IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 15TH DAY OF NOVEMBER 2024 / 24TH KARTHIKA, 1946

WP(C) NO. 13544 OF 2020

PETITIONER/S:

K.T.MUJEEB,
AGED 39 YEARS
S/O. MR. HASSAN KOYA, RESIDING AT NEERAYIL HOUSE,
CHALIYAM P.O. , KOZHIKODE- 673 301.

BY ADVS.
S.SREEKUMAR (SR.)
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITHESH
AJAY BEN JOSE
MANJUNATH MENON
HARIKRISHNAN S.

RESPONDENT/S:

1 **STATE OF KERALA,**
REPRESENTED BY ITS SECRETARY, (LSGD), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2 **THE DISTRICT COLLECTOR,**
CIVIL STATION, KOZHIKODE 673 020.

3 **THE SECRETARY,**
KADALUNDI GRAMA PANCHAYAT (SPECIAL GRADE),KADALUNDI P.O. , PIN-673 302.

4 **RADHAKRISHNAN,**

THAIKKADAVATHU, KOTHERI PARAMBU, VATTAPARAMBU, CHALIYAM P.O., KOZHIKODE -673 301.

ADDL. R5 THE ENVIRONMENTAL ENGINEER,
POLLUTION CONTROL BOARD, REGIONAL OFFICE, 3RD FLOOR, ZAMORIN SQUARE, LINK ROAD, KOZHIKODE - 673 002.-
ADDITIONAL R5 IS SUO MOTU IMPLEADED AS PER THE ORDER DATED 17.11.2020 IN WP(C) 13544/2020.

ADDL.R6 V.P.AJAYAN,
AGED 56 YEARS, S/O.SAKTHIDHARAN, CONVENER
KOTHERIPARAMBU PARISARA VASIKALUDE KOOTTAYMA,
VATTAPPARAMBU, CHALIYAM (PO), KADALUNDI GRAMA PANCHAYATH, KOZHIKODE DISTRICT, PIN- 673 301-
ADDITIONAL RESPONDENT NO.6 IMPLEADED AS PER THE ORDER DATED 07.12.2020 IN I.A.01/2020 IN WP(C) 13544/2020.

BY ADVS.
DEVISHRI R., GOVERNMENT PLEADER-R1& R2
VINOD SINGH CHERIYAN -R3
P.V.ANOOP
T.M.KHALID -R3
K.P.SUSMITHA - R3
PHIJO PRADEESH PHILIP - R4
K.V.SREERAJ -R4
T.SETHUMADHAVAN (SR.) - ADDL.R6
M.P.PRIYESHKUMAR- ADDL.R6

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 24.10.2024, THE COURT ON 15.11.2024 DELIVERED THE FOLLOWING:

C.R.

MOHAMMED NIAS C.P., J.

.....

W.P(C) No. 13544 of 2020

.....

Dated this the 15th day of November, 2024

JUDGMENT

The petitioner owns an extent of 7.20 cents of land in Sy. No.147/2 of Kadalundi Village, which had a building which has been used as a prayer hall since 2004. It is submitted that no Juma prayer was conducted, no amplifiers or speakers were used, and the prayer hall was only for offering prayers by the religious people. The petitioner had applied for a building permit for changing the roof of the building and for approval of the plan before the 3rd respondent Secretary of the Kadalundi Grama Panchayat. The petitioner was ultimately given a permit on 25.11.2014, Ext.P4, which permitted him to change the roof of the existing building having a plinth area of 53.36 sq.mtrs., pursuant to which the petitioner changed the roof. The petitioner submits that he was issued with a notice dated 11.05.2015 from the 3rd respondent Secretary of the Panchayat alleging that complaints were received from neighbours regarding illegal construction and directed the petitioner to stop the construction. The petitioner submitted a reply on 16.05.2015 denying any illegal construction as alleged in Ext.P5.

