

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR. JUSTICE SATHISH NINAN

MONDAY, THE 29TH DAY OF OCTOBER 2018 / 7TH KARTHIKA, 1940

CRP(WAKF) .No. 189 of 2015

AGAINST THE ORDER IN W.T.O.A.1/2012 of WAKF TRIBUNAL, LAKSHADWEEP,
KAVARATTI DATED 17.03.2015

REVISION PETITIONERS:- (PETITIONERS AND 3RD RESPONDENT IN OA):

- 1 S.V.P.POOKOYA
AGED 72 YEARS
S/O SYED KOYA, RESIDING AT SHEIKINTE VEEDU PADIPPURA,
ANDROTH ISLAND, LAKSHADWEEP.
- 2 S.V.SYED MUHAMMED KOYA THANGAL
AGED 52 YEARS
S/O ATTAKOYA THANGAL, RESIDING AT SHEIKINTE VEEDU,
ANDROTH ISLAND, LAKSHADWEEP ISLAND.
- 3 S.V.P.SYED HASSAN THANGAL
S/O JAMALUDDIN THANGAL, RESIDING AT SHEIKINTE VEEDU,
ANDROTH ISLAND, LAKSHADWEEP ISLAND.

BY ADVS.
SRI.T.SETHUMADHAVAN (SR.)
SMT.N.DEEPA
SRI.P.A.HARISH

RESPONDENTS:- (RESPONDENTS 1 AND 2) AND 2ND PETITIONER:-

- 1 LAKSHADWEEP STATE WAKF BOARD
KAVARATTI, REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER/SECRETARY, UNION TERRITORY OF LAKSHADWEEP,
NEAR DISTRICT AND SESSIONS COURT, SANTHIPATH ROAD,
KAVARATTI, LAKSHADWEEP ISLAND-682553.
- 2 S.V.CHERIYAKOYA THANGAL
S/O KOYAMMAKOYA THANGAL, RESIDING AT SHEIKINTE VEEDU,
ANDROTH ISLAND, LAKSHADWEEP ISLAND-682551.

* 3 S.V.SYED YOUSUF KOYA THANGAL
 AGED 71 YEARS
 S/O KUNHIKOYA THANGAL, RESIDING AT SHEIKINTE VEEDU,
 ANDROTH ISLAND, LAKSHADWEEP ISLAND. [DELETED]

** ADDL. R4 IMPEADED

 4 S.S.FATHAFULLAH THANGAL, S/O KOYAMMAKOYA THANGAL,
 SHEIKINTE VEEDU, ANDROTH ISLAND, U.T .OF LAKSHADWEEP
 ISLAND - 682551

*[R3 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER
AS PER ORDER DATED 14/7/16 IN IA 1380/15]

**[ADDL. R4 IS IMPEADED AS PER ORDER DATED 05/9/18 IN IA 1791/18
IN CRP (WAKF) 189/2015]

BY ADVS.
SRI.A..RANJITH NARAYANAN (CAVEATOR)
SRI.C.M.ANDREWS
KUM.LAYA MARY JOSEPH
SMT.ANITYA ANNIE MATHEW
SMT.BOBY M.SEKHAR
SMT.NEETHU RAVIKUMAR
SMT.REVATHY P. MANOHARAN
SRI.A..RANJITH NARAYANAN CAVEATOR
SRI.MANU.S CGC ADMINISTRATION OF THE UNION TERRITORY
OF LAKSHADWEEP
SRI.NABIL KHADER
SRI.P.T.MOHANKUMAR
SRI.SHYAM PADMAN
SRI.S.RADHAKRISHNAN, SC, LAKSHADWEEP ADMN

THIS CRP (WAKF ACT) HAVING BEEN FINALLY HEARD ON 24/10/18, THE
COURT ON 29/10/18, PASSED THE FOLLOWING:

**V. CHITAMBARESH &
SATHISH NINAN, JJ.**

**= = = = =
C. R. P. (Wakf) No.189 of 2015
= = = = =
Dated this the 29th day of October, 2018**

ORDER

Sathish Ninan, J.

