

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 27TH DAY OF DECEMBER, 2011

B E F O R E

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

WRIT PETITION NO.19588/2010(LB-RES)

BETWEEN:

Anjuman-E-Islam,
No.16, Nehru Nagara,
Gokul Road Hubli.
Rep. by its President
Mohammed Yousuf C.Savanur

...PETITIONER

(By Sri Padmanabha Mahale, Sr. Advocate for
Sri F.V. Patil, Adv.)

AND:

1. Commissioner of Hubli Dharwad
Municipal Corporation,
Hubli.
2. Commissioner of Police
Hubli-Dharwad,
Navnagar, Hubli.

R2 has been deleted as per the
order dated 11.11.2011.

2. The State of Karnataka,
Rep. by its Chief Secretary,
Bangalore - 560 001.

R2 amended as per the order
dated 9.12.2011.

...RESPONDENTS

(By Sri M.R.Naik, Sr. Advocate for
Sri G.I. Gachchinamath, Adv. for R1;
Smt. K. Vidyavathi, AGA for R2;
Sri Suresh N.Kini, Adv. for impleading applicants)

This petition is filed under Articles 226 & 227 of the Constitution of India praying to direct the R1, to consider the representation of the petitioner dated 15.2.2010 and pass appropriate order in accordance with law.

This petition having been reserved, the Court made the following:

ORDER

This writ petition is by Anjuman-E-Islam, Hubli, by its President, to issue a writ of mandamus and direct the Commissioner of Hubli Dharwad Municipal Corporation ('HDMC' for short), to consider a representation dated 15.2.2010, as at Annexure-D and pass appropriate order.

2. The subject matter of the petition relates to a plot of land measuring about 4991 Sq.yards, bearing CTS No.174, now situated in the heart of Hubli City, on which a sacred wall "IDGAH", before which the Muslim community offers the prayers, exists. The said plot of land became



the root cause for a clash on 17.3.1972, between the members of the two communities, which resulted in bloodshed, loss of property and life. The said incident gave rise to the institution of a civil suit against the petitioner herein and 2 others. The suit having been decreed, Civil Appeals filed were dismissed by the Apex Court. Despite, 3 decades of litigation, during which period also there were clashes between the members of the two communities, unfortunately, the quietus has not been reached.

3. The petitioner having submitted a representation dated 15.2.2010, alleging inaction on the part of HDMC, filed this writ petition. In para 13 of the writ petition, reference has been made to a representative suit filed by the residents of Hubli City against the petitioner i.e., in O.S.No.359/1972 and also the appeals filed by the petitioner questioning the decree passed in the said suit. For the reasons best known to the petitioner, copies of the judgments/decrees passed in the said suit and the appeals filed thereagainst were not produced. Selected portions of



judgment dated 12.10.1982 passed in R.A.No.40/1982 by the learned II Additional Civil Judge, Hubli, was extracted. By an order dated 20.8.2010, the petitioner was directed to produce the judgments passed by the Civil Courts, High Court and the Supreme Court. The petitioner and the respondents have placed on record the said judgments and decrees.

4. An application was filed on 27.8.2010 by certain residents of Hubli City, seeking impleading as additional respondents. In view of the objections raised by the petitioner for the impleading, it was decided to hear the application along with the main matter. However, the applicants were permitted to file objections, if any. The applicants/proposed additional respondents, filed statement of objections to the writ petition on 23.9.2010.


5. The 1st and 2nd respondents have filed separate statements of objections on 6.9.2010. Additional statement of objections was filed by the 1st respondent on 12.12.2011.



6. The petitioner filed a memo dated 11.11.2011, seeking permission to delete respondent No.2, by stating that no relief is sought against respondent No.2 and hence, is not a necessary party to the writ petition. Memo was placed on record and respondent No.2 was deleted. I.A.1/2011 was filed on 15.11.2011 by certain other residents of Hubli City for impleading them as additional respondents in the writ petition.

7. Sri Padmanabha Mahale, learned Sr.Advocate for the petitioner, on 11.11.2011, submitted that the matter is urgent and should be taken up immediately for consideration.


8. Preliminary submissions of the learned counsel on both sides were heard on 9.12.2011. Considering the background of the case, noticed supra, Government of Karnataka, represented by the Chief Secretary, was directed to be impleaded as respondent No.2 and the learned AGA was directed to accept notice. State of Karnataka was impleaded.



9. On 14.12.2011, arguments of the learned counsel on both sides was heard in part. Since the hearing could not be concluded even at 6.30 p.m., the matter was adjourned to 19.12.2011. On 19.12.2011, the 1st respondent filed memo of submissions, accompanied by copies of 2 communications and photographs of the property. Arguments of the learned counsel on both sides were heard in full. For want of time, order could not be dictated.

10. On 22.12.2011, petitioner has filed memo to withdraw the writ petition, without prejudice to its rights and interest. On the same day, to the said memo, the 1st respondent filed statement of objections.

11. On behalf of the petitioner, on 14.12.2011, Sri Padmanabha Mahale, learned Sr.Advocate submitted the arguments at length. Sri Madhusudan R Naik, learned Sr.Advocate appeared for the 1st respondent and submitted the reply arguments. Arguments of the learned Sr.Advocates being inconclusive even at 6.30



p.m., the petition was adjourned. On 19.12.2011, Sri F.V. Patil, learned Advocate appeared for the petitioner and submitted further arguments and Sri Madhusudan R Naik, learned Sr.Advocate replied. On behalf of the impleading applicants, Sri Suresh S Kini and Sri M.B.Nargund, learned Advocates, were heard on the legal issues.