2. Apprehending demolition of the roof of the building the petitioner filed W.P(C) No. 15810/2015 challenging Ext.P5, in which this Court granted an interim stay on 28.05.2005 and which was extended until further orders on 15.06.2015. Thereafter, the Revenue Divisional Officer issued a notice dated 18.12.2015 for a hearing to be held on 29.12.2015 to resolve a complaint from the 4th respondent and local residents. The RDO, by proceedings dated 29.01.2016, directed to stop the functioning of the prayer hall as it will cause communal disharmony, which was challenged by the petitioner before this Court by filing W.P(C) No. 7505/2016. On 26.02.2016, this Court passed an interim order permitting the petitioner to use the building as a prayer hall, but on condition that the petitioner shall not use any loudspeaker or conduct any Juma prayer and shall not use it as a permanent place of worship. Ultimately, the writ petition was disposed of by judgment dated 07.06.2018 directing the 2nd respondent District Collector to decide adverting to the reports from the police and revenue authorities, and till such time the interim order passed was directed to be maintained. The 2nd respondent, by proceedings dated 15.06.2020, addressed the 3rd respondent that there were objections from the members of the other communities in conducting the prayer hall and therefore, refused to issue the NOC through Ext.P8 order. The 3rd respondent Panchayat also issued a letter on 17.06.2020 directing the petitioner to stop the prayer hall in view of Ext.P8. Exts.P8 and P9 are challenged in this writ petition.

3. Heard Sri. S. Sreekumar, the learned Senior Counsel instructed by Sri. P. Martin Jose for the petitioner, Sri. T. Naveen, the learned Standing Counsel for the

Pollution Control Board, Sri. T. Sethumadhavan, the learned Senior counsel for the additional 6th respondent, Sri. Vinod Singh Cheriyan, the learned Standing Counsel for the Panchayat and Smt. Devi Shri R., the learned Government Pleader for the official respondents.

4. The Learned Senior Counsel for the petitioner submits that Exts.P8 and P9 are illegal and in excess of the authority conferred on the 2nd respondent. It is submitted that the principles of law stated by this Court have not been followed at all. The petitioner also relies on Article 26 and the Provisions of the Manual which governs grant of permission has to be understood in the context of Articles 25 and 26. It is also submitted that there are no interfaith disputes in the locality between two different religious community members and there was not even a single instance where the local administration or the police had interfered in the matter of public order due to the establishment of a place of religious worship since 2004. The learned Senior counsel for the petitioner also relies on the following judgments to support his contention. **Smt. Angoori Devi for Ram Ratan v. Union of India and others [(1989) 1 SCC 385], Thomas Varghese and other v. District Collector, Ernakulam and others [2014 (3) KHC 725], Fr. Geevarghese v. District Collector [2014 (4) KLT 553]** and **St. Peter's and St. Paul's Syrian Orthodox Church, Chalisserry v. State of Kerala [2024 KHC 405].**

5. Opposing the prayers in the writ petition, learned counsel Sri. T. Sethumadhavan asserts that the orders through Exhibits P8 and P9 were issued following a thorough hearing involving the petitioner and local residents. Since 2010,

the petitioner has allegedly operated the premises as a mosque without obtaining a valid No Objection Certificate (NOC), thereby unlawfully converting a residential building into a place of worship. Additionally, it is alleged that unknown individuals have been visiting the site continuously, raising concerns during the pandemic. The petitioner is accused of misusing an interim order from this Court as a means to conduct activities as if the premises were a permanent place of worship, which generated fear among nearby residents and disrupted communal harmony. The 4th respondent further contends that a complaint was lodged with the 2nd respondent and local Revenue Divisional Officer (RDO) in 2013 regarding the unauthorised use of the building as a prayer hall. An inspection confirmed that no permission had been granted for such use. He also relies on the judgment of the Hon'ble Supreme Court reported in **Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and others v. State of Gujarat and others [(1975) 1 SCC 11]** and the judgment of this Court reported in **Noorul Islam Samskarika Sangham Thottekkad, Malappuram v. District Collector, Malappuram and others [2022 (5) KHC 595]** to support his contentions.

6. The counter affidavit filed on behalf of the second respondent District Collector, states that in the judgment of W.P.(C) No. 7505/2016 dated June 7, 2018, this Court focused on the usage of the building in question. It noted that the District Collector possesses the discretion to rely on reports from relevant authorities, whether previously submitted or newly requested and may conduct a fresh hearing if deemed necessary. Consequently, the 2nd Respondent sought additional reports from

the District Police Chief of Kozhikode City and the Tahsildar of Kozhikode Taluk.

