

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR
&
THE HONOURABLE MR. JUSTICE S.MANU

Monday, the 7th day of April 2025 / 17th Chaithra, 1947

WA NO. 603 OF 2025

AGAINST JUDGMENT DATED 17/03/2025 IN WP(C).NO.3817/2025 OF THIS COURT
APPELLANT(S)/FIRST RESPONDENT IN THE WRIT PETITION:

THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, HOME
DEPARTMENT, SECRETARIAT, THIRUVANATHAPURAM, PIN - 695001

BY ADVOCATE GENERAL SRI.K.GOPALAKRISHNA KURUP AND SPECIAL GOVERNMENT
PLEADERS SRI.V.MANU, C.E.UNNIKRISHNAN, M.H.HANILKUMAR & SENIOR GOVERNMENT
PLEADER SRI.S.KANNAN

RESPONDENT(S)/PETITIONERS AND RESPONDENTS 2 TO 5 IN THE WRIT PETITION ::

1. T.K.I. AHAMED SHERIEF, AGED 70 YEARS, S/O. T.K.A.IBRAHIM. THOTTATHIL HOUSE, MARAMPPILLY P.O., MARAMPILLY VILLAGE, KUNNATHUNADU THALUK, ERNAKULAM,, PIN - 683105
2. T.A. MUJEEB RAHMAN, AGED 48 YEARS, S/O. AHAMMED, THACHAVALLATH HOUSE, VENNALA P.O., EDAPPALLY SOUTH VILLAGE, KANAYANNOOR THALUK, ERNAKULAM,, PIN - 682028
3. THE COMMISSION OF ENQUIRY, RTD. JUSTICE C.N. RAMACHANDRAN NAIR, 3B, BHAVANI APARTMENTS, KUNNUPURAM, KAKKANAD, KOCHI, PIN - 682030
4. KERALA STATE WAQF BOARD, VIP ROAD, KALOOR, ERNAKULAM, REPRESENTED BY ITS CHIEF EXECUTIVE., PIN - 682017
5. FAROOK COLLEGE MANAGING COMMITTEE, FAROOK COLLEGE, FAROOKE, KOZHIKODE DISTRICT, REPRESENTED BY ITS MANAGER., PIN - 673301
6. *ADDL R5) JOSEPH BENNY S/O. K.B. GEORGE, RESIDING AT KURUPPASSERY HOUSE, MUNAMBAM BEACH, PALLIPURAM, PALLIPORT P.O., ERNAKULAM DISTRICT *(IS IMPEADED AS PER THE ORDER DATED 06.02.2025 IN IA NO.1/2025 IN WP(C) 3817/2025), PIN - 683515

BY ADVS.M/S.P K IBRAHIM, K.P.AMBIKA, ZEENATH P.K, JABEENA K.M, ANAZ BIN IBRAHIM, PRADEEP KUMAR A FOR R1 AND R2

SENIOR ADVOCATE SRI.GEORGE POONTHOTTAM FOR R5

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum, the High Court be pleased to stay the operation and implementation of judgment dated 17.03.2025 passed by the learned Single Judge in Writ Petition (Civil) No. 3817 of 2025 and to permit the Commission appointed as per Exhibit P1 to proceed further with the Inquiry, pending disposal of this Writ Appeal.

This Writ appeal again coming on for orders along with connected case on 07.04.2025, upon perusing the appeal memorandum , and this court's order dated 28.03.2025 the court on the same day passed the following:

**EXHIBIT P1: TRUE COPY OF THE GOVERNMENT ORDER PUBLISHED IN THE
KERALA GAZETTE (EXTRAORDINARY) DATED 28.11.2024.**



“C.R.”

NITIN JAMDAR, C.J. & S. MANU, J.

W.A. Nos. 603 of 2025 & 606 of 2025

Dated this the 7th day of April, 2025.

ORDER

Nitin Jamdar, C. J.

These two appeals filed by the State of Kerala arise from the common judgment of the learned Single Judge dated 17 March 2025 in W.P.(C) Nos.2839 and 3817 of 2025.

