

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 14TH DAY OF DECEMBER 2021 / 23RD AGRAHAYANA, 1943

CRP(WAKF) NO.442 OF 2016

AGAINST THE ORDER/JUDGMENT IN W.O.A 10/2015 OF WAKF TRIBUNAL,

ERNAKULAM AND O.P.No.90/2012 OF THE KERALA STATE WAKF BOARD

REVISION PETITIONER/APPELLANT/PETITIONER:

P.V. KASSIM, S/O ANATHU, KAKKATTIRI,
PUTHIYANA VALAPPIL, PATTITHARA, OTTAPPALAM,
PALAKKAD.

BY ADVS.

SRI.T.H.ABDUL AZEEZ

SRI.MOHAMMED SADIQUE.T.A

RESPONDENTS/RESPONDENTS/RESPONDENTS & WAKF BOARD:

- 1 KAKKATTIRI JUMA MASJID MAHALLU COMMITTEE,
REPRESENTED BY ITS PRESIDENT,
KAKKATTIRI JUMA MASJID MAHALLU COMMITTEE,
MAALA P.O, KAKKATTIRI, PALAKKAD-679 534.
- 2 PRESIDENT,
KAKKATTIRI JUMA MASJID MAHALLU COMMITTEE,
MAALA P.O, KAKKATTIRI, PALAKKAD-679 534.
- 3 SECRETARY,
KAKKATTIRI JUMA MASJID MAHALLU COMMITTEE,
MAALA P.O, KAKKATTIRI, PALAKKAD-679 534.
- 4 TREASURER,
KAKKATTIRI JUMA MASJID MAHALLU COMMITTEE,
MAALA P.O, KAKKATTIRI, PALAKKAD-679 534.
- 5 THE KERALA STATE WAKF BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
V.I.P ROAD, KALOOR, KOCHI-682 017.

BY ADVS.

SRI.AJEESH K.SASI

SMT.POOJA PANKAJ

SRI.T.P.SAJID, SC, KERALA STATE WAQF BOARD

SRI.P.VIJAYA BHANU SR.

SRI.T.K.SAIDALIKUTTY, SC, WAQF BOARD

SRI.JAMSHEED HAFIZ, SC

THIS CRP (WAKF ACT) HAVING COME UP FOR ADMISSION ON
14.12.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

'CR'

ORDER

A. Badharudeen, J.

Revision petitioner herein is the original petitioner in O.P.No.90/2012 before the Kerala State Waqf Board and the appellant in W.O.A No.10/2015 before the Waqf Tribunal, Ernakulam. The respondents herein are the respondents 1 to 4 in the above proceedings.

2. Necessary facts, shorn off unnecessary narration, are as follows:

The revision petitioner herein who alleged to be a member of the 1st respondent, Kakkattiri Juma Masjid Mahallu Committee, filed O.P.No.90/2012 before the 5th respondent, Waqf Board alleging that respondents 1 to 4 had imposed 'ooruvilakku' (excommunication) on him. Accordingly, he prayed to set aside the same.

3. Respondents 1 to 4 filed objection before the Waqf Board as well as before the Waqf Tribunal and denied the allegation of 'ooruvilakku' alleged by the petitioner. According to the respondents 1 to 4, the petitioner has been continuing as the member of the Jama-ath enjoying all rights available to a member in its full vigour.

4. As per order dated 27.07.2015, the Kerala State Waqf

Board dismissed the application after hearing both sides holding that the respondents 1 to 4 did not impose any type of excommunication as contended by the petitioner.

5. The above order was challenged before the Waqf Tribunal, Ernakulam in W.O.A No.10/2015. The learned Tribunal also, after having appraised the facts and evidence available confirmed the order of the Waqf Board. Thus the revision petitioner is before this Court.

6. While assailing the order passed by the Kerala State Waqf Board as well as the Waqf Tribunal, the learned counsel for the petitioner vehemently asserted that the respondents 1 to 4 imposed ooruvilakku (excommunication) on the petitioner and the same indirectly taken away the right of the petitioner and he has been experiencing difficulties to continue as a member of the Jama-ath; and his image in the society has been defamed.

7. We have heard the learned counsel Mr.T.H.Abdul Azees and Mr.Jamsheed Hafiz and particularly, noted the circumstance made in assertion and the declaration by the contesting respondents.

8. The cause seems to be that the Kakkattiri Juma Masjid Mahallu committee actuated undeclared 'ooruvilakku' on the petitioner.

9. ***The seminal issue crops up for consideration is; whether ooruvilakku, externment and excommunication is legally permissible?***

10. Before answering the query, it is worthwhile to mention the crux of the dispute. According to the revision petitioner, respondents 1 to 4 imposed 'ooruvilakku' on him. However, respondents 1 to 4 denied the said allegation. The Tribunal and the Waqf Board dismissed the case put up by the revision petitioner for want of evidence to prove express/ declared excommunication. Further the Tribunal and the Waqf Board given credence to the case put up by the respondents 1 to 4 after holding that the revision petitioner has been a regular visitor of the Mosque and has been a participant of the special and general prayers pursued in the Jama-ath.

11. However, a close reading of the order of the Tribunal, with reference to paragraph 10, it could be easily gathered that the revision petitioner belongs to Jama-ath Islami faction of Muslim community and the Mosque has been managed by Sunni faction of the Muslim community having different ideologies. In this scenario, difference of opinion mainly in the matter of implementation of ideologies, is embedded in this matter. This obviously would suggest that though no records available to substantiate 'ooruvilakku' alleged to be imposed against the revision petitioner in express or declared terms, some sanctions on the revision petitioner is moulded in this case otherwise. We are inclined to refer the same as 'implied' or 'undeclared' ooruvilakku. In this context, we are prepared to accept the pleadings

placed on record by the respondents. However, ***we hold that 'ooruvilakku', externment and excommunication either express/declared or implied/undeclared are illegal*** as these powers are not traceable from the letter and spirit of the Waqf Act. We have to observe further that the Jama-ath shall function according to the bye-law of Jama-ath and in terms of the Waqf Act. ***We hold further that any provisions in the bye-law or scheme in relation to administration of a Jama-ath or Waqf property authorising 'ooruvilakku', externment and excommunication are also illegal, since the same would infringe the fundamental rights guaranteed by the Constitution of India.***

The upshot of the discussion is that the revision petitioner at least in the midst of an undeclared or implied 'ooruvilakku'. Therefore, it is ordered that there shall not be any 'declared' or 'undeclared' ooruvilakku against the petitioner, hereinafter.

The findings of the Tribunal stood modified as indicated above.

The C.R.P is disposed of, accordingly.

Sd/-

S.V.BHATTI, JUDGE

Sd/-

A. BADHARUDEEN, JUDGE