

**IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA**

**Present: Sri. Mahesh. M., Additional Munsiff**

**Monday, the 7<sup>th</sup> day of April, 2025 /17<sup>th</sup> Chaithram, 1947.**

**IA No.01/2025 in O.S. No. 132/2025**

(Filed on 04.03.2025)

**Petitioner/ Plaintiff :-**

Muhammed.V.A, aged 72,  
S/o Abdulla, Safa (Vattathara ) House,  
Vaduthala Jetty.P.O, Arookutty Village,  
Cherthala Taluk.

**By Adv. Ambili.P.Madhavan, Adv.Amrutha Joshy &  
Adv.Meera Pulickan**

**Respondents/ Defendants:-**

1. Hidayathul Islam Samajam,  
a Samajam (Association ) in the Ottathengumkal Mosque,  
Vaduthala Jetty.P.O, Arookutty Village, Cherthala Taluk.  
Represented by its President
2. Abdul Jaleel, aged 55, S/o Mammu,  
Kozhisseril House, Vaduthala Jetty.P.O,  
Arookutty Village, Cherthala Taluk.  
(present President of 1<sup>st</sup> defendant Association)
3. Junaid, aged 32, Thottupurathu House, now residing at  
Eramangalathu House, Naduvathnagar P.O,  
Arookutty Village, Cherthala Taluk.
4. Rasakh, aged 63, S/o T.K.Kuttimoosa, Thannikkal,  
Vaduthala Jetty.P.O, Arookutty Village, Cherthala Taluk.  
(proposed Secretary of the 1<sup>st</sup> defendant)
5. Majeed K M, aged 55, S/o Mohammed, Karuppasseril,  
Vaduthala Jetty.P.O, Arookutty Village, Cherthala Taluk.
6. Easa, aged 56, S/o T.K.Kunjupillai, (Muhammed),  
Vaduthala Jetty.P.O, Arookutty Village, Cherthala Taluk.

7. Dr Ansari Backer, aged 56, Hannz Villa No.5,  
Kumaranasan Nagar, Kadavanthara.P.O, Ernakulam Village,  
Kanayannur Taluk, Ernakulam District.  
**R1 to R6 by Adv. N.Ratheesh**

This petition having been finally heard on 27.03.2025 and the court 07.04.2025 passed the following :-

### **ORDER**

This is a petition filed by the petitioner under Order 39 Rule 1 CPC for restraining the respondents from expelling the petitioner from the executive committee of the 1<sup>st</sup> defendant association.

#### **2. Petition averments in brief are as follows:**

Plaintiff is the present secretary and committee member of the first defendant Hidayathul Islam samajam. For the last 40 years plaintiff has been continuing as a committee member of the first defendant. On 15.01.2017 he has been elected as the secretary of the association. The first defendant Association was formed as per Travancore Cochin Literary, Scientific and Charitable Societies Registration Act (Act 12 of 1955). Number of persons belong to Islam community in the locality is working associated with the 1<sup>st</sup> defendant samajam, This 1<sup>st</sup> defendant association is functioning for and on behalf of Ottathengungal Mosque situated in Vaduthala. Second defendant is the present president of the samajam. Third defendant is the proposed Secretary of the first dependent samajam and the fourth defendant is the treasurer and 5<sup>th</sup> defendant is the committee member and 6<sup>th</sup> defendant is the vice president. First defendant was established with the objectives of protecting and maintaining the properties dedicated as Wakf under the first defendant and conducting vocational education of the younger section of the Islam community. One of the goals of the association at the time of its formation was the educational, cultural, social and

economic upliftment of the people of Muslim community in the locality. Plaintiff's grandfather had dedicated his two properties situated in Arookkutty village as Wakf (Waqf) to the above said mosque. In this way a few nearby families who are believers in Islam also dedicated some of their properties as Wakf. And thus the entrusted properties became the Wakf properties. The first defendant Association has the duty to protect all these properties. Since 2017 plaintiff has been holding the post of secretary of the first defendant association and during his entire tenure plaintiff has carried out the work required to protect the properties under the samajam. The revenue of the properties were collected in time and accounts were kept accurately. Accounts were used to submit before the committee in time and has been accepted and approved by the committee. The 7<sup>th</sup> defendant is the tenant of the first defendant association. He has taken on rent the Wakf property having an extent of 21.05 Ares comprised in Sy No 186/17-18 of Arookkutty Village. The same was taken on rent by him for constructing in auditorium. In 2019 itself construction of Auditorium has been started. Subsequently first lease deed executed by him was cancelled by a surrendering deed and a new lease deed was executed in the year 2021. For a period of 30 years tenure of lease has been fixed. Apart from monthly rent fixed, the 7<sup>th</sup> defendant had agreed to pay incentive to the samajam. He had agreed to pay 5% proceeds as incentive for each event held at the Auditorium. Initially he used to pay the incentive amount correctly, but later he defaulted the same. Moreover without showing proper figures of programmes held in the Auditorium he has tried to make it appear that a few programs are being held in the Auditorium without showing the actual figures of the programmes. Matter being so the 7<sup>th</sup> defendant submitted an application to the first defendant showing that the ownership of the Auditorium should be given in his name But the plaintiff strongly objected to it. The plaintiff and some other members of the committee

