

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K.V. ARAVIND

WRIT PETITION NO.23615 OF 2022 (KLR-RR/SUR) PIL

BETWEEN:

MOHAMED IKBAL
ADVOCATE
AGED ABOUT 67 YEARS
No. 305, 6/1 MAIN
V. V. NAGAR
R. T. NAGAR POST
BANGALORE - 560 032

... PETITIONER

(BY SRI MOHAMED IKBAL, PETITIONER-PARTY-IN-PERSON)

AND:

- 1 . SECRETARY TO GOVERNMENT
OF KARNATAKA
REVENUE DEPARTMENT
M.S. BUILDING
BANGALORE - 560 001
- 2 . COMMISSIONER FOR SURVEY &
SETTLEMENT, K.R. CIRCLE
BANGALORE - 560 001
- 3 . DEPUTY COMMISSIONER
(REVENUE DEPT.)
HASSAN DISTRICT
HASSAN - 573 201

- 4 . TECHNICAL ASSISTANT TO DC
& EX OFFICIO
DEPUTY DIRECTOR OF LAND RECORDS
HASSAN DISTRICT
HASSAN - 573 134
- 5 . ASSISTANT COMMISSIONER
SAKLESH PURA SUB DIVISION
SAKLESH PURA
HASSAN DISTRICT - 573 134
- 6 . TAHSILDAR, ARKALGUD TALUK
ARKALGUD, HASSAN DISTRICT
PIN - 573 102
- 7 . ASST. DIRECTOR OF LAND RECORDS
ARKALGUD TALUK, ARKALGUD
HASSAN DISTRICT, PIN 573 102
- 8 . TALUK SURVEYOR
TALUK OFFICE
ARKALGUD TALUK
HASSAN DISTRICT, PIN 573 102
- 9 . PANCHAYATH DEVELOPMENT OFFICER
GRAMAPANCHAYATH -
RUDRAPATNA, ARKALGUD TALUK
HASSAN DIST- 573 150

... RESPONDENTS

(SMT NILOUFER AKBAR, ADDITIONAL GOVERNMENT ADVOCATE
FOR RESPONDENT NOS.1 TO 8
RESPONDENT No.9 IS SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF
MANDAMUS TO RESPONDENTS FOR PROPER SURVEY,
HADDUBAST AND DURASTH OF 3-10 ACRES OF MUSLIM BURIAL
GROUND IN SY.NO.27 OF RUDRAPATNA VILLAGE, HASSAN
DISTRICT AND TO PROTECT THE BURIAL GROUND AND GRAVES
AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N.V. ANJARIA
and
HON'BLE MR. JUSTICE K.V.ARAVIND

CAV JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. V. ANJARIA)

Heard the petitioner-party-in-person Mr. Mohamed Ikbal and learned Additional Government Advocate Smt. Niloufer Akbar for respondent Nos.1 to 8. Respondent No.9 is served with the notice of this court, however has not chosen to appear.

2. The prayer in this public interest petition filed under Article 226 of the Constitution is to direct the respondent-authorities to undertake proper survey and *durast* of 3 Acres and 10 Guntas of land Survey No.27 at Rudrapatna Village, Hassan District which is claimed to be Muslim burial ground. It is further prayed to pass necessary orders to protect the said burial ground and graves.

2.1 At the outset, it needs to be observed that the petition is characterised by wayward pleadings made by the party-in-person. Apparently drafted by the petitioner-party-in-person, the pleadings contain long statements and facts which are extra in nature not properly related to the controversy. The pleadings are made

cumbersome to cull out the crux of the controversy. The court, however, undertaken that exercise since party-in-person appeared.

2.2 This phenomenon of indisciplined irrelevant, unnecessary and long unrelated pleadings which are even otherwise, hardly up to the mark are seen in common whenever party-in-person appears either as petitioner or respondent and conducts the matter. Therefore, it is desirable that while assessing the competency to appear as party-in-person by the Committee under the High Court of Karnataka (Conduct of Proceedings by Party-In-Person) Rules, 2018 and before issuing Form 16 certifying party-in-person to be competent to appear before the court, their capacity to plead and draft the case properly as per the law of pleadings, should also be applied as one of the criteria. The party-in-persons who are not able to plead properly in their petition and draft their pleadings should not be granted the certification to argue in the court in-person.

3. The petitioner-party-in-person is an advocate, claims to be a social worker and administrator of Masjid and *Khabrastan* at Rudrapatna, Arkalgud *Taluka*, Hassan District. It is claimed that he has no personal interest but, the petition is filed in public spirit. The grievance, stated in a nutshell, is that the authorities have sanctioned land for Muslim burial ground in Survey No.27 by

passing different orders, but its *phodi* is not properly done and the land is trespassed.