12. Indisputably, O.S.No.359/1972 against HDMC, State of Mysore and the petitioner/defendants No.1 to 3 respectively, was decreed on 7.2.1973, by the learned II Additional Munsiff, Hubli. The said judgment and decree was questioned by the petitioner by filing R.A.No.40/1974, in the Court of II Additional Civil Judge at Hubli. The Karnataka Board of Wakfs got itself impleaded as an additional appellant. The said appeal upon hearing and consideration was allowed in part and the judgment and decree passed by the Trial Court was modified. The suit was decreed with costs. The orders passed by the 2nd defendant in the suit, on 9.2.1961 and 8.1.1962, were declared as illegal, ultravires, void and the transaction



between defendants No.1 and 3 under the deed dated 30.3.1962 as not binding on the public within the limits of the 1st defendant Municipal Corporation. The 3rd defendant i.e., the petitioner herein, was ordered to remove the building constructed by it on the suit property within 45 days period and in case of default, the plaintiffs were held entitled to get the same removed with the assistance of the Court, at the cost of the 3rd defendant i.e., petitioner. The petitioner which was the 3rd defendant in O.S.359/1972 and appellant in R.A.No.40/1974, questioned the said decrees by filing RSA No.754/1982. The Karnataka Board of Wakfs by its Secretary filed RSA No.1/1983. Both the appeals having been consolidated and heard was dismissed on 18.6.1992. The said decrees were questioned by the said appellants by filing SLP Nos.10584/1992 and 11692/1992. Leave having been granted, the petitions were registered as Civil Appeal Nos.1919/1995 and 1020/1995. A Cross objection filed, was registered as Civil Appeal No.1021/1995. All the 3 appeals were dismissed by the Apex Court, by an order



dated 13.1.2010. Thus, the decree passed against the petitioner in R.A.No.40/1974 dated 12.10.1982, by the II Additional Civil Judge, Hubli, has attained finality.

13. Challenging a communication dated 23.1.2010 of the Government of Karnataka, wherein, the Commissioner of HDMC was directed to hoist the National Flag in Hubli Idgah Maidan, on the Republic Day i.e., 26.1.2010, the petitioner filed W.P.No.60316/2010. Finding that, Hubli Idgah Maidan belongs to the HDMC, the writ petition was dismissed on 25.1.2010.

14. Concededly, the plot in question belongs to HDMC. In the civil side litigation noticed supra, it has been held that, Ex.D1 i.e., (Annexure-C), was a licence and that, neither the general public nor Muslim community in particular, acquired right over the property by way of user from time immemorial or by dedication, express or implied. It has been further held that, the property belongs to HDMC and it has every right to deal with the



property for the purpose of, and not inconsistent with the Municipal law, by which, it is governing.

15. Having noticed that the Idgah Maidan, which is in the heart of the City, has become a source of nuisance, filthy and breeding source for mosquitoes and that the Idgah Maidan not only needs but essentially required to be maintained clean and mosquito free, in order to carry out its essential duties and obligations towards public life and health and to protect the environment of the city which would also enhance the beauty and utility value of the maidan, the HDMC, on 28.10.2006, sought co-operation of the petitioner, to carry out the work of paving the entire Idgah maidan area. The petitioner, on 1.11.2006, declined to extend co-operation, by making reference to an interim order of status-quo passed in C.A.No.1019/1995.

16. On behalf of the petitioner, its learned Sr.Advocate insisted that the matter should be taken up immediately for consideration and decided. In view of the request, despite the heavy work load, the matter was taken up for hearing. Arguments were addressed on behalf



of the petitioner by Sri Padmanabha Mahale, learned Sr.Advocate and Sri F.V.Fatil, learned Advocate, at great length. Sri Madhusudan R Naik, learned Sr.Advocate submitted the reply arguments at length. Even Sri Suresh S Kini and Sri M.B.Nargund made extensive submissions on legal aspects of the matter.

17. The matter would have been decided on its merit, but for a memo dated 21.12.2011, filed on 22.12.2011 by the petitioner seeking withdrawal of the writ petition. Even after the memo of submissions was filed by the 1st respondent on 19.12.2011, Sri F.V.Patil by placing reliance on certain case laws, made submissions at length, on the merit of the matter. This petition not only contributed to the work load of the Court but also consumed substantial time and came in the way of the genuine cases which need assistance of the Court for doing justice being decided.

18. The act of the petitioner in filing the memo to withdraw the writ petition, after conclusion of the hearing



of the case is nothing but wasting judicial time and an abuse of process of law. There is want of bona fides on the part of the petitioner. For wasting judicial time and abuse of process, the petitioner deserves to be imposed with exemplary cost. However, I refrain from imposing cost, with the fond hope, that atleast henceforth, the petitioner would not file unwarranted cases and give room for any abuse of law and process of the Court, since no litigant has a right to unlimited drought on the Court time and public money, in order to get the affairs settled in the manner he petitioner wishes.

In the result, memo of the petitioner withdrawing the writ petition is placed on record and the writ petition stands dismissed as not pressed.

Consequently, the pending applications for impleading do not survive for consideration.

**Sd/-
JUDGE**

Ksj/-