

(2006) 12 KAR CK 0060
Karnataka High Court
Case No: Writ Petition No. 26113 of 2005

Nitin Punja

APPELLANT

Vs

Deputy Commissioner
and Others

RESPONDENT

Date of Decision: Dec. 22, 2006

Acts Referred:

- Waqf Act, 1995 - Section 13 (3), 50

Citation: (2007) ILR (Kar) 597 : (2007) 2 KCCR 873

Hon'ble Judges: Ram Mohan Reddy, J

Bench: Single Bench

Advocate: K. Shashi Kiran Shetty, for the Appellant; Anjana Moorthy, HCGP for R1 and R3, Veerendra Patil, for R2 and Mahmood Patel, for R4 and R5 SD, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ram Mohan Reddy, J.

The petitioner's father purchased certain immovable properties under two registered sale deeds dated 25/07/1975 and 26/07/1975, Annexures "A" & "B" respectively which were assigned Municipal No. 4-5-94/2. On the death of the petitioner's father on 30th August 1994, the petitioner's application to substitute his name as the khatedar of the said properties, remained unresponded and on account of interference by respondents 4 and 5, the petitioner filed Writ Petition No. 6340/1999 and 6758/1999 for mandamus which were disposed of by order dated 17.6.99 Annexure "E" directing the Chief Officer Municipality to dispose of the application of the petitioner for transfer of khata. The Chief officer, after enquiry, by order dated 1.10.99 Annexure "F", substituted the name of the petitioner in its khata register. The 4th and 5th respondents aggrieved by the said order preferred Appeal No. 60/99-2000 to the first respondent, who by order dated 25/08/2005 Annexure

"A" cancelled the khata. Hence, this Writ Petition.

2. The petition is opposed by filing statement of objections dated 14/09/2006 of respondent No. 4 interalia contending that the Writ Petition is not maintainable and the sale deeds Annexures "B" and "C" are illegal as the immovable properties conveyed therein are a portion of the property in Sy. No. 198/3 of Gangavathi measuring 29 guntas said to be a khatarastan (Muslim burial ground). According to the 4th respondent, the land in sy. No. 199/3 is declared to belong to a Wakf institution and a Wakf property at Sl. No. 35 of the Gazette Notification bearing No. KTW/3060/ASR/74, dated 4th may 1974, and published in the Karnataka Gazette dated 25th September, 1975 and corrigendum dated 7th September, 1996, published in the Gazette dated 21st November 1996 Annexure R-I. In addition, it is contended that at the instance of the 4th Respondent and another, a proceeding was instituted arraigning the petitioner's father as a respondent, whence, the Divisional Commissioner, in Case No. 70/APM//92, by order dated 10th January, 1995 Annexure R-15, held that on account of endorsement issued on 14/05/1992 to the petitioner's father by the Municipality of Gangavathi that there was no khata mutation in the name of Veerapakshaya Swamy, the construction license issued, to him in respect of the said property stood cancelled. It is lastly stated that the 4th respondent is the Muthawalli of the Wakf Institution.

3. The learned Counsel for the petitioner contends that 4 and 5th respondents without authority and having no private interest in the property in question, toeing busy bodies, not competent to represent the Wakf Board in the matter of substitution of the petitioner's name as Khatedar filed an incompetent appeal before the Deputy commissioner. It is next contended that the immovable properties in question are not part of Khabrastan in Sy. No. 198/3 as there is no material to support the same coupled with the fact that the Wakf Board having not questioned the transfer of Khatha, the respondents 4 and 5 were incompetent to maintain an appeal. In addition, the learned Counsel contends that the order of the Deputy commissioner is not a speaking order as no reasons are assigned, tantamounting to denial of justice.

4. The learned Counsel for respondents 4 and 5 seeks to support the order impugned as being well merited, fully justified and not calling for interference. It is contended that being mutawallis appointed by the Wakf Board, Respondents 4 & 5 are entitled to represent the Wakf Board and competent to object transfer of khata and hence filed Appeal No. 60/99-2000 before the Deputy Commissioner. Learned Counsel points out to the order dated 10/01/1995 in Appeal No. 70/92 Annexure R-15 of the Divisional Commissioner, Gulbarga, to contend that the permission to erect a building granted to the petitioner's father was cancelled establishing the fact that the properties conveyed in the sale deeds Annexures "B" & "c" formed a part of the Khabrastan in sy. No. 198/3 measuring 29 guntas. In addition, learned Counsel contends that the description of the properties in the schedule to the sale

deeds Annexures "B" and "C" does not disclose either Survey number or the khata number, except boundaries and therefore a presumption arises that the said properties do constitute a part of the Khabrastan in Sy. No. 198/3. According to the learned Counsel this contention is supported by the Revenue Records maintained by the Revenue Authorities showing the land measuring 29 guntas in sy. No. 198/3 as Kabaristan.

5. Having heard the learned Counsel for the parties, perused the pleadings and the order impugned, what emerges is that the petitioner's father having purchased the properties in question secured municipal numbers and khata from the Town Municipality. On the death of the petitioner's father on 30/08/1994, the petitioner's name was substituted in the revenue records as the Khatedar, by order dated 01/10/1999 Annexure "F", which when called in question in Appeal No. 60/99-2000 before the Deputy Commissioner, by the Respondents 4 & 5, was set aside by the order impugned.

6. It is not in dispute that assigning of the Municipal number and the incorporation of the name of the petitioner's father as the Khatedar of the properties in question not being objected to nor challenged in any legal proceedings by either the Wakf Board or respondents 4 and 5, the substitution of the name of the petitioner as the Kathedar, by order dated 01/10/1999 Annexure "F", cannot be found fault with.

7. According to respondent No. 4 the properties are a part of the Wakf property belonging to Wakf institution duly notified under the Wakf Act 1995. If that is so, then what is the locus standi of respondent No. 4 to either object to the transfer of khata or file appeal No. 60/99-2000 before the Deputy Commissioner calling in question the order dated 1.10.99 Annexure "F" transferring the khata.) Though learned Counsel for the 4th respondent points out to Section 50 of the Wakf's Act 1995 to contend that Respondent No. 4 being appointed as Mutawalli was competent to represent the Wakf Board in legal proceedings, I am afraid that contention, is without merit. I say so because neither Section 50 of the Act nor the order of appointment of the 4th respondent as muthawalli empowers the muthawalli to initiate legal proceedings for and on behalf of the Wakf Board. The 4th respondent, even if he is said to be muthawalli (though no material was placed on record before the Deputy Commissioner), cannot represent the Wakf Board as Sub-section (3) of Section 13 of the Wakf's Act, 1995 reads thus: the board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

8. In view of the statutory provisions, it is clear that the Wakf Board alone shall sue and be sued in respect of the properties in question. The respondents 4 and 5 acting as muthawalli did not have the locus standi to maintain an appeal against the order dated 01/10/1999 Annexure "F" substituting the name of the petitioner as kathedar

of the properties in question. The Appeal being incompetent, the entire proceedings culminating in the order impugned stand vitiated.

9. The other contentions advanced by the learned Counsel for Respondents 4 & 5, as a consequence, are without merit and are rejected.

10. In the result, the writ petition is allowed. The order dated 25/08/2005 Annexure "A" in Appeal No. 60/99-2000 of the Deputy Commissioner, Koppal, is quashed and the appeal stands dismissed as incompetent.