O.MUHAMMED, SAFNAS FLAT
EXPRESS GARDEN, PATTERNI, KOOTTOLI AMSOM DESOM,
KOZHIKODE-673016
BY ADVS.
K.M.FIROZ
M.SHAJNA

RESPONDENT/S:

- 1 THE CHIEF EXECUTIVE OFFICER KERALA STATE WAKF BOARD,
VIP ROAD, KALOOR, KOCHI, PIN-682017, ERNAKULAM
DISTRICT.
- 2 SHABEER AHAMMED .K.M SECRETARY, PUTHIYARA MALIAKKAL
MAMMU HAJI WAQF, JASEENA NIVAS, CHERUVANNUR,
NALLALAM.P.O., KOZHIKODE-673027
BY ADVS.
SRI.T.P.SAJID, SC, KERALA STATE WAQF BOARD
P.A.ABDUL JABBAR
SHRI.T.K.SAIDALIKUTTY, SC, WAQF BOARD

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MUHAMMED SHAFFI (K/1201/2012)
SHAHIM BIN AZIZ (K/557/2016)
SINI K SALIM (K/1243/2006)
Jamsheed Hafiz SC

THIS CRP (WAKF ACT) HAVING BEEN FINALLY HEARD ON
21.08.2023, THE COURT ON 25/8/2023 DELIVERED THE FOLLOWING:

O R D E R

A.Muhamed Mustaque, J.

This revision was filed challenging an order of the Wakf Tribunal Kozhikode in O.A.No.13/2019. The Chief Executive Officer of the Kerala State Wakf Board moved an application under 54(3) of the Wakf Act, 1995 to remove the encroachment. That has been allowed by the Tribunal. That order is under challenge in this revision.

2. Heard learned counsel Shri Firoz K.M. for the revision petitioner, learned Standing Counsel Shri Jamsheed Hafiz for the Wakf Board and learned counsel Shri Abdul Jabbar who appeared for the party respondent.

3. The registration of the Wakf is not in dispute. The specific case of the revision petitioner was that there was no proof of the subject building dedicated as a Wakf and registered with the Wakf Board. It is further argued by the learned counsel that the revision petitioner continues to be the tenant and he cannot be treated as an encroacher and there was no notice issued

determining lease in accordance with the Transfer of Property Act, 1882. According to the learned counsel, tenancy had commenced on 1940. Even if the building stands exempted under the Wakf Act, the lease has to be determined in accordance with the Transfer of Property Act.

4. The Wakf Board as well as the Wakf Tribunal found that the building in question is owned by the Wakf, and the Wakf is registered with the Wakf Board. It appears that the details of the property referred in the registration are with reference to the location. Anyway, we are not competent to revise the findings of fact in revisional jurisdiction unless the findings of fact are so perverse.

5. Section 3(ee) defines 'encroacher' which reads thus:
(ee) "encroacher" means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;

6. This definition clearly indicates that a tenant whose lease has expired is also an encroacher. The Transfer of Property Act is a general enactment governing lease. When a special enactment treats a tenant in a particular way after the

expiry of the lease, the procedure referred to in the special enactment will have to be followed. In so far as the nature of occupation after the lease period is over, the Wakf Act would prevail and not the Transfer of Property Act. The revision petitioner has no case that the lease subsists. Therefore, on expiry of the lease, he has to be treated as an encroacher. On enactment of the Wakf Act, all jural relationship between lessor and lessee will have to be in accordance with the Wakf Act, so far as it governs the relationship. Section 54 of the Wakf Act confers the power on the Chief Executive Officer to remove the encroachment. That be the case, the Chief Executive Officer has acted within his power and the Tribunal was justified in passing the impugned order. We find no merit in this revision. The revision petition fails, and it is dismissed. However, we grant six months time to the revision petitioner to vacate the building on the following terms and conditions:

- i. The revision petitioner shall file an undertaking that, they will vacate the building within six months, before the Wakf Tribunal within four weeks from today.

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ii. The revision petitioner shall clear the entire arrears within four weeks from today.

iii. The revision petitioner shall continue to pay the rent payable till actual surrender of the building.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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