

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE S.V.BHATTI**

**& THE HONOURABLE MR.JUSTICE BASANT BALAJI**

**WEDNESDAY, THE 29<sup>TH</sup> DAY OF JUNE 2022 / 8TH ASHADHA, 1944**

**C.R.P. NO.144 OF 2011**

**(AGAINST THE JUDGMENT AND DECREE DATED 09.01.2009  
IN WOS 64/2007 OF WAKF TRIBUNAL, ERNAKULAM)**

**REVISION PETITIONERS/DEFENDANTS 1& 2 IN WOS 64/2007:**

- 1 ELAPPULLY ERANCHERI JAMA-ATH PALLI,  
REPRESENTED BY ITS PRESIDENT C.MOHAMMED IBRAHIM,  
ELAPPULLY ERANCHERI JUMA-ATH PALLI COMMITTEE, P.O.VENGODI,  
ELAPPULLY, PALAKKAD DISTRICT.
- 2 THE SECRETARY,  
ELAPPULLY ERANCHERI JUMA-ATH PALLI COMMITTEE,  
P.O.VENGODI, ELAPPULLY, PALAKKAD DISTRICT.  
BY ADVS.  
SRI.P.JAYARAM  
SRI.SARATH CHANDRAN K.B.

**RESPONDENTS/PLAINTIFFS 1 & 2/3<sup>RD</sup> DEFENDANT IN WOS 64/2007:**

- 1 MOHAMMED HANEEF AND OTHERS, AGED 51 YEARS,  
S/O.USSANAR RAWTHER, MANIYERI, VENGODI,  
ELAPPULLI, PALAKKAD-678 622.
- 2 HASSAN MOHAMMED, AGED 58 YEARS,  
S/O.MEERAN SAHIB, CHILIKU PALAYAM, VENGODI, ELAPPULLI,  
PALAKKAD-678 622.
- 3 KERALA STATE WAKF BOARD,  
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,  
V.I.P.ROAD, KALOOR-682 017.  
  
BY ADVS.  
SRI.T.H.ABDUL AZEEZ - FOR R1 & R2  
SHRI.JAMSHEED HAFIZ, SC, WAQF BOARD

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
29.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ORDER**

(Dated:29<sup>th</sup> June, 2022)

Defendants 1 and 2 in W.O.S.No.64 of 2007 on the files of the Wakf Tribunal, Ernakulam, are the revision petitioners, and the respondents 1 to 3 herein were plaintiffs 1 and 2 and 3<sup>rd</sup> defendant. The parties are referred to as they are arrayed before the Tribunal.

2. The suit was filed by the plaintiffs for declaration and injunction. The averments in the plaint, in brief, are as follows:

The plaintiffs are members and beneficiaries of Elappully Eranchery Jama-ath Palli. It is a wakf represented by the 1<sup>st</sup> defendant/president and 2<sup>nd</sup> defendant/secretary. When the plaintiffs and 40 members of the 1<sup>st</sup> defendant wakf attended a religious discourse conducted by the Kerala Naduvathul Mujahideen on 20.03.2007, the 1<sup>st</sup> defendant led by its president and

secretary ex-communicated the plaintiffs and others of the Jama-ath. They imposed a ban on the members of the Jama-ath from participating in the marriage and their ceremonies to be held in the houses of the plaintiffs and others. They were also not allowed to bury the dead bodies of the plaintiffs, others and their family members. In connection with the burial of the dead body of one Mohammed, on 18.10.2007, there was a law and order problem and the RDO, Palakkad, Tahsildar, Circle Inspector and Sub Inspector of Police came to the plaint schedule property and mediated the matter and the dead body was buried. Thereafter a complaint was filed before the RDO for a permanent solution to the matter. On 03.11.2007, the RDO convened a joint meeting and took a decision directing the Jama-ath committee not to obstruct the burial of dead bodies of Mujahideen Sect, till they acquire an alternative burial ground of their own. Plaintiffs have no other Jama ath or burial ground. Plaintiffs apprehend that the defendants will obstruct

the burial of dead bodies, hence the suit was filed for declaration of their right and prohibitory injunction.

3. Defendants 1 and 2 filed a joint written statement. The 1<sup>st</sup> defendant wakf is administered by the committee and the beneficiaries are the followers of Allahu Sunnathu Val Jama-ath. Plaintiffs were members of the 1<sup>st</sup> defendant Jama-ath and followers of Allahu Sunnath Val Jama-ath. Thereafter they changed to Kerala Naduvathul Mujahideen and attempted to transform the members of the 1<sup>st</sup> defendant Jama-ath into that organization. Kerala Naduvathul Mujahideen has got several religious institutions and wakf properties including mosque, madrasa, khabarsthan etc., of their own. They have got ample institutions and khabarstan to accommodate their believers and bury their dead bodies. Plaintiffs and their organisations have no legal right to bury the dead bodies in the khabarsthan of the 1<sup>st</sup> defendant Jama-ath. As per the agreement dated 03.11.2007, plaintiffs have waived their claim on the

1<sup>st</sup> defendant organization and its properties, hence prayed for dismissal of the suit.