7. Accordingly, the District Police Chief submitted Report No. D2-73130/2018/CC dated December 7, 2018 (Exhibit R2(a)), while the Tahsildar provided Report No. A1-42074/18 dated January 11, 2019 (Exhibit R2(b)). Exhibit R2(a) reveals that "Niskaram" and "Bank Vili" activities have commenced at the Sunni Center, drawing individuals from various locales for religious purposes. The report highlights concerns regarding potential contamination of water sources affecting nearby homes, primarily inhabited by members of the Hindu community, who oppose the construction of a mosque at this site. Furthermore, it notes that there are four other mosques within one-kilometre radius, indicating that even some members of the Muslim community are opposed to establishing a mosque in this location. The report warns that converting the Sunni Center into a mosque could undermine communal harmony and disrupt peace in the area.

8. In Exhibit R2(b), the Tahsildar of Kozhikode conveyed inputs from the Village Officer of Kadalundi, the locality where the Sunni Center is situated. The report states that the majority of the Sunni Center's structure is designed to facilitate religious prayers. The Tahsildar further emphasised that the surrounding community predominantly comprises Hindus who are against the establishment of a mosque at this site. At first glance, it is apparent that the ongoing religious activities at the Sunni Center challenge the opposition from the Hindu community, posing a potential threat to law and order in the area.

9. The second respondent states that after receiving reports R2(a) and

R2(b), a hearing was convened with the petitioner, who claimed that the Village Officer's earlier report did not indicate any communal disharmony. The second respondent then directed the Additional District Magistrate to inspect the situation regarding the need for a mosque and potential communal issues. On August 4, 2019, the Additional District Magistrate submitted Report R2(C), indicating that the Sunni Center was modified for religious activities, including the presence of a water tank and washroom. During the inspection, nearby Hindu residents expressed concerns that constructing a mosque would lead to law and order issues and communal polarisation, especially given the presence of three other mosques within one-kilometre radius. At a review meeting on October 5, 2019, the District Police Chief reiterated that converting the Sunni Center into a mosque would disrupt communal harmony and create law and order problems. Consequently, it was decided to reject the No Objection Certificate requested.

10. The third respondent, the Secretary of Kadalundi Grama Panchayat, contends that while Exhibits P1 and P2 indicate communal harmony in the area, they refer to a situation over a decade ago. The permit granted was strictly for roof repairs, specifying that the building is a single-family residence, not a place of worship. Following public complaints, the third respondent issued Ext.P5 notice to prevent the petitioner from using the building for religious purposes. The building permit originally issued by the 3rd respondent was for single-family residential use, yet the petitioner used it as a prayer hall. As a result of continued complaints, Exhibit P5 was issued on May 11, 2015, ordering the petitioner to cease all religious activities

and construction on the property. The petitioner's continued use of the premises despite this order led to public disturbances, prompting further complaints to the RDO. Following a detailed investigation by the Tahsildar, which confirmed the functioning of a mosque at the location the RDO issued directives prohibiting the use of the premises for religious activities, noting that such use was causing communal unrest.

11. After hearing the rival contentions and perusing the records, it is to be noted that a reading of Ext.P8 order, impugned in the writ petition, would clearly show that the essential reason for the rejection of the application is the objection from the members of another community. The reports of the officers of the district administration show that they fear a law and order situation on account of the objection made by the members of other communities. Merely because one community opposes the setting up of a religious place by another community, it cannot be assumed that there will be disharmony or breach of peace. This cannot be a reason at all, more particularly when the basis of the said apprehension is not revealed from any acceptable material except the anticipated ones which the district administration is duty bound to avert.