2. The Government of Kerala was of the opinion that it is necessary to appoint a Commission of Inquiry to recommend measures to be taken by the Government to find a permanent solution in the matter of ongoing dispute between the citizens residing in Munambam at Ernakulam District and the Waqf Board. Accordingly, considering that this enquiry was into a matter of public importance, the Government of Kerala, in exercise of the powers conferred under Section 3 of the Commissions of Inquiry Act, 1952 (Act 60 of 1952), appointed a retired Judge of this Court as the Commission of Inquiry and issued a notification dated 27 November 2024. The terms of reference of the Commission of Inquiry are, to identify the present lie, nature and extent of property comprised in old Survey No.18/1 of the then Vadakkekara Village of the erstwhile Travancore State, and to enquire and report as to how to protect the rights and interests of the *bona fide* occupants of the said land and to recommend the measures to be taken by the Government in that regard.

3. W.P.(C) No.2839 of 2025 was filed by the Kerala Waqf Samrakshana Vedhi, Thrikkakara and W.P.(C) No.3817 of 2025 was filed by Mr. T.K.I. Ahamed Sherief and another, claiming to be beneficiaries and persons interested in the Waqf properties. The Petitioners challenged the notification/order issued by the Government dated 27 November 2024 (Exhibit P1), *inter alia* contending it to be illegal, arbitrary, and beyond the powers of the State. and that only authorities under the Waqf Act, 1995 had jurisdiction to decide whether any disputed property involved was dedicated to the Muslim community. The Petitioners contended that the Government of Kerala was not the appropriate Government as defined under Act 60 of 1952. The Petitioners sought a writ of certiorari to quash the notification/order issued by the Government dated 27 November 2024 (the Notification) and a writ of mandamus restraining the Commission from proceeding with the enquiry. In its counter affidavit, the Appellant – State questioned the *locus standi* of the Petitioners, contending that they were not ‘persons interested’ nor ‘beneficiaries’ under the Waqf Act, 1995 and that, at the most, the petitions amounted to Public Interest Litigations. It was contended that the Commission was only a fact-finding body, constituted in the wake of public protest, and no cause of action would arise until a decision was taken on its recommendations. By order dated 6 February 2025, the parties claiming to have lawful title to the property were impleaded as additional Respondents in the writ petitions. They filed a counter affidavit, contesting both the *locus standi* of the Petitioners and their claim of the properties as Waqf properties.

4. The learned Single Judge held that the Petitioners had *locus standi* to file the writ petitions. It was further held that the Government of Kerala was the appropriate Government as defined under Act 60 of 1952. The learned Single Judge, however, concluded that the Notification was not valid and also required to be quashed as having been issued mechanically and without due application of mind. Accordingly, by the impugned judgment, the learned Single Judge quashed the notification dated 27 November 2024. Being aggrieved, the State of Kerala is in Appeal before us.

5. W.A. No.603 of 2025 arises from the judgment in W.P.(C) No.3817 of 2025 and W.A. No.606 of 2025 arises from the judgment in W.P.(C) No.2839 of 2025.

6. We have heard Mr. K. Gopalakrishna Kurup, the learned Advocate General for the Appellant, Mr. P.K. Ibrahim and Mr. P. Chandrasekhar, the learned counsel for the Original Petitioners, and Mr. George Poonthottam, the learned Senior Advocate appearing for the added Respondents.

7. The learned counsel for the Original Petitioners requested an adjournment for final hearing of the Appeals. The learned Advocate General pressed for a grant of interim relief of stay and permission to continue with the functioning of the Commission, in view of the limited time mandate. We have heard the learned counsel for the parties on the issue of interim relief pending the hearing of the Appeals. Though we have not prefixed each observation with the phrase '*prima facie*' for the sake of readability, our observations in this order are in the context of interim relief and, thus, be construed as *prima facie*.

8. The learned Single Judge had formulated three questions in the judgment: (i) *locus standi* of the Petitioners, (ii) whether the State was the appropriate Government, and (iii) the validity of the Notification.

