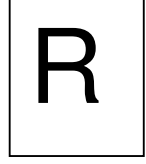




IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH



DATED THIS THE 6TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 202162 OF 2022 (KLR-RR/SUR)

BETWEEN:

SMT. CHENNAMMA
W/O AMARAYYASWAMY HIEMATH,
AGED ABOUT 48 YEARS,
OCC: AGRICULTURE AND HOUSEHOLD,
R/O. CHIKRAGI VILLAGE,
TQ: MANVI,
DIST: RAICHUR-584123.

...PETITIONER

(BY SRI. RAVI B. PATIL, ADVOCATE)

AND:

1. THE REGIONAL COMMISSIONER
KALABURAGI REGION,
MINI VIDHAN SOUDHA,
STATION ROAD,
KALABURAGI-585 102
2. THE DEPUTY COMMISSIONER
AND PRESIDENT DISTRICT TASK FORCE,
COMMITTEE. (WAQF), RAICHUR,
D.C. OFFICE RAICHUR-584123.
3. THE ASSISTANT COMMISSIONER
LINGASUGUR,
DIST: RAICHUR-584123.





4. THE TAHASILDAR
AND MEMBER DISTRICT TASK FORCE COMMITTEE,
(WAQF) MANVI,
TAHASILD OFFICE MANVI,
DIST: RAICHUR-584123.

5. THE DISTRICT WAKF OFFICER
WAQF RAICHUR,
THROUGH HUSSAINI ALAM
ASHUR KHANA SUNNI
DIST: RAICHUR-584123.

...RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1 TO R4;]
SRI P.S.MALIPATIL, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, A) WRIT A CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 14.02.2022 BEARING NO. SAM/KKAM/DEVASTAN/12/2021-22 PASSED BY THE 3RD RESPONDENT AUTHORITY AS AT ANNEXURE-M IS WITHOUT DUE PROCESS OF LAW AND IS NOT IN DUE COMPLIANCE WITH THE PROCEDURE KNOWN TO LAW. B) A WRIT A MANDAMUS DIRECTING THE RESPONDENTS NO.1 TO 4 TO DELETE THE ILLEGAL ENTRY IN COLUMN NO.9 AND 11 OF THE LAND OF THE PETITIONERS IN SY.NO.179/5 OF KARADKAL VILLAGE, TQ. LINGASUGUR, DIST. RAICHUR, REFLECTING THE NAME OF THE 5TH RESPONDENT AS AT ANNEXURE-H. C) PASS SUCH OTHER ORDER/ORDERS, DIRECTIONS AS THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE INCLUDING AN ORDER AS TO THE COSTS OF THE PRESENT WRIT PETITION, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this court seeking for the following reliefs:

a. *Writ a certiorari to quash the impugned order dated 14.02.2022 bearing No. SAM/KKAM/DEVASTAN/12/2021-22 passed by the 3rd respondent authority as at Annexure-M is without due process of law and is not in due compliance with the procedure known to law.*

b. *A writ a mandamus directing the respondents no.1 to 4 to delete the illegal entry in column No.9 and 11 of the land of the petitioners in Sy.No.179/5 of Karadkal village, Tq. Lingasugur, Dist. Raichur, reflecting the name of the 5th respondent as at Annexure-H.*

c. *Pass such other order/orders, directions as this Hon'ble court deems fit in the circumstances of the case including an order as to the costs of the present writ petition, in the interest of justice and equity.*

2. The petitioner claims to be the absolute owner of land in Survey No.179/5, measuring 39 guntas out of the total



extent of 02 acres 18 guntas, situated at Karadakal village, taluk Lingasuguru, district Raichur, having acquired the same and a registered sale deed dated 05.10.2012. Originally, the land in Survey No.179 measuring 20 acres 29 guntas was cultivated by one Hassan Khan and Hakeem Khan as Inamdars, an application for tenancy having been filed by one Ahmed Hussaini, Kajabee, Nawab Aahmed, Murthuja Ahmed, Mansoor Aahmed and Chand Pasha. The land tribunal in proceedings in KLRM/INM/2249/78-79 dated 08.07.1981 directed their names to be mutated in the revenue records. The aforesaid Murtuja Aahmed sold the property to Amaresh under a sale deed dated 09.12.2010. The said Amaresh sold the property to Sri Shivanand under a sale deed dated 18.02.2012. The said Shivanand in turn sold the property to the petitioner under a sale deed dated 05.10.2012 and it is in that background that the petitioner claims to be the owner of 39 guntas in Survey No.179/5 out of total extent of 02



acres 18 guntas the name of the petitioner having been entered into in the revenue records.

3. Subsequently, the first respondent Regional Commissioner had issued a notification directing the Deputy Commissioner to make necessary enquiries with regard to Wakf properties and make entries in the revenue records in column Nos.9 and 11. Respondent No.2 - Deputy Commissioner issued directions to the Tahasildars on the 23.12.2017. Based on the notification of the Regional Commissioner dated 09.08.2017 and the direction issued by Deputy Commissioner dated 23.12.2017, the respondent No.4 - Tahasildar mutated the name of the respondent No.5 - District Officer, Wakf Board in the revenue records in the year 2018-2019.
4. Hence, the petitioner submitted a representation to the respondent No.4 on 11.09.2018 seeking for removal of the illegal entries and reinstating the name of the petitioner, which was followed up by a representation on 01.08.2019. Since no action was taken thereon, the petitioner filed W.P. No.201391/2021, wherein this Court



directed the respondents to consider the representation of the petitioner. Subsequent thereto, the representation has been considered and the impugned order passed, rejecting the representation which is challenged by the petitioner before this court.

