

**Nellyullathil Shareef vs Rasheed K**

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**SooperKanoon Citation :** [sooperkanoon.com/1305720](https://sooperkanoon.com/1305720)

**Court :** Kerala

**Decided On :** Jul-18-2024

**Judge :** Honourable Mr. Justice Amit Rawal, Honourable Mr. Justice Easwaran S.

**Appeal No. :** CRP(WAKF)/6/2024

**Appellant :** Nellyullathil Shareef

**Respondent :** Rasheed K

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR. JUSTICE EASWARAN S. THURSDAY, THE 18TH DAY OF JULY 2024 / 27TH ASHADHA, 1946 CRP(WAKF) NO. 6 OF 2024 AGAINST THE ORDER DATED 15.12.2023 IN WOA NO.49 OF 2021 OF WAKF TRIBUNAL, KOZHIKODE REVISION PETITIONER(S)/2ND RESPONDENT : NELLIYULLATHIL SHAREEF AGED 49 YEARS S/O. ALIKUTTY HAJI, AGED 49 YEARS, NELLIYULLATHIL HOUSE, ADUKATH P.O., KUTTIYADI VIA, ADUKKATH AMSOM DESOM, KOZHIKODE DISTRICT, PIN - 673508 BY ADVS. M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM RAJA

KANNAN R.CHETHAN KRISHNA RESPONDENT(S)/APPLICANTS 1ST  
RESPONDENT AND SUPPLEMENTAL 3RD RESPONDENT :

1 RASHEED K KALATHIL, S/O. MOIDU, AGED 62 YEARS, KALATHIL  
HOUSE, KUTTIYADI, KUTTIYADI AMSOM DESOM, KOZHIKODE  
DISTRICT, PIN - 673508 2 HAMEED VALLIL S/O. MOIDEEN, VALLIL  
HOUSE, KARUVAN VALAPPIL, ADUKKATH P.O., KUTTIYADI VIA,  
KALLAD AMSOM, MARUTHONKARA DESOM, KOZHIKODE  
DISTRICT, PIN - 673508 3 ABDUL SAMAD M.M S/O. ALIKUTTY,  
MEETHALE MADATHIL HOUSE, ADUKKATH P.O., KUTTIYADI VIA,  
KAKOTH AMSOM DESOM, KOZHIKODE DISTRICT, PIN - 673508 4  
ABDULLA MASTER VALLIL S/O. MOIDEEN, AGED 75 YEARS,  
ADUKKATH P.O., KUTTIYADI VIA, KALLAD AMSOM,  
MARUTHONKARA DESOM, KOZHIKODE DISTRICT, INCORRECTLY  
DESCRIBED AS 'MUTAWALLI OF NIRAVANGOTT JUMA-ATH PALLY  
DARAS', PIN - 673508

5 KERALA STATE WAKF BOARD REPRESENTED BY ITS CHIEF

EXECUTIVE OFFICER, OFFICE OF THE KERALA STATE WAQF  
BOARD, VIP ROAD, KALLOOR, ERNAKULAM -, PIN - 682017 6  
KALATHIL SOOPI S/O. KALATHIL KUNHAMMAD HAJI, AGED 67  
YEARS, MARUTHONKARA AMSOM, ADUKATH DESOM, VADAKARA  
TALUK, KOZHIKODE DISTRICT, PIN - 673508 BY ADVS. SHYAM  
PADMAN V.V.SURENDRAN C.M.ANDREWS(K/000070/1989) BOBY  
M.SEKHAR(K/422/2008) LAYA MARY JOSEPH(K/000725/2016)  
HARISH ABRAHAM(K/764/2007) ASHWATHI SHYAM(K/1451/2020)  
SWATHY SUDHIR(K/2677/2022) RAM MOHAN(K/2812/2023)  
P.A.HARISH(K/000392/1991) HARISH ABRAHAM SRI. JAMSHEED  
HAFIZ THIS CRP (WAKF ACT) HAVING BEEN FINALLY HEARD ON

18.07.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING: AMIT RAWAL & EASWARAN S., JJ.