9. On the question of whether the Government of Kerala is the appropriate Government, it has been answered in favour of the Appellant-State. Therefore, two questions arise for consideration. First, whether the Petitioners have demonstrated any infringement of a personal right or personal injury by the Notification to maintain a writ petition filed in a personal capacity, or whether they have questioned the Notification, invoking the public interest litigation jurisdiction. Secondly, whether the Petitioners have established legal grounds for setting aside the Notification issued by the Appellant – State, in the exercise of its statutory power to constitute a Commission of Inquiry.

10. The issue of *locus standi* of the Petitioners was raised by the Appellant – State as well as Respondent No.5 in their counter affidavits, contending that the Petitioners are neither the beneficiaries, as defined under Section 3(a) nor are they persons interested in Waqf under Section 3(k) of the Waqf Act, 1995. The learned Advocate General reiterating the stand submitted that the Petitioners were neither the persons interested nor the beneficiaries and lacked *locus standi* to maintain a writ petition, which could, at the most, be a Public Interest Litigation to the Division Bench. The learned Senior Advocate appearing for Respondent No.5 also submitted that the Petitioners have no *locus standi* to maintain a writ petition, and at the most, the matter could have been pursued as a Public Interest Litigation. The Roster for Civil Writ Petitions and Public Interest Litigation is different,

with different rules applying to each. The learned counsel for Petitioners contended that the concept of *locus standi* has been diluted that they also have locus as they seek to espouse a cause on behalf of the community and people in general.

11. The *locus standi* can be of different degrees. There could be an infringement of personal rights and a personal injury, or the petitioner may seek to espouse a cause on behalf of the community or a group in general. As the further discussion will show, the grounds invoked would differ depending on whether the Petitioners are directly affected. In that context, the question of the nature of locus is important. Secondly, as per the High Court Rules and the procedure a Civil Writ Petition – Writ Petition (Civil), and a Public Interest Litigation – Writ Petition (PIL) are different. From the argument of the Petitioners themselves before us, it can be seen that they have not suffered a direct injury or that their personal right is not affected, but they seek to espouse a cause on behalf of the community and people in general. Apart from different rules, as per the present allocation of work/Roster, Public Interest Litigations are assigned to the Division Bench, and Civil Writ Petitions – Writ Petition (C), are assigned to the Single Judge. The distinction between a Civil Writ Petition and a Public Interest Litigation with reference to the Roster is not merely a matter of procedure. The Hon'ble Supreme Court, in the case of *Garden Reach Shipbuilders and Engineers Limited v. GRSE Limited Workmens Union and Others*¹, has declared the position of law that any order that a Bench comprising of two Judges or a Single Judge may choose to make in a case that is not placed

¹ 2025 SCC OnLine SC 582

before them/him as per the Roster/allocation or specific administrative direction, is an order is without jurisdiction and even consent of parties will not confer jurisdiction. It was held that the adjudication beyond allocation is void and has to be considered a nullity. Therefore, this argument advanced by the Appellant – State and the added Respondents, in view of the decision in *Garden Reach Shipbuilders*, merits serious consideration.

12. On the conclusion in the impugned judgement that Exhibit-P1 order/notification dated 27 November 2024 is bad in law, the learned Advocate General submitted that the Notification had been set aside in writ jurisdiction without the existence of any valid grounds for the exercise of a judicial review. He submitted that the exercise of power by the Appellant-State under Section 3 of Act 60 of 1952 could not have been nullified through the exercise of power akin to appellate jurisdiction. It was contended that none of the grounds stated in the impugned judgment could be a basis for quashing the Notification, especially when the Petitioners are not directly affected by the issuance of the Notification. He contended that, though it is observed in the impugned judgment itself that the Commission is only a fact-finding body and its recommendations are not binding, yet it proceeds on the basis that the appointment of the Commission infringes upon the powers of the Tribunal and the authorities under the Waqf Act, 1995. The learned Advocate General made a grievance that the impugned judgment is based on generalized perceptions without any legal basis. He also submitted that since the term of the Commission expires at the end of May 2025, the Commission may be permitted to continue, and as an interim measure, its report can be directed not to be acted upon until