5. The submission of Ms. Vaishnavi Chanda, learned counsel for the petitioner is that the property having been purchased under the registered sale deeds, the revenue entries had been made in the name of the petitioner without as much as a notice to the petitioner, the name of the petitioner was deleted and the name of respondent No.5 was added by respondent No.4 in the revenue records. It is in that background that the representation had been submitted by the petitioner for deletion of the name of the respondent No.5 and reinstatement of the name of the petitioner. This court having directed the representation submitted in that regard to be considered, the respondent No.3 - Assistant Commissioner has completely misapplied himself and has come to a wrong conclusion that he does not have



powers to do so. If the petitioner is aggrieved, the petitioner would have to approach the Wakf Tribunal under Section 83 of the Wakf Act.

6. Her submission is that there is no dispute as regards the title in the present matter. It is the entries made illegally by respondent No.4 which was in question. The property having earlier stood in the name of the petitioner in furtherance of the various entries made, which were in turn made in furtherance of various sale deeds executed. In that background, she submits that, the above petition is required to be allowed.
7. Submission of Sri.P.S.Malipatil, learned counsel for respondent No.5 is that the property is a wakf property. The Regional Commissioner having issued a Notification and Deputy Commissioner having issued directions, respondent No.4 has complied with the same and caused the entry of respondent No.5, the property being wakf property. If the petitioner were to dispute the title of respondent No.5, the same would have to be done only in a proceeding under section 83 of the Act before the



Wakf Tribunal and as such, he supports the order passed by the Assistant Commissioner.

8. Heard learned counsel for the petitioner, learned High Court Government Pleader for respondent Nos.1 to 4 and learned counsel for respondent No.5. Perused the papers.
9. The short question which would arise for consideration before this Court is as regards in what matters a person would have to approach the Wakf Tribunal under Section 83 of the Wakf Act, 1995.
10. In the present case, it is not in dispute that the land has been purchased by the petitioner under a registered sale deed and the revenue entries were made in the name of the petitioner in the revenue records. It is thereafter that the Regional Commissioner had issued a Notification issuing general directions to all officers to cause entry of name of the Wakf Board as regards the wakf properties, after inquiry. In furtherance of the said notification, the



Deputy Commissioner had directed the officers subordinate to him to cause such entries.

11. Both the Deputy Commissioner and respondent No.4-Tahsildar completely misconstrued the notification issued by the Regional Commissioner. The Regional Commissioner had specifically stated that due enquiry has to be made and thereafter, entry of the name of the Wakf Board to be made, if the property was the Wakf property, that is to say, there was a determination required to be made on available documents as to whether the property is Wakf property or not. Without carrying out any such enquiry, the Deputy Commissioner in furtherance of the Notification directed his subordinate officers, including respondent No.4-Tahsildar to carry out the instructions of the Regional Commissioner.
12. The Tahsildar has misconstrued the said Notification and the direction of the Deputy Commissioner and caused the entry of the name of the Wakf Board, merely



because, the Wakf Board claimed an interest in the said property, without making any enquiries.

13. As directed by the Regional Commissioner in the Notification, no such enquiry having been held, the Tahsildar has unilaterally without issuing any notice to the petitioner, caused the deletion of the name of the petitioner from the revenue records and insertion of the name of respondent No.5 in the revenue records. The same is not what was envisaged by the Regional Commissioner or the Deputy Commissioner, albeit the Deputy Commissioner ought to have been more clear in the instructions given by him to the Tahsildar as regards holding of inquiry.
14. The Tahsildar has considered the direction of the Deputy Commissioner to be a direction to insert the name of the Wakf Board by deleting the name of private owners, which is not what is contemplated in the Notification and the direction issued by Deputy Commissioner.



15. It is in that background, when the Tahsildar has deleted the name of the petitioner and inserted the name of the Wakf Board, the property cannot be said to be the wakf property merely by such insertion. The enquiry being required to be made as aforesaid, the same not having been made, it cannot now be contended by the Wakf Board that there is a dispute of the title as regards the property belonging to the Wakf Board, requiring the petitioner to approach the Wakf Tribunal under Section 83 of the Act, that would have been the case, if the name of the Wakf Board was always found on the records and a new claim was made by a third party.

16. In the present case, the claim is made by the Wakf Board as regards a property which stands in the name of a private party which would not make Section 83 of the Act applicable requiring the petitioner to approach the Wakf Tribunal. It is for the Wakf Board to establish its title over the property as against a private party which would not come within the purview of Section 83 of the Act. Thus, the finding of the Assistant Commissioner in



this regard is completely unsustainable. In that background I pass the following:

ORDER

- i. The Writ Petition is ***allowed***.
- ii. A Certiorari is issued, the impugned order bearing No.SAM/KAM/DEVASTAN/12/2021-22 dated 14.02.2022 passed by respondent No.3 at Annexure-M is set aside.
- iii. Mandamus is issued directing respondent No.4 to delete the entry of respondent No.5 in column Nos.9 and 11 of the record of rights in respect of land of the petitioner bearing Sy.No.179/5 of Karadkal village, Lingasugur Taluk, Raichur District and reinstate the name of the petitioner in the said revenue records within sixty days from the date of receipt of certified copy of this order.
- iv. Liberty is, however, reserved to respondent No.4 to cause a proper enquiry as afore observed in terms of the Notification issued by respondent No.1-Regional Commissioner and the directions



issued by respondent No.2 - Deputy Commissioner by issuing a show cause notice, affording an opportunity to the petitioner of filing objections and being heard and thereafter, pass necessary orders.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SVH
List No.: 1 Sl No.: 34