

N. Ereshi Vs. State of Karnataka, Rep. by Police Sub-inspector, Karnataka Lokayukta, Bellary

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Court : Karnataka Dharwad

Decided On : Dec-19-2011

Judge : Mohan Shantanagoudar & Ravi Malimath

Appeal No. : Criminal Petition No.10853 of 2011

Appellant : N. Ereshi

Respondent : State of Karnataka, Rep. by Police Sub-inspector, Karnataka Lokayukta, Bellary

Advocate for Pet/Ap. : For the Petitioner: Hegde Neeralgi, Patil, Advocates. For the Respondent: M.B. Gundawade, Advocate.

Judgement :

Mohan Shantanagoudar, J

1. The records are placed before us to decide the following issue:

“Whether the licenced surveyor appointed under Section 18A of the Karnataka Land Revenue Act, 1964, can be said to be a “public servant” as defined under Section 2 of the Prevention of Corruption Act, 1988”.

(1) Brief facts leading to the reference to this Bench are as under:

1(a) The petitioner was appointed as a licenced surveyor under Section 18-A of the Karnataka Land Revenue Act, 1964. One Mr. Jagadish lodged the information alleging that the petitioner demanded a sum of Rs.2,500/- as illegal gratification for the official work of issuance of the survey sketch relating to Sy.Nos.31 and 32 of H. Veerapur village.

On 15-6-2011, a successful trap was laid on the basis of the said information, wherein the petitioner was caught red handed while accepting a bribe of Rs.2,500/- from said Jagadish. Further proceedings continued. Being aggrieved by the prosecution, the petitioner filed a petition under Section 482 of the Code of Criminal Procedure before this Court in Criminal Petition No.10853/2011 and prayed for quashing the proceedings pending before the Special Judge and Sessions Judge, Bellary in Lokayukta PS Crime No.5/11 registered for the offences punishable under Sections 7 and 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act.

It is contended by the Petitioner that he is not a “public servant” as defined under the provisions of Prevention of Corruption Act, 1988 and consequently, he is not liable to be prosecuted under the provisions of Prevention of Corruption Act, 1988.

1(b) Learned Judge while hearing the Criminal Petition came across two judgments rendered by two Learned Judges of this Court which are conflicting with each other. The said judgments are;

a. Judgment dated 23-5-2011 in Criminal Petition No.15283/2011

b. Judgment dated 19-7-2011 in Criminal Petition No.3372/2011 and

In Criminal Petition No.15283/2011 Learned Judge of the Court has held that the licensed surveyor cannot be prosecuted under the provisions of Prevention of Corruption Act, inasmuch as he cannot be construed as a public servant. While concluding so, the following observations are made:

“In the instant case the petitioner is not paid or remunerated by the Government. He is only a licensed surveyor. The petitioner also cannot be said to hold a public office within the meaning of Section 2(c)(viii). The petitioner being a licensed

surveyor, if he is charging the fee in excess of the prescribed fee, the authorities concerned can revoke his licence. The illegal demand of excess fee for conducting survey would only enure civil consequence of revoking the licence and at any rate the petitioner cannot be considered as a public servant and he cannot be prosecuted under the Prevention of Corruption Act.”

In Criminal Petition No.3372/2011, another Learned Judge of this Court took a diametrically opposite view to conclude that the licensed surveyor appointed under Section 18(A) of the Karnataka Land Revenue Act is a public servant and is liable to be prosecuted under the provisions of the Prevention of Corruption Act. While concluding so, the following observations were made:

“5. Reading of the aforesaid provisions, indicate that any person in the service or pay of the Government or remunerated by the Government by fees, would fall within the definition of public servant as per sub-Clause (viii) if any person who holds an office by virtue of which he is authorised or required to perform any public duty also fall within the definition of public servant. No doubt in the case on hand, petitioner having been appointed as licensed surveyor under Section 18(A) of the Karnataka Land Revenue Act cannot be said as a person in the service of Government or pay of the Government. However, persons like petitioner appointed as licensed surveyor are remunerated by the Government by fees as is evident from the provisions of the Rule 46(E) of Karnataka Land Revenue Rules, 1999. Fee payable to the work rendered by the licensed surveyor is fixed by the Government and for the work turned out by such licensed surveyor, they are remunerated by the fee prescribed under Rule 46(E) the licensed surveyor hold an office by virtue of such appointments and he is authorised or required to perform public duty of conducting survey and preparing survey sketches. Therefore, in my considered opinion, licensed surveyor appointed under Section 18(A) of the Karnataka Land Revenue Act would be public servant within the meaning of sub-Clause (I) and (viii) of Clause (c) of Section 2 of the PC Act. Explanations (1) and (2) to Section 2 makes this position further clear. As per explanation (1), persons falling under any of the above sub-Clauses are public servants, whether appointed by the Government or not. As per explanation (2), wherever the words “Public Servant” occur, they shall be understood as every person who is in actual

possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Thus from the above explanations, it is clear that even if a person is not appointed by the Government and if he falls within any one of the category mentioned in sub-Clause (1) to (xii) of Clause (c) of Section 2, they would answer to the definition of Public Servant.”

1(c) It is relevant to note that both the Learned Judges have taken into consideration the provisions of Karnataka Land Revenue Act and the Rules framed thereunder as also Sections 2(c)(i) to (viii) of the Prevention of Corruption Act while coming to the conclusion. In view of such conflicting views, the aforementioned issue as raised in Criminal Petition No.10853/2011 and the matter is referred to the Division Bench for decision on the issue.

2. For considering the aforementioned issue referred to us, it is necessary to refer to certain of the provisions of the Karnataka Land Revenue Act and Karnataka Land Revenue Rules framed thereunder is also the Prevention of Corruption Act.

Section 18-A of the Karnataka Land Revenue Act, 1964 reads thus:

“18-A. Appointment of Licensed Surveyors:- (1) The Director of Survey Settlement and Land Records may, for the purposes of the third proviso to Section 128 and of Clause (c) of Section 131, issue, with the prior approval of the State Government and subject to such conditions and restrictions and in such manner as may be prescribed, a licence to any person (hereinafter referred to as the ‘Licensed Surveyor’) possession the prescribed qualifications and experience.

(2) The fee payable to a Licensed Surveyor shall be as maybe prescribed.”

2(a) Section 18-A is inserted by Amendment Act No.14 of 1999 with effect from 30th April, 1999. The object for the said amendment is as under:

Amending Act 14 of 1999 - Some more than three lakhs of mutation phody cases are pending for measurement and many cases are pending disposal due to change of survey numbers, variation of extend and other reasons. It is considered necessary to entrust the work of preparing sketch of the properties of private surveyors (who will be called as Licensed Surveyors) who shall possess such

qualifications and experience, as may be prescribed by inserting a new section to Karnataka Land Revenue Act, 1964.

It is also proposed, by amending Sections 128 and 131 of the said Act, to make it obligatory for any person reporting acquisition of right in a partition, in respect of land and any person alienating any land, that is part of a survey or sub-number, to get a sketch of the said property prepared by a Licensed surveyor.

From the above, it is clear that in order to clear the pending phody cases of about 3 lakhs with regard to measurement, survey sketch, change of survey numbers etc., licensed surveyors possessing requisite qualification and experience are appointed. The licensed surveyors are required to perform the statutory duty of preparing survey sketches of the properties for the purposes of effecting the changes in the revenue records maintained for public purposes. Section 18-A(1), further makes it clear that licensed surveyors are appointed for the purposes of third proviso to Section 128 and of Clause (c) of Section 131 of the Karnataka Land Revenue Act, 1964. Section 18-A(2) mandates that the prescribed fee shall be paid to the licensed surveyors.