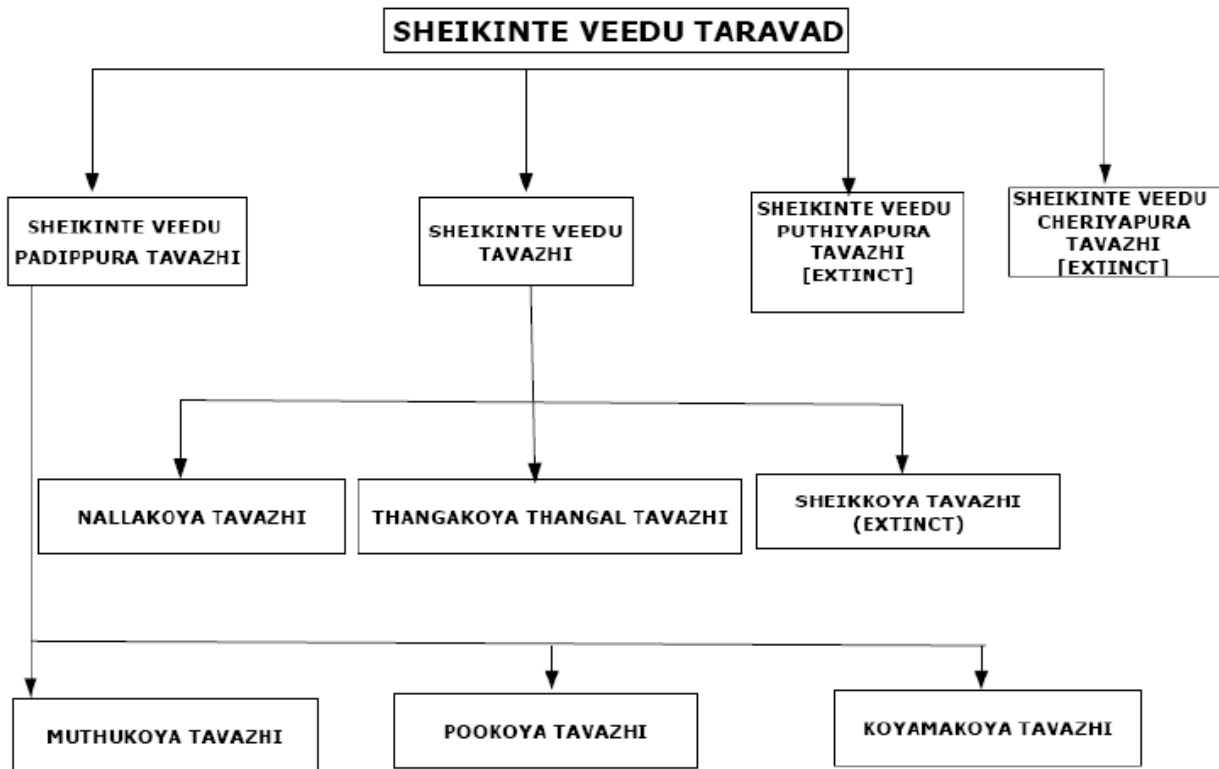
Rival claims for “Muthavalliship” and “Sheikship” of a mosque situated at the Androth Island in Lakshadweep is the subject matter of the litigation. The wakf Board declared the second respondent to be the Muthavalli and the Sheik. The order was affirmed by the wakf Tribunal. Aggrieved thereby, the petitioners before the wakf Tribunal are in revision under section 83 of the wakf Act, 1995.

2. “Ujra Palli” is a mosque situated in the Androth Island. The mosque was established by one Sheik Muhammed Khasim Valyulla, the predecessor in interest of the parties to the litigation. The parties belong to one of the ancient Tarawads of

the appellant known as “Shaikinte Veedu Taravad” hereinafter referred to as the “Taravad”. The said sheik Muhammed Khasim Valyulla was a saintly member of that Taravad and he established the mosque.

3. When the number of members of the Taravad swelled up, it got divided into four thavazhies viz. (1) Shaikinteveedu thavazhi (2) Shaikinteveedu Padippura thavazhi (3) Shaikinteveedu Puthiyapura thavazhi and (4) Shaikinteveedu Cheriypura thavazhi. The last two among the thavazhies viz. Puthiapura thavazhi and Cheriypura thavazhi got extinct. It is not in dispute that the assets reverted to the other two thavazhies. The remaining two thavazhies got divided into sub thavazhies. The sub thavazhies under “Sheikinte Veedu Thavazhi” are known as Nallakoya Thangal thavazhi, Thangakkoya Thangal thavazhi and Shaik Koya thavazhi. The last among them became extinct. The sub thavazhies under “Sheikinte Veedu Padippura Thavazhi” are Muthukkoya thavazhi, Pookkoya thavazhi and Koyamakkoya thavazhi. It is not in dispute that the petitioners and respondents 2 and 3 are members of the various

thavazhis. A genealogical chart showing the Tarawad and its divisions is given hereunder for an easy assimilation of the facts:-