4. The Tribunal raised 4 issues and based on Exts.A1 to A3 and the oral evidence of PWs 1 and 2 decreed the suit and it was declared that the plaintiffs and similarly situated persons have the right to prayers of the defendant mosque and to bury the dead bodies of the family members in the 1<sup>st</sup> defendant Jama-ath. The 1<sup>st</sup> defendant and their men were permanently restrained from obstructing the plaintiffs and similarly situated persons from conducting prayers in the mosque and burying the dead bodies of the family members of the khabarstan in the plaint scheduled property. Aggrieved by the said judgment and decree this revision is filed by the defendants 1 and 2.

5. The learned counsel for the petitioner Sri.P.Jayaram submits that the religious beliefs and practices of Allahu Sunnath Val Jama-ath and Kerala Naduvathul Mujahideen are different in many ways. The

impugned judgment and decree rendered by the Wakf Tribunal for two different fractions offering prayers and conducting funerals in the same mosque and graveyard will disturb the public order, morality and health of the citizens of the muslim and hence the impugned judgment is violative of Article 15 and 25 of the constitution of India. The remedy available to defendants 1 and 2 is to find out a separate sight of their own choice without disturbing the followers of the muslim in the 1<sup>st</sup> defendant's mosque. The plaintiffs ought to have approached the Wakf Board, which is the authority under Section 69 of the Wakf Act to frame a scheme for the administration of the Wakf.

6. The learned counsel for the respondents Sri.Abdul Aziz, per contra submitted that the plaintiffs are the members of the 1<sup>st</sup> defendant Jama-ath and since they attended the religious discourse conducted by the Kerala Naduvathul Mujahideen on 20.03.2007, they were ex-communicated from the Jama-ath. The act of the

defendants in not allowing a muslim of the 1<sup>st</sup> defendant Jama-ath to offer prayers and buried dead bodies is illegal and therefore they approached the Tribunal for a declaration and injunction. The Tribunal after elaborately considering the rights of the plaintiffs have decreed the suit and the revision is only an abuse of the process of law and the same has to be dismissed.

7. A mosque is a place of worship and every muslim offers prayer in the mosque. The 1<sup>st</sup> defendant has no right to obstruct a member of the Jama-ath or any other muslim from offering prayers. The burying of dead bodies is also a civil right. The graveyard situated in the plaint schedule property is a public graveyard. Every muslim is entitled to get a decent burial according to civil rights and the graveyard under the supervision of 1<sup>st</sup> defendant is a public graveyard, any muslim or any member of the 1<sup>st</sup> defendant has a right to bury the dead. The 1<sup>st</sup> defendant cannot obstruct the plaintiffs from offering prayers in the mosque and from burying dead

bodies of their relatives stating that they have been ex-communicated from the 1<sup>st</sup> defendant Jama-ath since they followed the Kerala Naduvathul Mujahidhin Sect. Admittedly, the 1<sup>st</sup> defendant is a wakf having an extent of 1 acre and 25 cents of property wherein the mosque building and the khabarstan are situated. The contention raised in the written statement filed by defendants 1 and 2 is that since they have changed to Kerala Naduvathul Mujahidheen and attempting to transfer the members of the 1<sup>st</sup> defendant Jama-ath their organisation they have to delink themselves from the 1<sup>st</sup> defendant and hence they are not entitled to offer prayers and buried their dead bodies. The said contention will not stand in the eye of the law because every muslim is entitled to offer prayers in any mosque or buried dead bodies in a public khabarsthan. The 1<sup>st</sup> defendant's mosque and khabarsthan being a public one, the defendants cannot obstruct the plaintiffs in offering prayers and burying the dead. The Tribunal found that

the apprehension raised by the plaintiffs that they will not be allowed to offer prayers and the dead bodies of the family members will not be allowed to be buried because a law and order situation happened on 18.10.2007 in connection with the burial of the dead body of one Mohammed. The Tribunal after elaborately considering the right of the parties and the contentions raised in the written statement decreed the suit, ongoing through the evidence adduced as well as the judgment of the Tribunal. We are of the considered view that the Tribunal was right in decreeing the suit and there is no illegality or impropriety in the judgment passed by the Tribunal. In view of the matter, there arise no interference and hence the same is dismissed.

*Sd/-*

S.V.BHATTI, JUDGE

*Sd/-*

BASANT BALAJI, JUDGE