12. In a democratic nation where citizens possess the fundamental right to practice and profess their faith, the establishment of a religious place by any community should not be curtailed merely due to opposition from other groups. The principles articulated in the judgment of this Court in Fr. Geevarghese (supra) have been egregiously overlooked. Secularism and religious freedom are cornerstones of

the Indian Constitution, yet the term "religion" remains undefined within its text. Religion, in its normative essence, is understood as a framework of beliefs in a transcendent reality. Conflicts among different faiths can disrupt public order, posing a threat to the secular fabric of our nation. It is imperative for the State machinery to maintain a delicate balance between safeguarding religious freedom and upholding the tenet of secularism when issuing guidelines in such matters. A clear distinction must be drawn between public order and "law and order." The former pertains to collective societal harmony, while the latter relates to individual disputes or conflicts over tangible interests. The resolution strategies for these two types of disputes are fundamentally different. The State's focus on public order seeks to preserve communal harmony, while law and order issues are often confined to the interests of the parties involved. Objections raised by a handful of individuals from other faiths cannot serve as a valid basis to restrict the rights guaranteed under Articles 25 and 26 of the Constitution. Furthermore, the mere proximity of other mosques does not inherently justify the rejection of an application to set up another. The administration must protect the fundamental rights of all citizens, including the petitioner’s right to utilise his property lawfully. The difference between public order and law and order has not been appreciated while passing Ext.P8 order.

Under such circumstances, Ext.P8 cannot be sustained and the same is accordingly quashed. There will be a direction to the second respondent District Collector to reconsider the application submitted by the petitioner strictly in terms of the guidelines noticed above and based on the above observations. This shall be

done with notice to the parties and within three months from the date of receipt of a copy of the judgment. Needless to say, till permission is granted to the petitioner to function as a religious place, he shall not conduct any activities of that nature pending the decision by the District Collector.

SD/-

MOHAMMED NIAS C.P.

JUDGE

okb/

APPENDIX OF WP(C) 13544/2020

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF REPORT DATED 17.04.2006 SUBMITTED BY THE VILLAGE OFFICER BEFORE THE 2ND RESPONDENT ON THE APPLICATION FOR NOC.**
EXHIBIT P2	**TRUE COPY OF THE REPORT DATED 23.06.2009 SUBMITTED BY THE 3RD RESPONDENT SECRETARY BEFORE THE 2ND RESPONDENT ON THE APPLICATION FOR NOC**
EXHIBIT P3	**TRUE COPY OF JUDGMENT DATED 02.03.2012 IN WPC NO. 5196 OF 2012 DISPOSED WITH A DIRECTION TO THE 2ND RESPONDENT TO EXPEDITE THE APPLICATION FOR NOC.**
EXHIBIT P4	**TRUE COPY OF BUILDING PERMIT DATED 25.11.2014 ISSUED BY THE 3RD RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF NOTICE DATED 11.05.2015 ISSUED BY THE 3RD RESPONDENT ALLEGING THE PETITIONER PROCEEDED WITH AN ILLEGAL CONSTRUCTION.**
EXHIBIT P6	**TRUE COPY OF PROCEEDINGS 29.01.2016 OF THE REVENUE DIVISIONAL OFFICER DIRECTING TO STOP THE PRAYER HALL AS IT WILL CAUSE COMMUNAL DISHARMONY.**
EXHIBIT P7	**TRUE COPY OF JUDGMENT IN WPC NO. 7505 OF 2016 DATED 07.06.2018 OF THIS COURT.**
EXHIBIT P8	**TRUE COPY OF PROCEEDINGS DATED 15.06.2020 OF THE 2ND RESPONDENT REJECTING THE APPLICATION FOR NOC.**
EXHIBIT P9	**TRUE COPY OF LETTER DATED 17.06.2020 OF THE 3RD RESPONDENT DIRECTING THE PETITIONER TO STOP THE PRAYER HALL IN THE PROPERTY IN VIEW OF EXHIBIT P8.**

RESPONDENT EXHIBITS

EXHIBIT R2(A)	**TRUE COPY OF THE REPORT NO D2-73130/2018/CC OF DISTRICT POLICE CHIEF DATED 7.12.2018**
EXHIBIT R2(B)	**TRUE COPY OF THE REPORT NO A1-42074/18 OF TAHSILDAR, KOZHIKODE DATED 11.1.2019**
EXHIBIT R2(B)	**TRUE COPY OF THE REPORT OF ADDITIONAL DISTRICT MAGISTRATE, KOZHIKODE**