4. There was an earlier civil litigation between the members in the family as O.S. 5/1987 before the Munsiff's Court, Androth wherein the present parties or their predecessors were parties. One S.V.Pookoya Thangal who was the then senior most member of the second respondent Thavazhi was the first defendant therein. The issue involved in

the said suit was relating to his right to perform "Ratheeb"-a prayer conducted in the mosque, and whether the right vests exclusively with his thavazhi. In the said suit the second respondent herein was originally the fourth plaintiff. On the application of the other plaintiffs, he was later transposed as the third defendant. It may not be necessary to go into the details of the suit except to refer the decreetal portion of the judgment wherein a declaration was made to the following effect:-

"A declaration that 'the right of management and income from suit property belongs to the members of different tavazhies of Shaikinte veedu tarwad of plaintiffs and defendants and the right to hold the office of Shaik Ujra mosque also belongs to qualifide(qualified) members of the tarwad' is granted"

5. The trial court found that the right of management and income from the Ujra Mosque and its properties belong to members of all the thavazhies of the common Tarawad - "Sheikinte veedu", of the

plaintiffs and the defendants. It was also held that the right to hold the office of Sheik of Ujra Mosque belongs to the qualified members of the Tarawad. The first defendant therein namely, the said S.V.Pookoya Thangal preferred an appeal before the District Court, Kozhikode as AS 5/93. The appeal was transmitted to the Sub Court, Kozhikode and renumbered as AS 22/1994. The learned Sub Judge interfered with the decree and judgment of the trial court and dismissed the suit. Challenging the said judgment and decree, the plaintiffs filed appeal before this Court as SA 698/99. As per judgment dated 17.12.09, this Court allowed the second appeal and restored the judgment passed by the trial court. The decree and judgment has become final.

6. Therefore, going by the declaration granted in the suit, it is beyond challenge now that the right of Muthavalliship vests with the members of all the thavazhies of the Tarawad and the right to hold the office of Sheik vests with the qualified members of the Tarawad. As to who among the members

of the various thavazhies should be the Muthavalli or Sheik, and as to what are the qualifications to be a Sheik, were not considered therein. It would be appropriate to refer to the observation made by this Court while disposing of the Second Appeal, which reads thus:-

“..... It is unnecessary in the present proceeding to go into the questions as to who among the members of the thavazhies should be the Muthavalli or Shaik and what should be his qualifications as such questions do not come within the scope of the suit. I make it clear that I am not going into those matters in this appeal.”

Therefore, except for declaring that the Muthavalliship and Sheikship in respect of the Mosque in question belongs to the entire Tarawad, there was no finding as to who among the members were to hold the said office, and what was to be their qualifications or the criterion based on which the office was to be filled up.

7. Pending the Second Appeal, the first defendant in the suit viz. S.V.Pookoya Thangal

passed away. Thereupon, the second respondent herein submitted an application before the first defendant Wakf Board requesting to record him as the Sheik and Muthavalli of the Mosque. After the disposal of the Second Appeal, petitioners 1 to 3 and the third respondent submitted a request to the first respondent Board seeking their appointment as the joint Muthavallies of the Mosque. The wakf Board constituted a committee to enquire into the issues. There were various proceedings before this court in relation to the proceeding before the wakf Board which are essentially of interlocutory in nature. The relevant ones are adverted to during the course of this judgment. The wakf Board passed an order dated 15.01.2012 holding the second respondent to be the Muthavalli and the Sheik of the Mosque in question, and further declared that the successor in office of the Sheik is to be nominated by the existing Sheik from the qualified persons based on the custom noticed by the Board. The petitioners though assailed the said order of the wakf Board before the wakf Tribunal, were not successful.

8. Heard learned Senior Counsel Sri.T.Sethumadhavan on behalf of the revision petitioners and Sri.Syam Padman, learned counsel for the second respondent.