2(b) Section 128 of the Karnataka Land Revenue Act reads thus:

“128. Acquisition of rights to be reported.- (1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgage, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Prescribed Officer of the village within three months from the date of such acquisition, and the said Officer shall at once give a written acknowledgement of the receipt of the report to the person making it.

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Prescribed Officer.

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the Prescribed

Officer.

[Provided also that any person reporting under this sub-section the acquisition by him of a right in partition in respect of the land shall annex with the report a sketch showing the metes and bounds and other prescribed particulars of such land and such person shall get the sketch prepared by a Licensed Surveyor.]”

2(c) Section 131 of the Karnataka Land Revenue Act reads thus:

“131. Requisition of assistance in preparing Maps.- Subject to rules made in this behalf by the State Government.-

(a) Any Revenue Officer or Prescribed Officer may for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this Chapter, exercise any of the powers of a Survey Officer under Section 107, except the power of assessing the cost of hired labour; and

(b) Where the preparation or revision of such map is made on the application of any person, any Revenue Officer of a rank not lower than that of an Assistant Commissioner or of a Survey Officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses including the cost of clerical labour and supervision, and such costs shall be recoverable from such person as an arrear of land revenue.

(c) Any person while reporting acquisition by him of right in accordance with the third proviso to sub-Section (1) of Section 128 or any person alienating any land that is part of the survey or sub-number shall get a sketch of the said property prepared by a licensed surveyor, for the purpose of presenting the deed before the registering authority.”

2(d) Combined reading of Sections 128 and 131 of the Karnataka Land Revenue Act makes it amply clear that statutory duty of preparing survey sketches is assigned to the licensed surveyors. Prior to coming into force of Section 18-A of Karnataka Land Revenue Act (relating to licensed surveyors), the very work of preparing survey sketches was being performed by the surveyors of the Survey Department appointed by the State Government. The State Government having

found that the existing staff in the Survey Department is not sufficient to cope up with pending work of preparing survey sketches of the properties, thought fit to entrust the work of preparing sketches in favour of the licensed surveyors. Thus, what is assigned to the licensed surveyors is the statutory and official duty of preparing survey sketches under the provisions of the Karnataka Land Revenue Act and the rules framed thereunder:

2(e) It is also relevant to note that Rule 46-A of the Karnataka Land Revenue Rules, 1966 deals with qualification, experience and age for obtaining license as a licensed surveyor. Rule 46-B mandates that all the persons who apply for license have to compulsorily undergo training for three months and pass such examination conducted by the Survey Settlement Training Institute of Mysore (by the Government) once in a year, as may be notified. License shall be issued by the Director of Survey, Settlement and Land Records, Bangalore under Rule 46-C to the successful candidates in the examination conducted by the aforementioned institute on payment of fee of Rs.1,000/- for a period of one year subject to renewal every year. The register of the licensed surveyors is maintained under Rule 46-D of the Rules by the Director of Survey Settlement and Land Records. Rule 46-E prescribes the fee of Rs.300/- to be paid to licensed surveyors for preparing the sketch in accordance with Sections 129 and 131 of Karnataka Land Reforms Act. The jurisdiction of the licensed surveyors also shall be specified in the license as per Rule 46-F of the Rules. Rules 46-G, 46-H, 46-I and 46-J of the Rules 1966, prescribe the particulars to be contained in the survey sketch, work specification, scrutiny of the records given by the licensed surveyors and post registration work in Taluk Survey Office etc., Rule 46-K of the Rules, 1966 specifies that the license issued to the licensed surveyors under Rule 46-A of the Rules shall be cancelled if the licensed surveyors contravene any of the provisions of the Act or the Rules after giving an opportunity of being heard to them.