strongly opposed the same in the committee meeting realising the danger of transferring the ownership in the name of the 7<sup>th</sup> defendant. This action of the plaintiff had caused displeasure to the 7<sup>th</sup> defendant. Then the 7<sup>th</sup> defendant colluded with the second defendant and along with the other defendants has tried to expel the plaintiff from the first defendant association. The 7<sup>th</sup> defendant leveled baseless allegation against the plaintiff and tried to defame the plaintiff before the public. As his baseless allegations against this plaintiff continued plaintiff sent a registered letter to the 7<sup>th</sup> defendant seeking explanation of his baseless allegations against this plaintiff. He sent a vague reply for the same. Then colluded with each other now the defendants are trying to defame the plaintiff and harm the reputation of this plaintiff in various ways. Moreover prior Ustad (Head master) of the Madrasa was removed by the defendants raising false and baseless allegations against him and arbitrarily appointed a new person instead of him. When certain actions of the existing Usthad P.A Muhammed Moulavi (madrasa headmaster) adversely affected the 1<sup>st</sup> defendant association this plaintiff questioned it. It caused resentment among some people including the 2<sup>nd</sup> defendant. The plaintiff had to protest against the actions of the Ustad especially because of his indecent behaviour towards the girls who came to Madrasa. The 7<sup>th</sup> defendant also started to violate the norms of lease deed by parking and making use of additional car parking space. Some of the members of the association begin to their notice that the 7<sup>th</sup> defendant herein is wrongfully using some other Wakf properties (dedicated to the Mosque and being protected by the 1<sup>st</sup> defendant Samajam). As a result it is causing an impediment to the right of the association and thus causing inconvenience and discomforts. This plaintiff strongly opposed such unauthorized use and tried to oppose the same in the committee meetings. But the defendants 2 to 5 were reluctant to record the objections in the minutes book. The plaintiffs' strong action to protect the Wakf

properties and the objection towards the appointment of new ustad caused displeasure to defendants 2 to 5. Now the defendants 2 to 6 are trying to expel the plaintiff from the committee membership which is totally illegal and in violation of natural justice. Without giving notice to this plaintiff and without convening a General Body Meeting they are trying to expel the plaintiff from the first defendant Association which is illegal, arbitrary and against the law. Though several times this plaintiff demanded to convene a general body meeting second defendant was not ready to do the same. Colluded with the 7<sup>th</sup> defendant and with the assistance and support of him defendants 2 to 5 are doing the same. Matter being so, on 28.02.2025 when this plaintiff came in the office of the 1<sup>st</sup> defendant association 2<sup>nd</sup> defendant and some of his men threatened this plaintiff that he will be expelled from the committee. Though this plaintiff demanded a copy of the by-law and copy of resolution if any the second defendant was not ready to give a piece of paper. Though this plaintiff voluntarily decided to resign from the post of the Secretary the defendants have no right or authority to expel the plaintiff from the executive committee of the association. Colluded with the 7<sup>th</sup> defendant now the other defendants are trying to expel the plaintiff from membership of the 1<sup>st</sup> defendant association committee. Though a committee meeting was conducted on 22.02.2025 no such proceedings were initiated against this plaintiff. From the general body committee members are elected. It is only in the general body meeting that a decision can be taken whether to expel a member or not. The defendants 2 to 7 have no authority to expel this plaintiff from the association. Their attempt is an infringement of the right of this plaintiff. This plaintiff has no other go than to approach this court. Hence this petition.