9. The learned Senior Counsel for the revision petitioners challenges the impugned judgment on various grounds. The first and foremost ground of challenge is regarding the jurisdiction of the wakf Board to adjudicate upon the dispute between the parties as to who is the Muthavalli and Sheik of the Mosque in question. Another ground of challenge is regarding the legality of the constitution of the committee formed in terms of Sections 70 and 71 of the Wakf Act. Various grounds of challenge are urged as against the findings of facts by the wakf Board as affirmed by the Tribunal. It is contended that the findings of the Board in favour of the second respondent is said to have been entered into on the basis of custom in the island, with regard to which there is no plea raised by the second respondent. In the absence of proper plea regarding custom, the same could not have been delved into by the authorities, is the contention. It is also

contended that the finding entered into by the authorities is contrary to and against the finding of the civil court in O.S 5/87 as affirmed in SA 698/99. The civil court has granted a decree declaring that Muthavalliship and Sheikship enures to all the members of the Tarawad; however, the wakf Board and the Tribunal has held that the present Sheik has the right to nominate his successor. This is not in tune with the Civil Court judgment, urges the learned Senior Counsel. The finding of the wakf Board that the Ujra Palli and its assets is not the family property of the "Sheikinte Veedu Tarawad" is contrary to the finding entered into in the civil suit, is another contention raised by the appellant. The finding of the wakf Board that the Sheik and Muthavalli have always been a single person, is challenged by the learned Senior Counsel relying on Ext.P10 Gazette Notification published under Section 5(2) of the wakf Act. According to the learned Senior Counsel, Ext.P10 Notification reveals that there were more than one Muthavallies for the Mosque in question.

The finding of the wakf Board that seniority was never a criterion for the post of Sheikship or Muthavalli, is challenged on the ground that the civil court has found to the contrary. The finding entered into by the wakf Board that the second respondent was acting as the de facto Muthavalli and Sheik of the Mosque, is without any basis and that his holding the office was solely based on the interim orders passed in the pending litigations, is the submission. The above, though not exhaustive are the prominent grounds of attack on the impugned judgment.

10. The learned counsel appearing for the second respondent would on the other hand submit that the civil court in the judgment in O.S. 5/87 as affirmed in SA 698/99 by this Court, has specifically left open the issue as to who is to act as the Muthavalli and Sheik, to be adjudicated by the proper forum. The said issue did not arise for determination in that suit. It is accordingly that the Board has conducted an enquiry and passed the order impugned. The finding entered into by the

Board as affirmed by the Tribunal is based upon evidence both oral and documentary. On the basis of the enquiry conducted in terms of Section 71 of the wakf Act, the Board has found the custom as claimed by the second respondent and has accordingly passed the impugned order. According to the learned counsel, the evidence on record reveal that sheikship is the culmination of a three-tier journey as "mureed", "khaleef" and "sheik". Passing through tiers one and two are necessary to adorn the post of Sheik. The scope of interference in the revisional jurisdiction is very limited; revision is not to be treated as an appeal, enabling re-evaluation of the entire evidence and facts in the case, submits the learned counsel. The learned counsel would further contend that the wakf Board under the provisions of the wakf Act has supervisory and administrative control over the wakfs and has plenary powers. Referring to Ext.P10 Notification, the learned counsel would contend that as is evident therefrom, the manner of administration of the wakf is by custom. Referring

to the deposition of the witnesses, he would submit that it is admitted by the witnesses on the side of the revision petitioners that seniority by itself was never considered as the criteria for appointment of Muthavalli or Sheik. He would further contend that there was no issue or finding in the earlier civil suit against the second respondent which would operate as res judicata in the present litigation. The only question that arises for determination in the present proceedings is as to who is to function as the Muthavalli and the Sheik and what are their qualifications. The said issue was specifically left open in the earlier proceedings.

11. The jurisdiction of the wakf Board to adjudicate on the adversarial claims to the offices of Muthawalli and Sheikship having been challenged, we deem it proper to deal with the same initially.

12. According to the learned senior counsel for the revision petitioners, the wakf Board has only supervisory powers and does not extend to adjudicate disputed rights. Therefore, there is

lack of jurisdiction for the wakf Board to decide the issue involved, submits the learned Senior Counsel. The learned counsel for the respondents would on the other hand attempt to support the finding on jurisdiction with reference to the various provisions of the wakf Act, 1995 (hereinafter referred to as "the Act").