3.1 The Mysore State Wakf Board Gazette Notification dated 09.11.1964 sanctioned 1 Acre in the year 1964 in the said survey number, stated the petitioner. Similarly, 10 Guntas of land was further sanctioned by the Deputy Commissioner, Hassan District as per letter dated 20.08.1976. 2 Acres additional land was sanctioned in the year 1985 in the same land to be part of burial ground, claimed the petitioner, by Official Memorandum dated 15.06.1985 of the Special Deputy Commissioner, Hassan.

3.2 Thus it is claimed that total 3 Acres and 10 Guntas of land in Survey No.27 at Rudrapatna Village is available for use of burial ground. It is stated that however, RTC entry is made only for 2 Acres of land and the Public Works Department road covering portion of land is shown. Instead of total land, it was claimed, in the *durast* only 2 Acres of land is shown as Muslim burial ground- *Khabrastan*. It is stated that inspite of possession and enjoyment of 3 Acres and 10 Guntas of the land by the community, the entry in RTC is made only in respect of 2 Acres and 1 Acre and 10 Guntas of land is not included.

3.3 It is the second part of the submissions that the land owners of Survey Nos.22, 23, 24 and 25 of the village have encroached upon and trespassed the burial land. It is the grievance that the burial ground and graves are required to be protected from the trespassers and encroachers. It is averred that one Padmanabha has encroached the land of burial ground and cultivating thereon.

4. The case in the petition came to be responded and answered by respondent-State by filing affidavit in-reply in which it is stated that 3 Acres and 10 Guntas of land was to be subjected to *durast* as Muslim graveyard. The villagers submitted representation stating that part of the land was used as path leading to their respective lands from the middle of the portion to the extent of 2 Acres of the graveyard even prior to the grant of land for the purpose of graveyard.

4.1 It is stated that the people of the particular community had been objecting the movement of the villagers. On inspection, it was found that there were no graves at the Eastern edge of the graveyard and the same offered conveyance to the farmers of the village. Therefore, 7 Guntas of land was considered and earmarked as public road. The respondents have produced sketch showing that road exists on the land. It was contended that in view of

Section 103 (1) of the Karnataka Land Revenue Act, 1964 if any land is relinquished or fortified and the way to such land lies through other land, the right to way through such other land shall continue to the future holder of the land relinquished or fortified.

4.2 Accordingly, in view of the provision and in view of the user by the villagers since old times, the road is earmarked in the land admeasuring 7 Guntas which passes through 2 Acres of the land in question.

4.3 On the second aspect about the encroachment and the said part of the land for burial purpose, the allegation was that one Padmanabha had have encroached the burial land. In this regard, it is stated by the respondent in the affidavit that, upon making inquiry in the village and upon undertaking spot inspection, it was found that the said Sri Padmanabha had not encroached any portion of the Muslim graveyard. It was stated that *mahazar* was drawn and therefrom also it is seen that there is no grave in the government *gomal* land wherein Sri Padmanabha has been using 1 Acre and 8 Guntas.

4.4 It is stated undisputedly, the said person has been using the said government land which is *gomal* land since last 30 years for the purpose of raising crops. In that view, while conducting *durast* of 3

Acres and 10 Guntas of Muslim graveyard, the land of 1 Acre 8 Guntas in possession of the said private party was not included and was not subjected to *durast*.

4.5 The allegation of encroachment by the other persons who are the owners of Survey Nos.22, 23, 24 and 25 are concerned, it is pointed out that upon a representation submitted by Jamia Masjid Committee of Rudrapatna Village, legal notice was issued to the alleged encroachers. The Additional Director of Department of Survey Settlement and Land Records required the Technical Assistant to the Deputy Commissioner, Hassan District to inspect the spot and submit a report. Accordingly, the Technical Assistant issued notice to the petitioners and neighbouring landholders of Survey No.73. He also visited the spot on 31.07.2021.

4.6 It was proved that while preparing the *durast* documents in relation to the new Survey No.73 crafted out of Survey No.27, without keeping the original Survey Nos.22, 23, 24 and 25 in tact, Survey No.73 was overlapping on the boundaries of those survey numbers. Finally, the Joint Director of Regional Land Records, Mysore Division, has by allowing the revision application, cancelled the *durast* of Survey No.27 which was Survey No.73.

5. In other words, it is clear from above facts emerging that Survey No.73 is kept intact for the use of burial ground of particular community barring the portion use therefrom as road by the villagers even before the grant. Thus, the prayer about taking *durast* of 3 Acres and 10 Guntas stands explained. 1 Acre and 7 Guntas of land is used for public road out of 3 Acres and 10 Guntas as highlighted above. It was stated before the Court, there are 305 people of the community for whom land of the burial ground is adequate to be used.

6. It is observed however that the authorities shall always ensure the protection of use of extent of burial land, part of the area from being encroached upon by trespassers and encroachers.

7. For all the reasons, no case is made out to grant any relief in the present petition. The prayers are not well conceived, both on facts and in law. The petition is dismissed.

**Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K.V.ARAVIND)
JUDGE**

AHB