

Haroon vs Guardians Educational and Charitable Trust

Haroon vs Guardians Educational and Charitable Trust

SooperKanoon Citation : sooperkanoon.com/1363726

Court : Kerala

Decided On : Aug-09-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : FAO/52/2023

Appellant : Haroon

Respondent : Guardians Educational and Charitable Trust

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
WEDNESDAY, THE 9TH DAY OF AUGUST 2023 / 18TH SRAVANA,
1945 FAO NO. 52 OF 2023 AGAINST THE ORDER DATED 13.04.2023
IN IA NO.1/2023 IN OS NO.36/2023 OF SUB COURT, ATTINGAL -----

APPELLANTS/COUNTER PETITIONERS/DEFENDANTS: 1 HAROON,
AGED 66 YEARS, S/O MUHAMMED KUNJU, RESIDING AT
AISWARYAM, PALLIPPURAM.P.O., THIRUVANANTHAPURAM TALUK,
THIRUVANANTHAPURAM DISTRICT, PIN - 695316. 2 SHAMMAS,
AGED 29 YEARS, S/O NIZAR, RESIDING AT NIZAR MANZIL,
ALUMMOODU, KANIYAPURAM.P.O., PALLIPPURAM VILLAGE,

THIRUVANANTHAPURAM DISTRICT, PIN - 695301. 3 NUJUMUDEEN AGED 49 YEARS S/O SHAMSUDEEN, RESIDING AT SATHYA VILASAM, BUNGLOW, NEAR CRPF, PALLIPPURAM.P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695316 4 NIZAR, AGED 58 YEARS, S/O ABDUL AZEEZ, RESIDING AT SALIM NIVAS, NAMBIARKULAM, KANIYAPURAM.P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695301. 5 FIROZ, AGED 57 YEARS, S/O ALIYARUKUNJU, RESIDING AT VADAKKATHIL VEEDU, KANIYAPURAM.P.O., PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 695301 BY ADVS. K.M.GEORGE CHITHRA P.GEORGE FAO NO. 52 OF 2023 -2- RESPONDENTS/PETITIONERS/PLAINTIFFS:

1 GUARDIANS EDUCATIONAL AND CHARITABLE TRUST, MODERN GARDENS, CRPF, PALLIPPURAM, PALLIPPURAM.P.O., PALLIPPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN 695316. REPRESENTED BY ITS SECRETARY MR. KABEER @ KABEER CHANNANKARA, AGED 62, S/O ABOOBACKER KUNJU, RESIDING AT DARUL HASEEB, CHANNANKARA.P.O., KADINAMKULAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 635301 2 MR. KABEER @ KABEER CHANNANKARA, AGED 62 YEARS, S/O ABOOBACKER KUNJU, RESIDING AT DARUL HASEEB, CHANNANKARA P.O., KADINAMKULAM VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN - 635301 3 MR. SHIBU.M., AGED 49 YEARS, S/O MUHAMMED IBRAHIM, RESIDING AT T.C. 928, PRAKRITHI, KUMARAPURAM, MEDICAL COLLEGE.P.O., THIRUVANANTHAPURAM, PIN 695011.

FROM KADAYIL VEEDU, PULLAMPARA VILLAGE, NEDUMANGADU TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695607. BY ADV R.GOPAN - R1 to R3 ADVOCATE COMMISSIONER - SRI.K.B.PRADEEP THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR HEARING ON 09.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

===== F.A.O. No.52 of 2023 =====
===== Dated this the 9th day of August, 2023

J U D G M E N T

An interim order of injunction restraining the defendants from obstructing the administration and functioning of the Guardian's Educational and Charitable Trust, is under challenge by the defendants.

2. The dispute involved in the suit relates to the election to the governing body of the trust alleged to have been held on 12.02.2023.

3. This Court as per order dated 09.06.2023

directed election to be held to the governing body through an Advocate Commissioner appointed by this Court. Such election was conducted on 15.07.2023. Both sides have filed objections to the report of the Commissioner with regard to conduct of election. I do not consider it necessary to go into the objections at this stage. It would be sufficient if the members elected by an election held by the Commissioner and are F.A.O. No.52 of 2023 -: 2 :- permitted to hold office till the disposal of the suit, and the disposal of the suit is expediated. Resultantly, the appeal is disposed of with the following directions: -

(i) The Committee elected in the election held

through the Advocate Commissioner is permitted to assume office and be in management as Receivers till disposal of the suit.