13. The jurisdiction of the wakf Board to adjudicate on disputed rights was urged by the petitioners even at the very first instance. After the disposal of the second appeal, the second respondent herein approached this Court in W.P.(C) No.1071/2010 for a direction to the wakf Board to consider his application to record him as the Muthavalli and Sheik of the Mosque in question. In the appeal filed by the petitioners herein against the said judgment as W.A. No.359/2010, this Court had directed that the wakf Board will consider the application subject to its jurisdiction. In an interlocutory proceeding which reached this Court in W.P.(C) No.12353/2010, this Court has observed the contention of the petitioners to the following

effect:-

“It is pointed out that the main petition pending before the Wakf Board itself is not maintainable”

14. This Court left open the issue to be decided by the Board. In C.R.P. No.299/2010 which arose from yet another interlocutory proceedings from the wakf Board, the question of jurisdiction was again raised. It would be appropriate to refer to the observations by this Court in the said judgment which reads thus:-

“The Division Bench although accepted such contention, clarified that whether or not any issue is left out by the civil court and as to whether the Board has jurisdiction on such issues are matters which can be raised by the parties before the Wakf Board itself”.

In the said judgment, this Court directed that the question regarding jurisdiction of the court will be decided as a preliminary issue. This Court directed thus:-

“Needless to say that the question regarding jurisdiction of the Board will be

decided primarily”.

15. Thereafter, the Board as per order dated 13.10.2012 held that it has jurisdiction to decide on the issue. The said order was challenged by the petitioners before this Court in W.P.(C) No.32703/2010. This Court referred to the earlier judgment in C.R.P. No.299/2010 and dismissed the writ petition with the following observations:-

“It is clarified that the findings herein will not be used to the prejudice of the petitioners in the proceedings pending before the first respondent which shall decide the issues raised, untrammelled by the findings in this judgment.”.

Therefore, the issue regarding jurisdiction survives for consideration.

16. Even otherwise law is settled that there cannot be res judicata on the issue of jurisdiction. In ***Mathura Prasad Sarjoo Jaiswal and others v. Dossibai N. B. Jeejeebhoy [1970 (1) SC 613]***, the Apex Court held that question relating to jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court.

The Court further held:-

“..... If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.”

In **Chief Justice of A.P. v. Dixitulu [1979 (2) SCC 34]**, the Apex Court held that if the decision is made by an authority suffering from inherent lack of jurisdiction, such decision cannot be sustained even under the doctrine of res judicata or estoppel. In **Sushil Kumar Metha v. Gobind Ram Bohra [(1990) 1 SCC 193]** it was held that where there is inherent lack of jurisdiction, which depends upon a wrong decision, the earlier wrong decision cannot be res judicata. In **Smt. Isabella Johnson v. M.A. Susai (Dead) by Lrs. [(1991) 1 SCC 494]**, the Apex Court held that a Court which has no

jurisdiction cannot be conferred with jurisdiction by applying the principle of res judicata, as it is well settled that there is no estoppel on a pure question of law which relates to jurisdiction. In ***Mathevan Padmanabhan @ Ponnann (Dead) Through Lrs. v. Parmeshwaran Thampi [1995 Suppl. 1 SCC 479]***, the Apex Court was dealing with an appeal from this Court wherein the issue was one regarding tenancy under the Kerala Land Reforms Act. By virtue of Section 125 of the Kerala Land Reforms Act, the matter needs to be decided by the Land Tribunal. This Court while remanding the appeal that arose from the suit, directed the civil court to enter a finding regarding tenancy and dispose of the suit without making a further reference to the Land Tribunal since already there was a reference in the first round. It was interfered with by the Apex Court for the reason that jurisdiction could not be conferred on the civil court to decide the issue of tenancy when by virtue of Section 125 of the Kerala Land Reforms Act, the jurisdiction is

vested with the Land Tribunal. It was held that there is inherent lack of jurisdiction for the civil court and that any decision entered would be a nullity. ***In Canara Bank v. N.G. Subbaraya Setty and Anr. [2018 (4) Supreme 394]***, the Apex Court referred to the aforesaid principles and held that a Court having no jurisdiction in law cannot be conferred with jurisdiction by applying the principle of res judicata and further that a wrong decision on a point of jurisdiction could not operate as res judicata. In ***Balvant N. Viswamitra & Ors. v. Yadav Sadashiv Mule (dead) Through Lrs. & Ors. [2004 (8) SCC 706]***, the Apex Court held that a defect of jurisdiction of the court goes to the root of the matter and stares at the very authority of the court to pass a decree or order. The validity of such decree or order could be challenged at any stage even in execution or collateral proceedings. In ***Govindasami Pillai v. T.M.Srinivasa Chettiar and others [AIR 1969 Mad.***