----- Dated this the  
18th day of July, 2024

# **ORDER**

**AMIT RAWAL, J.**

The present Revision Petition is directed against the

**order dated 15.12.2023 of the Wakf Tribunal, disposing of**

Wakf Original Application [W.O.A.] No.49 of 2021 preferred by respondent Nos.1 to 4, whereby the Wakf Board has been directed to take up the previous compliant No.4449 of 2018 and hold an enquiry with regard to the allegations made in the WOA. The petitioner herein is the 2nd respondent in the WOA.

2. The controversy has little checkered history. In 2018, respondent Nos.1 to 4/applicants before the

Tribunal had preferred a complaint before the Wakf Board bearing No.4449 of 2018 alleging encroachment and as well as to ascertain regarding the conduct of the management of

**the Wakf committee. The said complaint was closed vide order**

dated 9.10.2019 which reads as under:

"As per the order In WPC 9787/2019 the Hon'ble High Court ordered to dispose the matter within 4 months. The matter posted for evidence on 09.10.2019. but the counsel appeared for the petitioner is not filed chief affidavit moreover the petitioner also absent. Respondent counsel Adv Namboothiry Junior of Senior Lawyer K. P. Mayan and Adv. Sandeep appeared for taking evidence. Respondents produced chief affidavit and documents, but the counsel appeared for the petitioner is not ready to produce the same and it was endorsed in the petition 172/2019, IA 171/2019. Petitioner is not intended to proceed the matter in time. So A12-4449/2018 is closed."

3. On a perusal of the above order, it is evident that the

respondents 1 to 4/applicants before the Tribunal did not give evidence but only tendered the documents but despite that did not insist for adjudication on merits.

4. The aforesaid order purported to have been assailed before this Court in W.P.(C) No.488 of 2020, was upheld by

**judgment dated 10.1.2020 with liberty to respondents 1 to 4**

herein to approach the Wakf Tribunal for appropriate reliefs. It is in that background, respondents 1 to 4/applicants instituted W.O.A. No.49 of 2021 on 8.10.2021 claiming the following reliefs:

"1. To call for the records pertaining to the proceedings No. A12-4449/18/KKD pending before the 1<sup>st</sup> respondent Wakf Board and to continue the proceedings by this Hon'ble Tribunal by taking steps for the protection and preservation of the wakf and wakf properties and for facilitating effective management of the wakf by the 4<sup>th</sup> applicant who is the eligible, authorised and duly ordained Mutawalli of the wakf as per the custom and usage and the wishes of the Wakif, basing on the submissions and documents submitted and available in the matter.

ii. Or in the alternative directing the 1<sup>st</sup> prime prime respondent Wakf Board to continue the proceedings as per the mandates of the Wakf Act and Rules by taking steps for the protection and preservation of the wakf and wakf properties and for facilitating effective management of the wakf by the 4<sup>th</sup> applicant who is the eligible, authorised and duly ordained Mutawalli of the wakf as per the custom and usage and the wishes of the Wakif, basing on the submissions and documents submitted and available in the matter.

iii. Directing the 1<sup>st</sup> Respondent to update the entries in the Register of Wakfs by entering the name of the 4<sup>th</sup> applicant as the Mutawalli, recording the custom and

usage of succession to the post of the Mutawalli and by incorporating the entire properties of the wakf. iv. To Initiate appropriate action against the 2 Respondent for illegally intermeddling with the Waqf properties and for causing loss to the Waqf.

v. To restrain the 2nd Respondent and his men from in any manner interfering or intermeddling with the management of the Wakf or trespassing or causing any loss or damage to its properties, or in any manner obstructing or preventing the 4th applicant from performing and discharging his duties as the Mutawalli of the wakf by a decree of permanent prohibitory injunction.

vi. To pay the costs of the proceedings; and vii. To grant such other reliefs that the Applicants may pray for from the time being and which this Hon'ble Tribunal may deem it fit and proper to grant."