3. Rules 46-A to 46-K of the Karnataka Land Revenue Rules if read jointly and homogeneously with Sections 18-A, 128 and 131 of the Karnataka Land Revenue Act, would make amply clear that all the activities of the licensed surveyors relating to discharging of statutory duties are controlled by the Survey Department of the State Government. As aforementioned, qualification, experience and age for

obtaining license as a licensed surveyors, training to be undertaken by the licensed surveyors for getting the license; getting through the examination conducted by Survey Settlement Training Institute of Mysore every year; prescribing the fees to be paid to the license surveyors; cancellation of license etc., is done and carried out by the State Government. Even the jurisdiction of the licensed surveyor is specified in the license issued by the State Government. Thus, it is clear that the licensed surveyors are not only to aid and assist the State Government in its statutory functions, but are also controlled by the State Government in their functioning as licensed surveyors. Thus, the licensed surveyors cannot be termed as mere contractors bound by their engagements, but they are the licencees who are bound by the terms of the office as a licensed surveyors. Hence, under any stretch of imagination, the licensed surveyors cannot be equated to the private surveyors who have no license by the State Government. Therefore, it is not open for the licensed surveyors to presume that the duties which they perform are mere contractual duties fraudulent deception in the discharge of which might subject them to punishment for cheating or for cancellation of license only. On the other hand, failure to perform the duties with required integrity as entrusted to the licensed surveyors would make them liable to special penalties prescribed for delinquent public servants under the provisions of the Prevention of Corruption Act, 1988.

4. State Government has bestowed upon the licenced surveyors of its statutory work of preparing survey sketches. It is more than clear from the aforementioned provisions that the licensed surveyors are performing the solemn statutory duties/public functions of preparing survey sketches and they are fully under the supervision and control of the Survey Department of the State Government.

5. Section 2(c)(i) and (viii) of the Prevention of Corruption Act, 1988 defines "Public Servant" as under"

Section 2(c) "public servant" means-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) to (vii) xxxxx

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

From the aforementioned provisions, it is clear that any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of public duty is a public servant. In the matter on hand, the licensed surveyors are not paid fees by the State Government, but are paid fees by the persons on whose request survey sketch is prepared under Sections 128 and 131 of the Karnataka Land Revenue Act. As aforementioned fee of Rs.300/- is prescribed by the State Government to be paid to the Surveyors by a private person on whose request survey sketch is prepared. Hence the licenced surveyors may not fall within the ambit of Section 2(i) of the Prevention of Corruption Act.

5(a) However, the licensed surveyors will definitely come within the definition of “public servant” as found under Section 2(c)(viii) of the Prevention of Corruption Act, 1988. Under Sub-clause (viii), any person who holds an office by virtue of which he his authorised or required to perform any public duty, is a public servant. As observed by us supra, the licensed surveyors are required to perform the public duty of preparing survey sketches entrusted to them by virtue of they being the licenced surveyors appointed under the Statue, i.e., under the provisions of Karnataka Land Revenue Act. Therefore, the licenced surveyors squarely falls within the definition of public servant as he is performing the public duty.

5(b) It is further relevant to note the definition of “public duty” as found in Section 2(b) of the Prevention of Corruption Act, 1988 which reads thus:

“Section 2(b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.”

From the above it is clear that the public duty means a duty in the discharge of which State, the public or the community at large has an interest. As aforementioned, the State itself, by virtue of the statute has entrusted public duty to the licensed surveyors. Hence not only the community at large but also the

State has an interest in discharging of the duties to be performed by the licensed surveyors. In view of the same it cannot be said that the licensed surveyors are not “public servants” within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988. The licensed surveyors are not mere contractors bound by their engagements. They are definitely bound by the terms of their office as licenced surveyors.

5(c) For the aforementioned reasons, we hold that the licensed surveyors appointed under Section 18-A of the Karnataka Land Revenue Act, 1964 are the public servants as defined under Section 2(c) of the Prevention of Corruption Act, 1988. Hence, the dictum laid down in CrI.P.No.15283/2011 disposed off on 23-5-2011 is not a good law.

6. In view of the above, we answer the issue referred to the Division Bench as under:

“The licensed surveyor appointed under Section 18-A of the Karnataka Land Revenue Act, 1964, is a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988.”

Reference is answered accordingly.

Post the Criminal Petition before the bench having roster for hearing.

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