172], it was held thus:-

“..... Whether a particular party raises the question regarding the want of jurisdiction of a Court or not, it is the duty of the Court to take note of the statutory provisions conferring jurisdiction on it or taking away the jurisdiction from it. If, under the law, a Court has no jurisdiction, no amount of consent, acquiescence or assertion on the part of any of the parties can confer jurisdiction on the Court.

xxxxx xxxxx xxxxx xxxxx

..... The principle of res judicata cannot be allowed to defeat the provisions of a statutory enactment which affects the jurisdiction of a Court, and a party cannot by his admission, omission or previous conduct or consent confer jurisdiction on a Court, where none exists.”

suffice to hold that the issue of jurisdiction is at large before this court and calls for determination.

17. Now, detailing on the issue of jurisdiction, the powers and functions of the wakf Board has been specified in Section 32 of the Act. Section 32(1) of the Act specifies that the power

of the Board under the Act is a power of superintendence to ensure the proper maintenance and administration of the wakf. Going by Section 32(2)(c) of the Act, the wakf Board has got power to issue directions in relation to the administration of the wakf. Section 32(2)(g) of the Act gives power to the wakf Board to appoint and remove Muthavallies in accordance with the provisions of the wakf Act. The words "in accordance with the provisions of this Act" in clause(g) is of significance since going by Section 63 of the Act, the Board has power to appoint Muthavallies only on a temporary arrangement, that is, for a limited period. Therefore, from section 32(g) read with Section 63 of the Act is evident that the power of the Board for appointment of a Muthavalli is restricted, only to aid the superintendence and administration of the wakf. From the scheme of the Act it is obvious that the powers of the Board are limited to supervisory and administrative powers as specified in section 32 of the Act.

18. The wakf Tribunal is constituted under Section 83 of the Act. Section 83 of the Act specifies that “any dispute, question or other matter relating to the wakf shall be decided by the Tribunal”. The Tribunal is deemed to be a civil court for the purpose. Under the scheme of the Act, adjudicatory powers are vested with the Tribunal.

19. There is ocean of difference between the terms “administration” and “adjudication”. Administration literally means governance or management. It does not generally take within its sweep the authority to pronounce on disputes rights. Adjudication is the process of determination of disputed rights. Of course, for the purpose of administration, the authority concerned may have to incidentally consider the rights involved and arrive at a prima facie opinion for interim governance. However, the authority cannot pronounce finally on the rights of the parties involved.

20. Definition of the terms “adjudication” and “administration” as given in various law dictionaries, supports the view taken by us. The relevant ones

are extracted hereunder:

Black's Law Dictionary

Adjudication:- The giving or pronouncing a judgment or decree in a cause.

Administration:- Managing or conduct of an office or employment.

Wharton's Law Lexicon

Adjudication:- Giving or pronouncing a judgment or decree.

Legal Thesaurus, Deluxe Edition, by William C. Burton

Adjudication:- Act of judgment, authoritative decision, award, conclusion, decision, declaration, decree, deliberate determination, determination of issues, final determination, final judgment, judicial decision.

Administration:- handling, keeping, management, superintendence, supervision.

**Prem and Saharays' Judicial Dictionary of Words & Phrases
Vol. I.**

Adjudication:- The legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in

a court proceeding, a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. The equivalent of a 'determination'. It contemplates that the claims of all the parties thereto have been considered and set at rest.

Administration:-The management, care, or control of anything.

21. In **Muhammed Kunju v. Biju [2008 (2) KLT 833]**, a Division Bench of this Court pointedly considered the dichotomy in the powers of the wakf Board and the wakf Tribunal. It was held that administration, management and control of the wakf vests with the wakf Board, whereas the wakf Tribunal is an adjudicatory body. This Court held thus:-

“...From the provisions quoted above, it is abundantly clear that the power of administration, management and control of a Wakf shall vest in the Wakf Board and that a duty is cast on the

Board to exercise its powers if the Board finds that the committee is mismanaging the affairs of the Wakf and if necessary, to supersede such committees...”

