

(2016) 07 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition Nos. 25078 to 25080 of 2016 (GM-KLA)

Subhindra A. Gumaste

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Karnataka Lokayukta Act, 1984 — Section 12(3), 8(1)

Citation : (2016) 6 KantLJ 148

Hon'ble Judges : Mohan M. Shantanagoudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Sri Rajendra C. Desai, Advocate, for the Petitioners; Sri Vijaykumar Patil, Additional Government Advocate, for the Respondent Nos. 1 and 4; Sri G. Devaraj, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Allowed

Judgement

Mohan M. Shantanagoudar, J. - The investigation report dated 6-5-2013 issued by the Karnataka Upa-lokayukta under Section 12(3) of the Karnataka Lokayukta Act, 1984 and the order dated 19-7-2013 passed by the State Government entrusting the enquiry to the Upa-lokayukta in respect of the allegations against the petitioners, are called in question in these writ petitions.

2. The records reveal that the complaint came to be lodged before Karnataka Lokayukta by Mr. Saheboddin Abdul Saheb Horti, R/o Habib Nagar of Jorapurpet, Bijapur against the petitioners herein alleging that the entries are changed in favour of the decree-holders in O.S. No. 33 of 2000 and O.S. No. 69 of 2003 passed by the Principal Civil Court (Senior Division), Bijapur in respect of the land bearing Sy. No. 387, without notice to the complainant. The complaint filed before the Karnataka Lokayukta was investigated into by Upa-lokayukta and the report came to be filed on 6-5-2013 under Section 12(3) of the Karnataka Lokayukta Act, 1984. Such report was sent by Upa-lokayukta to State Government for further orders. The State Government passed the order on 19-7-2013 as per Annexure-B entrusting the enquiry to the Upa-lokayukta under

Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Questioning the order dated 19-7-2013 petitioners herein approached the Karnataka Administrative Tribunal, Bangalore in Application No. 9533 of 2014 and connected matters, which came to be dismissed on 12-2-2016. As against the order of the Tribunal dated 12-2-2016, the petitioners approached this Court in W.P. Nos. 15060 to 15062 of 2016 (S-KAT), which came to be dismissed by order dated 30-3-2016 with certain observations, which read thus:

"7. At this stage, learned Counsel for the petitioners submitted that the petitioners may be permitted to challenge the order of the Lokayukta in separate proceedings. Hence, we refrain from making any observation, as, of now, there is no challenge brought before this Court. In the event any challenge is made before this Court, the rights and contentions of both sides shall remain open."

(emphasis supplied)

From the aforementioned observations it is clear that the Division Bench of this Court kept the option of the petitioners open to challenge the report filed under Section 12(3) of the Karnataka Lokayukta Act. Thus, the petitioners herein have filed these writ petitions questioning the report of the Karnataka Lokayukta filed under Section 12(3) of the Karnataka Lokayukta Act as also the subsequent proceedings.

3. As mentioned supra, the complaint came to be lodged by Mr. Saheboddin Abdul Saheb Horti against petitioners herein and who are the officials of Revenue Department with an allegation that the entries are made in favour of the decree-holders in O.S. No. 33 of 2000 and O.S. No. 69 of 2003 without notice to the complainant. The report under Section 12(3) of the Karnataka Lokayukta Act itself makes it clear that the entries are made pursuant to the decree passed in O.S. No. 33 of 2000 and O.S. No. 69 of 2003 passed by the Principal Civil Judge (Senior Division), Bijapur. It is but natural and legal that the entries shall be changed for complying with the order of the decree of the Civil Court. However, notice was not issued to the complainant while changing the entries pursuant to the decree. It is further relevant to note that as against the decree passed in O.S. No. 33 of 2000 and O.S. No. 69 of 2003, the judgment-debtors have filed R.A. No. 149 of 2008 and R.A. No. 150 of 2008 before the III Additional District Court, Bijapur, which came to be compromised between the parties in the civil suits/appeals on 7-2-2012. Thus, it is clear that the parties to the civil litigation have compromised the matter inter se and are living amicably. None of the parties including the complainant (who lodged complaint before Lokayukta) in the Civil Court have got any grievance against the petitioners herein as of now. Moreover, all the entries in the revenue records are necessarily to be changed pursuant to the decree passed in civil suit. It is the law of the land.

4. It is not in dispute that the entries in the revenue records are made as per the provisions of Section 129(4) of Karnataka Land Revenue Act, 1964 (in short "Act") and the same are certified by the Prescribed Officer under Section 129(6)

of the Act. If any party is aggrieved by such entries made and certified as mentioned supra, it is open for the aggrieved party to file appeal under Section 136(2) of the Act.

Moreover, even if any person is aggrieved by the entries made in the record of rights prepared and maintained as per Section 127 of the Act or if is aggrieved by the order in respect of registration of mutations under Section 129 of the Act, such aggrieved party may make an application before the Deputy Commissioner which will be treated as revision petition. The Deputy Commissioner may even suo motu revise such order pertaining to Sections 127 and 129 of the Act after hearing all the concerned parties.

From the above, it is clear that adequate appellate or revisional remedies are provided to the aggrieved party to question the defective revenue entries, if any.

5. At this stage, it is also relevant to note the provisions of Section 8(1) of the Karnataka Lokayukta Act, 1984, which read thus:

"8. Matters not subject to investigation.-(1) Except as hereinafter provided, the Lokayukta or an Upa-lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action.-

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any Tribunal, Court officer or other authority and has not availed of the same."

A bare reading of Section 8(1) of the Karnataka Lokayukta Act makes it clear that, in case, if the complainant has or had any remedy by way of appeal, revision, review or other proceedings before any Tribunal, or other authority and has not availed of the same, it is not open for the Lokayukta or Upa-lokayukta to conduct investigation under the Act in such matters.

In the matter on hand, even assuming that the judgment-debtors in O.S. Nos. 33 of 2000 and 69 of 2003 were aggrieved by the entries made in the revenue records, they should have filed appeal before the Appellate Authority for questioning such entries. Since the alternative remedy of appeal is provided under the provisions of the Karnataka Land Revenue Act, 1964, the Upa-lokayukta ought not to have proceeded to investigate into the matter since there is a clear bar for the Upa-lokayukta to enquire/investigate under Section 8(1) of the Lokayukta Act in such matters.

6. Looking to the aforementioned facts, it is amply clear that there was no intention/malice on the part of the petitioners in not issuing notice to the judgment-debtors, inasmuch as, the petitioners being the officers of the State with an anxiety to comply with the decrees of the Civil Court have changed the entries pursuant to the decrees passed in the civil suits. Subsequently, the civil matter has ended in compromise before the Appellate Court also. Since we find

that there was no intention/mens rea/malice on the part of the petitioners, as the entries are changed pursuant to the decrees of the civil suits and as there is clear bar for the Upa-lokayukta to investigate into such matters (as mentioned supra), we conclude that the investigation report of Upa-lokayukta is liable to be set aside.

7. Accordingly, the report submitted under Section 12(3) of the Karnataka Lokayukta Act stands set aside. Consequently, all further proceedings including the enquiry proceedings before the Upa-lokayukta, also stand quashed.

8. Accordingly, writ petitions are allowed.