(ii) The plaintiffs who were appointed as the Receivers as per orders of this Court dated 09.06.2023 shall forthwith handover the administration to such elected members referred to in Clause-(i) above.

(iii) It shall be open for the trial Court to pass

appropriate directions to the Receiver, if found necessary, treating the order of appointment of Receiver to have been made by that Court. F.A.O. No.52 of 2023 :-
3 :-

(iv) The validity of the election held through the Commissioner appointed by this Court need not be a subject matter of dispute between the parties.

(v) The trial court shall try and dispose of the suit as expeditiously as possible and at any rate within a period of six months from the date of receipt of a copy of this judgment.

(vi) The Governing Body elected through the Advocate

Commissioner pursuant to the orders of this Court shall pay an amount of ` 25,000/- to the Advocate Commissioner within a period of ten days and submit a memo before this Court. For report and compliance, call on 22.08.2023. Sd/- SATHISH NINAN JUDGE kns/- //True Copy// P.S. to Judge APPENDIX OF FAO 52/2023 RESPONDENT EXHIBITS EXHIBIT-R2 (A) PHOTOCOPY OF THE DRAFT VOTERS LIST PUBLISHED BY THE ADVOCATE COMMISSIONER. EXHIBIT-R2 (B) PHOTOCOPY OF THE OBJECTION DATED 07/07/23 FILED BY THE RESPONDENTS TO THE DRAFT VOTERS LIST PUBLISHED BY THE ADVOCATE COMMISSIONER. EXHIBIT-R2 (C) PHOTOCOPY OF THE SCRUTINY OF OBJECTIONS AND FINAL VOTERS LIST PUBLISHED BY THE ADVOCATE COMMISSIONER. ANNEXURE-A1 TRUE COPY OF THE NIL DATED DRAFT VOTERS LIST PUBLISHED BY THE ADVOCATE COMMISSIONER. ANNEXURE-A2 THE TRUE COPY OF THE NIL DATED OBJECTION FILED BY THE PETITIONERS AND OTHER MEMBERS OF THE TRUST COMMITTEE BEFORE THE RETURNING OFFICER. ANNEXURE-A3 THE TRUE COPY OF THE ORDER DATED 07.07.2023

PASSED BY THE RETURNING OFFICER OVERRULING THE OBJECTIONS AND THE FINAL VOTERS LIST PUBLISHED BY THE RETURNING OFFICER.

RESPONDENT ANNEXURES ANNEXURE M TRUE COPY OF THE DECLARATION OF RESULT OF ELECTIONS ANNEXURE A THE DRAFT

NOTIFICATION OF VOTERS LIST AND ELECTION SCHEDULE ANNEXURE B THE OBJECTIONS TO DRAFT VOTERS LIST BY A KABEER AND ANOTHER ANNEXURE C THE OBJECTIONS TO DRAFT VOTERS LIST BY SAJIL SALAM AND OTHERS ANNEXURE D THE ORDERS PASSED ON OBJECTIONS ALONG WITH FINAL VOTERS LIST ANNEXURE E TRUE COPY OF THE E-MAILS REQUESTING FOR ONLINE NOMINATION SUBMISSION APPENDIX-FAO 52/2023 -2- ANNEXURE J TRUE COPY OF THE BALLOT PAPERS(25 NOS.),

INCLUDING PARENT BALLOT OF ELECTRONICALLY TRANSMITTED IMAGES AND THE IMAGES OF BALLOTS RECEIVED AFTER MARKING PREFERENCES

ANNEXURE K TRUE COPY OF THE TABULATION/TALLY SHEET. ANNEXURE L TRUE COPY OF THE LOTS USED FOR DRAW OF LOTS ANNEXURE F TRUE COPY OF THE NOMINATION SUBMITTED (12 IN NOS) ANNEXURE G TRUE COPY OF THE ORDER REJECTING NOMINATION OF HASSAN SAEED ANNEXURE H TRUE COPY OF THE PROCEEDINGS OF SCRUTINY AND ELECTIONS ANNEXURE I TRUE COPY OF THE LIST OF ACCEPTED NOMINATIONS -----

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com