

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 10TH DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE MRS. JUSTICE K.S. MUDAGAL

AND

THE HON'BLE MR. JUSTICE ANIL B. KATTI

WRIT APPEAL NO.200007/2022

BETWEEN:

1. THE SECRETARY TO STATE GOVERNMENT
DEPARTMENT OF REVENUE,
M.S. BUILDING,
BENGALURU-01
2. THE DEPUTY COMMISSIONER,
BIDAR,
3. THE ASSISTANT COMMISSIONER,
BIDAR, D.C. OFFICE,
BIDAR
4. THE TAHASILDAR, BIDAR,
TAHASIL OFFICE,
BIDAR-585 401

... APPELLANTS

(BY SRI MALLIKARJUN C. BASAREDDY, GA)

AND:

1. SMT. NOORJAHAN BEGUM
W/O. MD. QAMRUDDIN,

AGED ABOUT 59 YEARS,
OCC: HOUSEHOLD,
R/O OUT SIDE SHAHA GUNJ,
BIDAR-585 401

2. THE DISTRICT WAKF OFFICER,
DISTRICT WAKF ADVISORY COMMITTEE,
BIDAR-585 401

... RESPONDENTS

**(BY SRI RAVI B. PATIL, ADVOCATE FOR R1;
SRI LIYAQAT FAREED USTAD, ADVOCATE FOR R2)**

This Writ Appeal is filed under Section 4 of the Karnataka High Courts Act, praying to call for records in the W.P. No.201968/2017 and to allow the appeal by setting aside the order of the learned Single Judge dated 05.03.2021 passed in W.P. No.201968/2017.

This appeal coming on for Preliminary Hearing, through physical hearing/video conference, this day **K.S. Mudagal, J.**, delivered the following:

JUDGMENT

1. Assailing the order of the learned Single Judge, the State - respondent Nos.1 to 4 in WP No.201968/2017 have preferred the above appeal.
2. The appellants were respondent Nos.1 to 4 and the present respondent No.1 was the petitioner and respondent No.2 was the 5th respondent in the said writ petition. For the purpose of convenience, the

parties would be referred to as per their ranks in the writ petition.

3. The petitioner purchased land bearing Survey No.59/1 measuring 2 acre 13 guntas situated within the limits of Naubad Village of Bidar District under a registered Sale Deed dated 24.07.1991 from one Abdul Rahim S/o. Shaikh Mahiam Saheb and Nagshetty S/o. Manikappa Hegge.
4. The land was said to be Ashurkhana Inam Land. As per Annexure-D to the writ petition the said land was granted in favour of one Hussain Khan S/o. Emam Khan under the Karnataka Certain Inam Abolition Act. He in turn sold the said property to the vendor of the petitioner. The said purchaser in turn sold the said property to the petitioner under Annexure - A the registered Sale Deed, 1991.
5. The land is situated within Bidar City Municipal Limits and covered under the residential zone Bidar Urban

Development Authority. The petitioner filed application before respondent No.2 - Deputy Commissioner on 25.07.2015 as per Annexure-F for conversion of land use from agricultural to non-agricultural purpose. The 2nd respondent did not pass any orders on the application.

6. On 04.07.2016, petitioner filed representation to the 2nd respondent by way of reminder seeking order on her application dated 25.07.2015. But no orders were passed on that. After more than 2 years of the application dated 25.07.2015, the 2nd respondent by an endorsement at Annexure - H dated 04.03.2017 rejected the application dated 25.07.2015 on the ground that the land in question is notified as Wakf property under notification dated 09.03.1973, therefore, the same cannot be converted.
7. The petitioner sought quashing of the said order in W.P. No.201968/2017 before the learned Single Judge, on the ground that such order is violative of

Section 95 of the Karnataka Land Revenue Act (for short '*KLR Act*'). The learned Single Judge relying on Section 95(5) of the KLR Act and the judgment of this Court in the case of ***S.M. Rudraswamy Vs. Deputy Commissioner***, reported ILR 1994 KAR 2958 and two other unreported judgments, allowed the writ petition.

8. Learned Government Advocate relying on the judgment of Supreme Court in ***Sayyed Ali And Ors vs. Andhra Pradesh Wakf Board, Hyderabad And Ors.***, submits that once the property is notified as the Wakf property, that is a permanent dedication.
9. Learned counsel for respondent No.1 relying on the judgment of the Division Bench of this Court in the case of ***Karnataka State Board Of Wakfs and Another vs. State of Karnataka and Others and connected matter in Writ Appeal No.5591/2011(GM-WAKF) connected with Writ Appeal No.379/2012 (GM-WAKF)*** submits that

the grant in favour of the original owner was 1987 and nobody has challenged the said order, therefore, the claim that the property is Wakf property is unsustainable. He further submits that Section 95(5) of KLR Act is mandatory provision and the Deputy Commissioner has no power to re-consider the matter after lapse of statutory period of 4 months.

10. Section 95(5) of KLR Act which is relevant for the purpose of this case, which reads as follows:

*"Where the Deputy Commissioner **fails to inform the applicant of his decision** on the application made under sub-section (2) **within a period of four months**, from the date of receipt of the application, the permission applied for **shall be deemed to have been granted.**"*

11. The reading of the above provision makes it clear that after filing of the application once the period of 4 months expires, the Deputy Commissioner ceases to have any jurisdiction over the matter. Under the

statute there is deemed conversion. Apart from that, the claim of respondent No.5 cannot be decided by the Deputy Commissioner once 4 months statutory period as prescribed under Section 95(5) of KLR Act, is over. Respondent No.5 has to work out its remedy in appropriate proceedings before the appropriate forum.

12. Under the above circumstances, the decision of the Supreme Court in **Syyed Ali** case cannot be pressed into service for the benefit of the respondents in the writ petition. Absolutely there are no grounds to interfere in the impugned order. Hence, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SBS*