**3. Respondents No.1 to 6 filed objection as follows:-**

The petition is not maintainable either in law or on facts. The

plaintiff has neither the authority nor the right to institute such a frivolous and baseless suit. Hence, the suit is legally unsustainable. The Munsiff Court does not have jurisdiction to entertain the suit. As per Section 85 of the Waqf Act, the suit cannot be sustained before the Munsiff Court. Furthermore, the first defendant is part of the Hidayathul Islam Samaj, which consists of numerous members. The non-inclusion of all necessary parties in the suit amounts to a defect of "non-joinder of necessary parties." Additionally, the plaintiff has not obtained permission under Order 1 Rule 8 of the Code of Civil Procedure to institute the suit in a representative capacity, thereby rendering the suit and proceedings unsustainable. The claim that the plaintiff has been serving as a committee member of the first defendant's association for the past 40 years is untrue. The plaintiff only assumed the role of a committee member in 2017. Since 2017, the plaintiff had also been functioning as the secretary of the first defendant. However, by a resolution passed by the management committee on 22.02.2025, the plaintiff was removed from the position of secretary and from the management committee. Subsequently, Junais S/o Kuttiammu Thottupurath was elected as the new secretary, who has since been performing the responsibilities of the position. The name of the plaintiff was removed from the first defendant association's bank accounts, and the accounts are now being operated under the new secretary's name. The plaintiff was present at the management committee meeting held that day and had also signed the minutes of the meeting. The assertion that the first defendant association is registered under the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act is incorrect. The defendants have no knowledge of any such registration existing for the first defendant. Furthermore, the actual name of the third defendant is Junais, who is currently serving as the secretary. The claim that the plaintiff's grandfather had dedicated two properties to the Thengunkal

Mosque as waqf is denied. To the knowledge of the defendants, none of the plaintiff's close relatives has ever dedicated any properties as waqf. It is admitted that the plaintiff functioned as the secretary of the first defendant since 2017. However, the plaintiff's performance during this period was unsatisfactory. The plaintiff made public statements against the operations of the madrasa and behaved inappropriately with the madrasa's teachers. Furthermore, certain amounts collected in the name of the first defendant were not properly accounted for. Only a detailed audit of the accounts can reveal the actual facts. The seventh defendant is an unnecessary party in the case. Therefore, the case is vitiated by the defect of misjoinder of necessary parties. The tenancy agreements mentioned in the petition are admitted. The application submitted to transfer ownership rights of the building in the waqf property to the name of the seventh defendant is admitted. However, the management committee has not granted approval for the same. The defendants have no knowledge of any animosity between the plaintiff and the seventh defendant regarding this matter. The allegations that the seventh defendant colluded with other defendants to oust the plaintiff from the first defendant association are baseless and false. No such incident occurred. The defendants have no knowledge regarding the allegation that the plaintiff sent a notice to the seventh defendant. However, these defendants have neither colluded with the seventh defendant nor made any attempt to defame or humiliate the plaintiff, and they have no intention of doing so. The former madrasa teacher resigned voluntarily. No one removed him. The new madrasa teacher was appointed by the plaintiff. The plaintiff has raised entirely false allegations against the current madrasa teacher. It is the plaintiff who misbehaved with the existing teacher in various ways and obstructed the smooth functioning of the madrasa. The additional parking space was allocated to the seventh defendant by the plaintiff. Subsequently, the plaintiff filed a complaint with the

Waqf Board regarding rent for the parking space without informing other committee members. The plaintiff was removed from the position of secretary and from the management committee of the first defendant association by a majority decision of the management committee on 22.02.2025. The plaintiff had signed the minutes of the meeting approving this decision. The allegations that the plaintiff demanded the convening of a general body meeting of the first defendant association and other such claims are false. The claim that the second defendant and their associates threatened the plaintiff on 28.02.2025 at the first defendant's office, stating that the plaintiff would be removed from the committee of the first defendant association, is also untrue. The first defendant association does not have a definite bylaw. It is an association operating based on long-standing customs and practices. The minutes book, notice book, receipt book, letterhead, and seal used since 2017 were handed over to the new secretary by the plaintiff on 06.03.2025. No other documents have been handed over to the new secretary so far. The plaintiff had agreed to hand over the remaining documents to the new secretary on 09.03.2025, but the plaintiff did not comply. The plaintiff is not currently a member of the executive committee of the first defendant association, as the plaintiff was removed from the position on 22.02.2025. However, the defendants have made no attempt to remove the plaintiff from the primary membership of the first defendant association. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

