

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4629/2024
[@ SLP [C] NO.3182/2019]

S V CHERIYAKOYA THANGAL Appellant(s)

VERSUS

S.V P POOKOYA & ORS. Respondent(s)

O R D E R

Leave granted.

This case has got a chequered history. The *lis* which started in the year 1987 in the form of a Civil Suit O.S. No.5/1987 on the file of Munsif Court, Androth, still continues in one form or another.

After the completion of the earlier round of litigation, the present *lis* was started at the instance of the appellant, duly followed by the respondents. Before the Waqf Board, both the parties claimed their respective rights to *Mutawalliship* and *Sheikhship*. By an elaborate order the Waqf Board held in favour of the appellant declaring him as a *Mutawalli*.

Being aggrieved, respondents filed an application by invoking Section 83 of the Waqf Act, 1995 before the Waqf Tribunal.

The waqf Tribunal, after affording opportunities to both the sides, *inter alia*, held that there is no

perversity in the decision rendered by the Waqf Board.

A plea was also taken both before the Waqf Board and the Waqf Tribunal, on the question of jurisdiction. It was contended by the respondents that it is the Waqf Tribunal which has got the original jurisdiction to decide the issue pertaining to *Mutawalliship* and, therefore, the Waqf Board did not have the jurisdiction.

On a revision being filed, the High Court was pleased to set aside the judgment and decree of the Waqf Tribunal *inter alia* holding that the Waqf Board did not have the jurisdiction and, therefore, the matter has to be decided afresh only by the Waqf Tribunal.

Challenging the said decision, the present appeal is filed before us.

Though arguments have been made at length, we are inclined to hold that the impugned order cannot be sustained in the eyes of law as the Waqf Board has rightly exercised the jurisdiction in exercise of power conferred under Section 32(2)(g) read with the definition under Section 3(i) which defines a '*Mutawalli*'. We have also perused Section 83 sub-Sections (5) and (7) of the Act which deals with the powers of the Tribunal. The Waqf Tribunal is deemed to be a civil court having the same powers that can

be exercised by the civil court under the Code of Civil Procedure, 1908. In other words, a dispute can be tried like a suit by the Waqf Tribunal. Under sub-section (7) of Section 83 of the Waqf Act, the decision of the Tribunal shall be final and binding upon the parties and it shall have force of a decree made by a civil court.

The word '*competent authority*' as mentioned in the definition clause contained in Section 3(i) makes the position further clear that it is the Waqf Board which has got the jurisdiction and not the Waqf Tribunal. After all, the Waqf Tribunal is only an adjudicating authority over a dispute while the Waqf Board is expected to deal with any issue pertaining to administration. The power of superintendence cannot be confined to routine affairs of a Waqf but it includes a situation where a dispute arises while managing the property and that would certainly include a right of a person to be a *Mutawalli* after all, it is the *Mutawalli* who does the job of administering and managing the Waqf.

In such view of the matter, we are of the view that the impugned order cannot be sustained in relegating the matter to an adjudicating authority by treating it as a competent authority, which is none other than the Waqf Board.

However, in the case on hand, the High Court did

not go into the merits of the case.

In such view of the matter, while setting aside the impugned order, we are remitting the matter to the High Court to decide the revision on merits, in accordance with law except the issue of jurisdiction as decided by us in this appeal.

We request the High Court to expedite the hearing and make an endeavour to dispose it of as early as possible in view of the fact that the revision is of the year 2015 and the dispute is pending from the year 1987 onwards.

The appeal accordingly stands allowed.

All issues are left open to be decided by the High Court.

Pending application(s), if any, stand disposed of.

..... J.
[M.M. SUNDRESH]

..... J.
[S.V.N. BHATTI]

NEW DELHI;
APRIL 02, 2024.

ITEM NO.27

COURT NO.14

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 3182/2019

(Arising out of impugned final judgment and order dated 29-10-2018 in CRP No. 189/2015 passed by the High Court Of Kerala At Ernakulam)

S V CHERIYAKOYA THANGAL

Petitioner(s)

VERSUS

S.V P POOKOYA & ORS.

Respondent(s)

IA No. 27117/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION

Date : 02-04-2024 This petition was called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. R. Balasubrahmaniam, Sr. Adv.
Mr. K. Gireesh Kumar, Adv.
Mr. Shine P. Sasidhar, Adv.
Mr. Tom Joseph, AOR
Mr. Linto K.B., Adv.

For Respondent(s) Mr. Hariprasad A, Sr. Adv.
Mr. K. Rajeev, AOR
Mr. Bijo M Joy, Adv.
Ms. Niveditha R.menon, Adv.
Mr. Pranav Krishna, Adv.
Mr. Aditya Verma, Adv.
Mr. Tarun Kumar, Adv.

Mr. Rajesh Singh Chauhan, Adv.

Mr. Mukesh Kumar Maroria, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stand disposed of.

(ASHA SUNDRIYAL)

ASTT. REGISTRAR-cum-PS

(POONAM VAID)

COURT MASTER (NSH)

[Signed order is placed on the file]