further orders. The learned Senior Advocate appearing for Respondent No.5 supported the arguments of the Appellant-State and also contended that the properties in the area in question are not Waqf properties. The learned counsel for the Petitioners submitted that the learned Single Judge, by a well-reasoned judgment, has set aside the Notification, and no interference is warranted. It is also submitted that the Notification itself indicates that it relates to the Waqf properties in the area. In view of sub-section (2) of Section 40 and Section 85 of the Waqf Act, 1995, the Commission of Inquiry is precluded from examining the issue, as it would amount to encroachment upon the exclusive jurisdiction of the Waqf Tribunal. It was contended that the Notification is an attempt to overreach the orders of the Courts, including this Court. Reliance was also placed upon the decision of a three-judge Bench of this Court in the case of *Balakrishna Pillai v. State of Kerala*².

13. The Act 60 of 1952 was enacted to provide for the appointment of Commissions of Inquiry and the vesting of such Commissions with certain powers. Section 3 of Act 60 of 1952 deals with the appointment of Commissions. Section 3 empowers the appropriate Government, if it is of the opinion that it is necessary to do so, to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the Notification. The appropriate Government shall cause to be laid before the Legislature the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1), together with a

² 1988 (2) KLT 1039

memorandum of the action taken thereon, within six months of the submission of the report by the Commission to the appropriate Government.

14. The decision taken by the Government to issue Exhibit-P1 Notification thus is an exercise of the power conferred by a statute, Act 60 of 1952, duly enacted by the Legislature. It is a well-established principle of law that not all orders of the Government are of the same nature, nor do they warrant the same degree of judicial scrutiny. While it is correct that the State may not have absolute and unfettered power and it remains subject to judicial review, before setting aside an exercise of statutory power, it has to be demonstrated that such exercise falls within the well-recognized grounds for judicial intervention. Therefore, the moot question in these Appeals is: on what legal grounds has the impugned judgement set aside this Notification issued in exercise of the statutory power by the State under Section 3 of Act 60 of 1952.

15. The impugned judgment states that, as per the counter affidavit, the Commission of Inquiry has no power to adjudicate any question of title; neither is it a judicial nor a quasi-judicial authority, and the terms of reference also do not enable the Commission to decide the question whether the property is Waqf or not. With such a clear finding in the impugned judgment, there is no merit in the contention of the Petitioners based on Sections 40(2) and 85 of the Waqf Act, 1995 that the Commission will encroach upon the jurisdiction of the Waqf Tribunal. The argument of the Petitioners, upheld in the impugned judgment, is that the issuance of the Notification suffers from non-application of mind as the

Government has not considered the significance of the observations or findings of the Waqf Board and the provisions of the Waqf Act, 1995. This argument and the finding are contradicted by the finding in the impugned judgment that the terms of reference do not enable the Commission to decide any question whether the property is Waqf property or not. The impugned judgment itself records that the Commission is only a fact-finding body and its recommendations are not binding. Further, it is stated in the counter affidavit that the State was primarily concerned with the situation that had arisen on-site due to the agitation and that the State Government, treating it as a social issue, sought to set up a commission to recommend measures to be taken by the Government to find a solution irrespective of the nature and legal status of the property.

16. The Petitioners then contend, as accepted in the impugned judgment, that since the Commission is composed of a former Judge of this Court, any observations by the Commission in respect of a matter pending before the Waqf Tribunal can have repercussions, and even the observations of the Commission may have a propensity to prejudice the rights and can have a tendency to impede fair consideration before the Tribunal. This contention is based on a general perception rather than any legal ground. Merely because a Commission of Inquiry, headed by a retired High Court Judge, makes certain observations in its non-binding report, it does not mean that the Waqf Tribunal will automatically view the matter differently. The Waqf Tribunal is headed by a judge, and such an inference does not acknowledge the judicial approach a Tribunal has to take or the experience of the concerned judge with the procedure. Any judge trained in law is expected to

understand the limits of the commission of inquiry and its observations, and the scope and ambit of the jurisdiction of the Waqf Tribunal. This contention and finding also cannot constitute a legal ground to set aside the exercise of statutory power by the State Government under Section 3 of Act 60 of 1952.