1. Whether this petition is allowable or not?
2. What is the order?

**6. Point No.1 –**

The specific contention of the petitioner is that respondents Nos. 2 to 6, in collusion with respondent No. 7, are attempting to expel the petitioner from the committee of the 1<sup>st</sup> defendant Samajam. On the other hand, the respondents contend that the petitioner had already been removed from the executive committee prior to the institution of the suit. Thus, the first issue to be analyzed is whether the petitioner has established a prima facie case. The petitioner has filed this petition asserting that he is the current secretary of the 1<sup>st</sup> defendant Samajam. However, this claim is effectively disproven by the respondents through the production of the Samajam's minutes book. From this document, it becomes apparent that the petitioner was removed from the position of secretary of the Samajam even before the suit was instituted. It is also noteworthy that the petitioner himself attended the meeting during which this decision was made. Furthermore, he signed the minutes book under the resolution recording his removal from the post of secretary. By affixing his signature, it can be inferred that the petitioner acknowledged and accepted the executive committee's decision regarding his removal. Despite being fully aware of the fact that he is no longer the secretary of the 1<sup>st</sup> defendant Samajam, the petitioner has chosen to present himself as the current secretary in the affidavit accompanying this petition. He has also advanced arguments as if he holds the position of secretary. This conduct demonstrates that the petitioner has approached the court with unclean hands, thereby undermining the credibility of his case.

7. The petitioner, through this petition, has expressed apprehension that respondents Nos. 2 to 5 threatened him with expulsion from the committee of the 1<sup>st</sup> defendant Samajam. According to the petitioner, the alleged reason for

such threats was his opposition to the unauthorized use of wakf properties by respondent No. 7. Specifically, the petitioner contends that respondent No. 7 attempted to claim ownership of the auditorium situated on wakf property. Upon opposing this action, the petitioner asserts that respondents Nos. 2 to 6 colluded with respondent No. 7 to expel him from the committee. Analyzing the veracity of these claims, it is undisputed that the properties belonging to the 1<sup>st</sup> defendant Samajam are wakf properties, as they are duly registered under wakf. However, it is unclear how the members of the committee of the 1<sup>st</sup> defendant Samajam could legally decide to transfer a wakf property to respondent No. 7, who is an outsider. Even if such a decision were taken by the committee, it would hold no legal value, as the committee does not possess the authority to transfer wakf properties. Consequently, the petitioner's assertion that respondents colluded to expel him for opposing this transfer lacks credibility. Moreover, the fact that respondent No. 7 was granted a 30-year lease of wakf property further undermines the petitioner's apprehension. This lease arrangement does not support the narrative of a conspiracy against the petitioner based on his opposition to respondent No. 7's actions. A review of the minutes book of the 1st defendant Samajam, as produced by the respondents, clearly indicates that the petitioner was removed from the post of secretary due to several allegations levelled against him. These allegations bear no connection to the claims made by the petitioner in this petition. Therefore, it can be reasonably inferred that the petitioner is attempting to manipulate the dispute between himself and respondent No. 7 to circumvent his expulsion from the position of secretary. Such conduct cannot be permitted under the principles of fairness and justice. In conclusion, the petitioner's arguments appear to lack substance and seem to be an attempt to misuse judicial proceedings for personal benefit.

**8.** The petitioner has put forth a contention that his expulsion from the

committee of the 1<sup>st</sup> defendant Samajam cannot be carried out without convening a general body meeting. Let us analyze the validity of this claim. The petitioner has asserted that the 1<sup>st</sup> defendant association is registered under the Travancore Cochin Literary, Scientific, and Charitable Societies Registration Act. However, during the course of the hearing, the learned counsel for the petitioner conceded that the 1<sup>st</sup> defendant Samajam does not hold any registration under this Act. Furthermore, it was admitted that there is no existing by-law governing the functioning of the Samajam. The petitioner claims that elections and other proceedings of the Samajam are conducted in accordance with practices followed historically. However, these admissions highlight certain key gaps in the petitioner's argument. Specifically, there is no evidence presented before this court to establish whether a general body exists for the 1<sup>st</sup> defendant Samajam. Moreover, the process or procedure for expelling a member from the committee is not documented or prescribed anywhere. In the absence of a defined legal framework or documented rules, it becomes difficult for the petitioner to convincingly argue that a general body meeting is a mandatory prerequisite for his expulsion. Additionally, there is no evidence provided to substantiate whether the petitioner was elected to the committee through a decision made by the general body. Without such proof, the petitioner's claim lacks foundation. Furthermore, without the support of any law or regulation safeguarding the petitioner's right to remain a member of the committee, it cannot be concluded that his rights have been violated. The absence of statutory provisions or organizational by-laws leaves the petitioner's argument without a solid legal basis. In light of these observations, the petitioner has failed to establish that he holds a right to continue as a member of the committee of the 1<sup>st</sup> defendant Samajam. The contention that a general body meeting is required before his expulsion appears unsubstantiated and legally untenable. In such circumstances

it cannot be said that the petitioner have a prima facie case.