5. The petitioner herein contested the aforementioned

matter and raised the objection qua maintainability much less locus. The Tribunal remitted the matter to the Wakf Board by restoring the previous complaint bearing No.4449 of 2018 for fresh adjudication. Operative portion of the said order reads as under:

"1) The 1st respondent Waqf Board is hereby directed to continue with the proceedings A12-4449/18/KKD, in the best interest of the waqf and its properties. 2) The 1st respondent Waqf Board is directed to conduct proper enquiry regarding mutawalliship, in order to facilitate effective management of the waqf. 3) The Waqf Board is also directed to conduct enquiry regarding illegal alienation of waqf properties, if any, having regard to all assignment deeds inclusive of Ext.A1 waqf deed, Ext.A33 partition deed and other similar deeds marked herein as Exts. A34 to A36. The Waqf Board shall bear in mind that the purpose of the proceedings shall not be for an adjudication. 4) There is no order as to costs."

6. We have heard Sri.Gopikrishnan Nambiar, learned

counsel appearing for the petitioner, Sri.Syam Padman, learned Senior counsel appearing for respondents 1 to 4 and Sri.Harish Abraham, learned counsel appearing on behalf of the 6th respondent.

7. Sri. M.Gopikrishnan Nambiar, the learned counsel

appearing on behalf of petitioner, submitted that the W.O.A preferred by respondents 1 to 4 was ex facie barred by law of limitation as per the provisions of Rule 136 of the Kerala Wakf

Rules, 2019. It is pointed out that after the Judgment of this court in Writ Petition No.488 of 2020, it took nearly 1 years for the applicant to approach the tribunal. Even assuming that the tribunal had the power to entertain the application, the same was not accompanied by any application for condonation of delay and hence the same could not have been entertained. It is further pointed out that the reliefs as noticed above were infact to re-agitate the issue which had already attained finality and therefore, the Tribunal/Wakf Board had the trappings of Code of Civil Procedure, the matter was expressly barred as per the provisions of Order II Rule 2 of the Code of Civil Procedure.

8. There is no prayer for challenging the alienation and even if the relief as couched is for holding enquiry. It would be a farcical exercise for, Ext.A33, the alleged partition deed, is in

respect of some different property and different Wakf. Exts.A34 and A35 are not reflected in the Wakf register as the registration i.e., Ext.A3 is of 1969. Except for Ext.A1, for all other properties, the survey numbers of A34, A35 and A33 do

not reflect in the waqf property, there is no need of holding an enquiry. The complaint/application was a roving enquiry with the intention of arm-twisting tactics. Any person as defined under Sections 70 and 71 of the Wakf Act cannot be permitted to espouse the alleged grievance and eschew the calls for the Jama ath or the mahal in the manner and mode as indicated above, as it has been seen in the past that such applicants have scant regard to the provisions of the Act and

have been indulging into various nefarious activities which have to be nipped in the bud and therefore the order impugned cannot be

said to be innocuous, giving liberty to the board to unnecessarily harass the parties without any cause.

9. On the other hand, Mr. Shyam Padman the learned Senior counsel countered the aforementioned argument and submitted that the submissions cannot be countenanced for the reason that the properties of the waqf and the

management cannot be permitted to be tinkered or misappropriated or mismanaged as per the whims and choices. Their actions have to be within the parameters of the Act and the Rules and not beyond. It is precisely for that

reason, the Wakf Board has been empowered with the superintending power over the Wakf as a watch-dog to prevent any miscarriage of justice to the devotees or the members of the jama ath. The contents of Exts.A32 and A33 reveal the same very survey numbers which has been the subject of partition deed and assignment deed in A34 and A35. There is no limitation for filing an appeal under Section

83. At the best the complaint instituted on 8.10.2021 can be considered for some other relief and not for raking of the previous claim made in the compliant bearing No.4449 of

2018. He further urged the court for dismissal of the writ petition as the Board would have the liberty to call upon the affected parties and take evidence; can be also directed to fix a time line for adjudication.