17. The next contention of the Petitioners, based on the impugned judgement, is that the Notification does not explain or narrate how the question relating to the right of ownership over certain properties assumes the character of a matter of public importance and that the counter affidavit cannot be relied upon to give reasons not furnished in the order. The decision of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commission, New Delhi and Others*³ is relied upon. This argument of the Petitioners overlooks the nature of the order issued under Section 3 of Act 60 of 1952. The terms of reference themselves would indicate the purpose for which the Commission was established under the Notification. In this case, the occurrence of public protests, agitation, and on-site disturbances is not disputed. A high-level meeting was held, during which it was decided that an issue of public importance had arisen. The State Government sought details to be furnished by the Commission so that it could take an informed decision on how to find a permanent solution at its level. Further, Section 3 of Act 60 of 1952 does not mandate a duty to provide for reasons in the Notification, akin to a judgment. Therefore, merely because the Notification did not give any detailed reasons, the exercise of power under Section 3 of Act 60 of 1952 could not have been

³ AIR 1978 SC 851

set aside if the existence of a fact situation is established. The decision of the three-judge Bench of this Court in *Balakrishna Pillai* does not support the case of the Petitioners. In the said case, under Act 60 of 1952, a Commission was set up in respect of the charges against a Member of the Legislative Assembly. The petitioner therein, who was directly affected by the constitution of the Commission, established solely for the purpose of inquiring into his conduct, had challenged the order. In this context, the Bench made observations regarding the scope of judicial review. However, the Bench ultimately upheld the appointment of the Commission and dismissed the writ petition. The facts of the said case are entirely different from those of the present case. Nothing is shown to us to demonstrate how the personal rights of the Petitioners are affected.

18. Therefore, the Act 60 of 1952 empowers the State Government to appoint a Commission when it is of the opinion that such appointment is necessary or expedient in the public interest. It is primarily for the appropriate Government to decide which issue is an issue of public importance under Section 3 of Act 60 of 1952. The action of the Appellant – State in issuing the Notification dated 27 November 2024 is in the exercise of its statutory power, and the Commission is proceeding in accordance with its statutory mandate. This Commission would function as an advisory body; its report is not binding or conclusive. The enquiry conducted by the Commission, by itself, will neither determine the legal rights of the concerned parties nor encroach upon the jurisdiction of the adjudicatory mechanism under the Waqf Act. The role of a Commission is separate and independent from that of the courts and tribunals. The mere

initiation of an inquiry by the Commission pursuant to a Notification dated 27 November 2024 under Section 3 of Act 60 of 1952 cannot, by itself, be construed as interfering with the jurisdiction of the court or tribunal. The Commission, in undertaking such inquiry, acts within the statutory framework and discharges a function assigned to it by law. Thus, a strong *prima facie* case is made out by the Appellant – State when it makes a grievance that its exercise of a statutory power could not have been set aside in such a manner and the Commission constituted under the statutory framework could not have been restrained from discharging its function assigned to it by law.

19. As regards the balance of convenience, the learned Advocate General submitted that the term of the Commission is due to end by May 2025 and if the Commission is not allowed to function in the meantime, and the Appellant – State eventually succeeds, it will be difficult for the Commission to restart its work as the interruption may affect the completion of the Commission's mandate within the time available. We find merit in the said contention. As an interim arrangement, the Commission can be permitted to continue its functioning and submit its report, and can be directed not to act upon the report without seeking leave of this Court.

20. The Appeals are admitted. List the Appeals for hearing on the Daily Board on 16 June 2025.

21. During the pendency of these Appeals, the operation and implementation of the judgment dated 17 March 2025 in W.P.(C) Nos.2839 of 2025 and 3817 of 2025, quashing Exhibit-P1 notification/

order dated 27 November 2024, is stayed. The report to be submitted by the Commission constituted under Exhibit-P1 notification, in accordance with its terms of reference, will not be acted upon by the State Government without seeking leave of this Court in these appeals.

Sd/-

**NITIN JAMDAR,
CHIEF JUSTICE**

Sd/-

**S. MANU,
JUDGE**

krj/-



//TRUE COPY//

P.A. TO C.J.