

Khaja Pasha vs the State of Karnataka

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Court : Karnataka Orders

Decided On : Jun-28-2024

Judge : Chief Justice,K. V. Aravind

Appeal No. : WP/9532/2022

Appellant : Khaja Pasha

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2024 PRESENT THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE AND THE HON'BLE MR. JUSTICE K.V. ARAVIND WRIT PETITION NO. 9532 OF 2022 (LB-RES-PIL) BETWEEN:

1. KHAJA PASHA

S/O CHAND PASHA AGE: 45 YEARS OCC: BUSINESS R/O H.NO.5-993/21/24 UMAR COLONY KALABURAGI-585 104 Digitally signed by PRABHAKAR PETITIONER SWETHA (BY SRI MURALI N, ADVOCATE) KRISHNAN Location: High Court of Karnataka AND:

1. THE STATE OF KARNATAKA BY ITS PRINCIPAL SECRETARY URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA BENGALURU - 560 001 -2-
2. THE DEPUTY COMMISSIONER KALABURAGI DISTRICT KALABURAGI - 585 102
3. THE REGIONAL COMMISSIONER KALABURAGI DIVISION VIKAS BHAVAN REGIONAL OFFICE KALABURAGI - 585 102
4. THE KALABURAGI CITY CORPORATION KALABURAGI CITY REPRESENTED BY ITS COMMISSIONER - 585 102
5. FEROZ KHAN

S/O HABIB KHAN AGE: 48 YEARS OCC: CARPENTER R/O UMAR COLONY KALABURAGI - 585 104 RESPONDENTS (BY SMT.SHWETA KRISHNAPPA, AGA FOR R-1 TO 3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION MADE BY THE PETITIONER ON 23.03.2020 AT ANNEXURE-A AND TAKE NECESSARY ACTION IN ACCORDANCE WITH LAW AT THE EARLIEST AND ETC. THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING: -3-

ORDER

Heard learned advocate Mr. N. Murali for the petitioner and learned Additional Government Advocate Smt. Shweta Krishnappa for respondent Nos.1 to 3 who appears upon service of copy of the petition in advance.

2. It is the grievance of the petitioner that private respondent

No.5 has been illegally constructing building by encroaching upon the public road and the drainage lane or nala. The petitioner, in capacity of resident of the area, has already approached the respondent-authorities by making representation.

3. It is due to inaction on the part of the respondents in

responding to the representation, it is stated, that the petitioner has to approach this Court by filing this public interest litigation. It was submitted that respondent No.5 has no right to obstruct the drainage lane or nala. It was submitted that the act and conduct on the part of respondent No.5 is in violation of Section 284 of the Karnataka Municipal Corporations Act, 1976, which reads as under, -4-

Right of owners to require streets to be declared public-If any street has been levelled paved metalled, flagged, channelled, sewerred, drained, conserved and lighted under the provisions of section 283, such street shall, on the requisition of a majority of the owners referred to in sub-section (1) of that section, be declared as a public street.

3.1 It was submitted that the plot owner-respondent No.5 cannot encroach upon and construct the road and cover the drainage when the public at large has already been using the said drainage since years. It amounts to damage to public property, it was stated. 3.2 In the facts of the case, the Court is of the view that the purpose would be served if the petitioner is relegated to make a representation to the competent authority-respondent and the authority is directed to consider the grievance of the petitioner raised in the petition.

4. Accordingly, it is provided that it would be open for the

petitioner to make a representation to the competent authority- respondent which may be made within two weeks from today. 4.1 Once the representation is made, the competent authority- respondent shall consider the same addressing the grievance of the petitioner in accordance with law and take decision on merits. -5- 4.2 If any measures are necessary to be taken against the private respondent who is alleged to have been encroaching the drainage lane, the same shall be done in accordance with law. 4.3 This Court, however, does not express any opinion on the merits of the case of the petitioner. It is for the authority to examine the case of the petitioner and take appropriate recourse, if required.

5. The petition is disposed of in the aforesaid terms.

In view of disposal of the petition, the interlocutory applications would not survive and they stand accordingly disposed of. Sd/- CHIEF JUSTICE Sd/- JUDGE KPS
List No.: 1 SI No.: 5

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