10. Sri.Jamsheed Hafiz, also adopted the argument of Sri.Shyam Padman and submitted that the Board will not act in an irrational manner in adjudicating the grievance as

espoused in the complaint WOA and shall afford an opportunity to the parties and if the application is found to be atrocious, can always take a call upon the demeanor and conduct of the complainant.

11. We have heard the learned counsel for the parties and appraised the paper book. Section 70 and 71 of the Act reads as under:

"70. Inquiry relating to administration of waqf.- Any person interested in a waqf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the waqf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.-

(1) The Board may, either on an application received under section 70 or on its own motion,-

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a waqf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the

Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents."

12. No doubt any person aggrieved of alleged

mismanagement or inaction on the part of the management of the committee managing the Wakf, such misdeeds or inaction or alleged illegalities can be brought to the notice of the Wakf Board if the Wakf Board fails to take any appropriate steps in accordance with law; but such provisions cannot be permitted to be misused with impunity as per whims and choices.

13. No doubt Section 106 of the Act excludes the applicability of the Limitation Act for the purpose of Original Suit, but Rule 136 of 2019 Rules provides limitation of



Thirty

(30) days in assailing the order of the Board.

14. On plain and simple reading of the provisions of

Section 83 of the Act, no doubt, though period has not been prescribed but the expression "as may be prescribed" has to be read in conjunction with Rule 136. In the instant case, even if the period is to be counted from the date of the order of the High Court i.e., 10.1.2020, no explanation has come forth in not invoking the alleged provisions till October 2021; in fact there was a delay of almost one year and few months. Though the provisions of Section 95 of the Waqf Act 1995 enables the

tribunal to entertain an application beyond the prescribed time if sufficient cause is shown, it must be noticed here that no such application for condonation of delay was filed. In the absence of the same the tribunal could not have entertained the application.

15. Rigors of the Limitation Act though in a catena of

judgments have been diluted to be not taken against the affected parties but cannot be also be taken protection of in the absence of any reasonable explanation or justified cause. Contents of the complaint read out before us do not fulfill any of such parameters calling upon the Tribunal to entertain the appeal after a gap of one year and few months. The reliefs as extracted supra viz-a-viz the reliefs in the previous application are intertwined and therefore cannot be permitted to re- agitate as it was deemed to have been given up as per the contents of the order dated 9.10.2019. This is what is laid down in Order II Rule 2 of CPC. The same reads as under :

2. SUIT TO INCLUDE THE WHOLE CLAIM.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in

## **order to bring the suit within the jurisdiction of any Court.**

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person

entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

16. At this stage, the Learned Senior Counsel would point

out that the applicant is entitled to get the benefit of the extension of limitation by the order of the Supreme Court in view of Covid pandemic. However we are afraid that the said contention cannot be countenanced since the orders were passed by the Supreme Court in March 2020, whereas by that time a limitation to prefer an appeal against the order of

## **9.10.2019 and much less the liberty granted as per the order**

of this Court dated 10.1.2020 had already elapsed on 9.2.2020.

17. Though we should not have been harping upon the

merits of the matter, but by looking at the document of registration, A3, there is no reference of the alleged survey numbers mentioned in A33 and all the transactions A34, A35 and A36 are emanating from the aforementioned documents are different. In the absence of the same, it cannot be termed to be a Wakf property, alleging alienation without the permission of the Board.

18. For the reason aforementioned, we are of the view that all these factors had not been looked into by the Tribunal in a correct perspective. Thus, the order is totally repugnant and fallacious and hereby set aside. CRP( WAQF) is allowed.  
Sd/- AMIT RAWAL JUDGE Sd/- EASWARAN S. NS JUDGE