9. Addressing the aspect of balance of convenience, it is observed that the prayer of the petitioner is to prevent his expulsion from the committee of the 1<sup>st</sup> defendant Samajam until the disposal of the suit. However, the phrasing of this prayer is notably vague and lacks specificity. If such an order were granted in favor of the petitioner, it would effectively result in his indefinite retention as a member of the committee. This outcome would, in turn, disrupt the natural course of proceedings and the regular functioning of the 1<sup>st</sup> defendant Samajam. The continuity and effectiveness of the Samajam's operations are paramount, and these activities must progress as they have historically. It is important to highlight that the petitioner and the other committee members were not selected through a general body meeting but rather within the committee itself. This fact is evident from the minutes book produced. Consequently, the committee itself has the authority to expel a member without requiring approval from a general body, assuming the existence of one. Moreover, as previously established, the Samajam does not have a by-law or defined procedures regarding the inclusion or expulsion of committee members. In the absence of such governing rules, the petitioner cannot validly argue that a general body meeting is a prerequisite for his removal from the committee. The court is also compelled to consider the intentions behind the petitioner's actions. It strongly appears that the petitioner seeks to disrupt the functioning of the Samajam by continuing as a member of the committee despite the expressed dissatisfaction of other members. The operations of the Samajam cannot and should not be compromised to accommodate the interests of a single individual. Notably, the petitioner has not argued that his presence in the committee is essential for the smooth functioning of the Samajam. On the contrary, the evidence suggests that the Samajam's operations can proceed seamlessly even in the absence of the petitioner. This

underscores the fact that the balance of convenience clearly tilts in favour of the respondents.

**10.** With regard to the aspect of irreparable injury, the petitioner has failed to adequately explain what specific injury or harm would be caused to him if the petition is not allowed. The respondents, on the other hand, have unequivocally asserted that the petitioner has already been expelled from the committee and is no longer an executive committee member. This assertion is further substantiated by the documents produced by the respondents, which clearly support their claim. In the absence of any evidence or convincing argument from the petitioner to demonstrate the nature and extent of the injury he would allegedly suffer, it cannot be concluded that irreparable harm will result if the requested injunction is denied. Moreover, the fact that the petitioner has already been removed from his position renders his claims of potential injury largely hypothetical and unfounded. Hence this point is found against the petitioner.

**10. Point No.2 :-**

In view of the finding in point No.1 the I.A. is dismissed.

**In the result this I.A. is dismissed.**

*(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 7<sup>th</sup> day of April, 2025.)*

Sd/-  
MAHESH M.  
ADDITIONAL MUNSIFF

**APPENDIX :-**

**Documents produced from the side of the petitioner**

1. Copy of memorandum of association of 1<sup>st</sup> defendant Samajam.
2. Copy of application submitted by the plaintiff before the 2<sup>nd</sup> defendant

3. Copy of lease deed between the 1<sup>st</sup> defendant and the 7<sup>th</sup> defendant.
4. Copy of draft lease deed approved by the Kerala State Wakf Board
5. Application submitted by the 7<sup>th</sup> defendant to transfer ownership
6. Copy of registered letter issued by the plaintiff to the 7<sup>th</sup> defendant and its postal receipt
7. Copy of reply sent by the 7<sup>th</sup> defendant
8. Copy of instruction report of Samastha Kerala Sunni Education Board dated 21.09.2024.
9. Committee minutes book of 1<sup>st</sup> defendant samajam from 03.09.2017 to 09.03.2025
10. Notice Book of 1<sup>st</sup> defendant samajam from 21.04.2019
11. Letter issued by the plaintiff to the 7<sup>th</sup> defendant and its reply
12. Copy of reply given from Wakf board, Changanassery office obtained under Right to Information Act.

**Documents produced from the side of the respondent**

1. Copy of application given to Kerala State Wakf Board and its reply obtained under Right to Information Act.
2. Copy of caveat No.14/2025 filed before the Hon'ble Sub Court, Cherthala.

Sd/-  
ADDITIONAL MUNSIF