“...The Wakf Tribunal is constituted for the purpose mentioned in S.83 of the Act. It is an adjudicatory body...”

22. This Court referring to the decisions in **Pookoya Haji v. Cheriya Koya [2003 (3) KLT 32]** and **Madeena Masjid v. Kerala Jama Ath Islami Hind [2007 (3) KLT 800]** proceeded to hold that the powers of the Tribunal extends not only over matters which are specifically conferred under the Act, but also over any dispute relating to wakf and its properties. This Court held thus:-

“..... It is true that S.83 of the Act is wide enough to take in within its sweep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act, but also any dispute, question or any other matter relating to any Wakf or Wakf property since those powers have also been conferred on the Tribunal by the Wakf Act itself and that on examining the scheme of the

Act and various provisions, it is clear that the intention of the Legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is, the Wakf Tribunal and not by the civil courts in the State.”

23. In **Rasheed A. P. A. v. N.N.Khalid Haji and Another [2011 (3) KLT 421]**, another Bench of this Court held that the powers of the wakf Board under section 32 of the Act are in the nature of superintendence in administration and that it has no adjudicatory powers.

24. In **Kerala Wakf Board v. Alam Aboobaker Sait [1987 (1) KLT 313]** referring to the provisions under the old wakf Act of 1954, a Division Bench of this Court held that the wakf Board cannot decide disputes regarding rival claims of Muthavalliship.

25. In Board of **Wakf, West Bengal v. Anis Fatma Begum and Anr. [2010 Vol. 4 KLT 765 (SC)]**, the Apex Court held that any dispute, question or other matter relating to the wakf is to be agitated before the wakf Tribunal. The Apex Court observed

thus:-

“Thus, the Wakf Tribunal can decide disputes, questions or other matters relating to a Wakf or Wakf property. The words 'any dispute, question or other matters relating to a Wakf or Wakf property' are, in our opinion words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. ”

The Apex Court further held that the Tribunal has all the powers of a civil court and that a full-fledged remedy is available to any party if there is any disputed question or other matter relating to a wakf. The Apex Court further held that to approach the wakf Tribunal for determination of any dispute, it is not necessary that there must be an order passed under the Act.

26. The learned counsel for the respondent would rely on the decision of this Court in **Basheer Haji v. Kerala Wakf Board [2007 (1) KLT 1039]** to contend that the wakf Board, apart from

its power of superintendence, has plenary powers and is competent to decide on the rival claims. That was a case where the services of the Katheeb and Mukri were withheld illegally and this Court held that the supervisory power of the wakf Board extends to religious matters. We do not think that the said judgment lays down any proposition that the Board has adjudicatory powers over disputed rights.

27. To conclude, the powers of the wakf Board and the wakf Tribunal are well delineated; the former is supervisory and the latter, adjudicatory.

28. In **M.P.Wakf Board v. Subhan Shah [2006 (10) SCC 696]**, the Apex Court held that when there are different authorities constituted under a statute, the authorities must exercise their functions within the compass. The Apex Court held thus:-

“Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise their functions within the four corners of the

statute”.

29. The Apex Court was dealing with the functions of the wakf Tribunal and the wakf Board under the Act. It was cautioned that one authority shall not transgress into the functions of the other. In **Alappuzha Muhiyideen Masjid Association v. Abdulkhader [2011 (1) KLT 772 (FB)]**, a Full Bench of this Court while considering the distinction in the powers of the wakf Board and the wakf Tribunal has relied on the above judgment passed by the Apex Court for judgment of the Apex Court.

30. On the above discussions, we are inclined to conclude that the wakf Board does not have jurisdiction to adjudicate upon the rival claims of Muthavalliship and Sheikship foisted between the parties. The finding regarding jurisdiction of the wakf Board is set aside.

31. The answer on the jurisdiction of the wakf Board to adjudicate upon the issue involved in the lis being held in the negative, it is only appropriate that the findings entered into by the

Board on the merits of the dispute and affirmed by the Tribunal be set aside. Accordingly, we do so. The parties are at liberty to have their rights adjudicated before the Wakf Tribunal in a properly constituted proceeding.

The CRP(wakf) is allowed as above.

**Sd/-
V. CHITAMBARESH
JUDGE**

**Sd/-
SATHISH NINAN
JUDGE**

kns/-

//True Copy//

P.S. to Judge