

STATE THROUGH LOKAYUKTA POLICE, RAICHUR

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v.

C. N. MANJUNATH

(Criminal Appeal No. 1140 of 2016)

NOVEMBER 22, 2016

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[A. K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Prevention of Corruption Act, 1988: s.2(c) – Public servant – Whether the respondent who was appointed as licenced surveyor u/s.18A of the Karnataka Land Revenue Act, 1964, would be treated as “public servant” for the purposes of Prevention of Corruption Act, 1988 – Held: The licensed surveyors are different from those private surveyors who have no license from the State Government – Survey report prepared by these persons is duly acted upon, on the basis of which Government functionaries take further action – Thus, statutory work of preparing survey sketches is bestowed upon these licensed surveyors and thus, they are performing statutory duty/ public functions.

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Disposing of the appeals, the Court

HELD: Once the nature of performance of duties gets crystallized, no doubt remains that these licensed surveyors would come within the ambit of Section 2(c) of the Prevention of Corruption Act. In the duties that are to be discharged by these public surveyors, the State or the public has interest therein. It is more so, when these public surveyors are bound by the terms of their office as licensed surveyors, viz., the terms on which they are given license by the Government. [Paras 9, 10] [810-F-G; 811-C]

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CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1140 of 2016.

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From the Judgment and Order dated 23.05.2011 of the High Court of Karnataka, Circuit Bench at Gulbarga in Criminal Petition No. 15283 of 2011

WITH

Criminal Appeal Nos. 89 and 113-114 of 2017.

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A Nagmohan Das, Sr. Adv., Ms. Anitha Shenoy, T. V. Ratnam, Shashibhushan P. Adgaonkar, Ms. Pradnya S. Adgaonkar, Ms. Priya Aristotle, Ms. K. Priyadarshini, J. Aristotle S., V. N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Advs. with him, for the appearing parties.

The Judgment of the Court was delivered by

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A. K. SIKRI, J. 1. Leave granted.

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2. The issue involved in these appeals is as to whether the respondent who was appointed as licenced surveyor under Section 18A of the Karnataka Land Revenue Act, 1964, (hereinafter referred to as 'Act') would be treated as "public servant" for the purposes of Prevention of Corruption Act, 1988. There was a difference of opinion expressed by the different Benches of the High Court and, therefore, the matter was referred to the larger Bench. The Division Bench vide its judgment dated 29th November, 2011 in Criminal Petition No. 10853 of 2011 resolved the issue by holding that such a licenced surveyor would be treated as a 'public servant' as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The material portion of the said judgment reads as under: -

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"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 as also the Prevention of Corruption Act. Section 18-A of the Karnataka Land Revenue Act, 1964 reads thus:

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"18-A. Appointment of Licensed Surveyors: -

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(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, issued 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") possessing the prescribed qualifications and experience.

(2) The fee payable to a Licensed Surveyor shall be as may be prescribed"

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2(a). Section 18-A is inserted by Amendment Act No. 14 of 1999

with effect from 30th April, 1999. The object of the said amendment is as under: A

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 extent 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. B
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It is also proposed, by amending Section 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. D

Hence the Bill.”

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 18A(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 paid to the licensed surveyors.” E
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3. The High Court also took into consideration the provisions of Section 128 and 131 of the Karnataka Land Revenue Act and distilled the legal position in the following manner:

“2(d) Combined reading of Sections 128 and 131 of the Karnataka H

A 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 Sec. 18-A of Karnataka Land
Revenue Act (relating to licensed surveyors), the very work of
B 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
C 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.

D 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.
E 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
F 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
G 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. Rule 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

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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” A

4. Against the aforesaid judgment of the Division Bench of the High Court, Criminal Appeal Nos. 113-114 of 2017 (arising out of SLP (Criminal) Nos. 6191-6192 of 2012), have been filed. B

5. For the purpose of deciding these appeals, we take note of the facts from Criminal Appeal No. 1140 of 2016 (arising out of SLP (Criminal) No. 3584 of 2012). C

6. Insofar as Criminal Appeal No. 1140 of 2016 is concerned, the Single Judge of the High Court has taken a contrary view holding that Surveyor is not a public servant. Thus, in all these cases, the issue is as to whether Surveyor under Section 18A of the Karnataka Land Revenue Act would be treated as “public servant” for the purposes of Prevention of Corruption Act, 1988. D

7. After hearing learned counsel appearing for both the parties, we are of the opinion that such a licensed surveyor is to be treated as public servant. For this purpose, we are entirely in agreement with the view taken by the Division Bench as extracted above. We may mention that different Single Judge Benches of the Karnataka High Court had conflicting views and, for this reason, the matter was referred to the Division Bench which has been answered, by the judgment dated 29th November, 2011 as noted above, holding licensed surveyor to be a public servant under Section 2(c) of the Prevention of Corruption Act. For this purpose, the High Court, after taking note of the provisions of Section 128 and 131 of the Act, came to the conclusion that these surveyors discharge statutory duty of preparing survey sketches. Such a function was earlier performed by the surveyors of the Survey Department appointed by the State Government. As these Government surveyors were over-burdened with the work, Karnataka Land Revenue Act was amended by inserting Section 18A therein and the work was assigned to these licensed surveyors. All the activities of the licensed surveyors relating to discharging of statutory duties are controlled by the Survey E
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A Department of the State Government. The High Court has observed as under:

B “...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.

C Thus, it is clear that the licensed surveyors are not only to aid and assist 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.”

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8. This legal position is curled out from Rule 46-A to 46-K of the Karnataka Land Revenue Rules, read conjointly with Sections 18-A, 128 and 131 of the Act. The aforesaid facts and legal position unambiguously leads to the conclusion that these licensed surveyors are different from those private surveyors who have no license from the State Government. Once survey report is prepared by these persons, the same is duly acted upon, on the basis of which Government functionaries take further action. It is, thus, statutory work of preparing survey sketches which is bestowed upon these licensed surveyors and thus, they are performing statutory duty / public functions.

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9. Once the nature of performance of duties gets crystallized, no doubt remains that these licensed surveyors would come within the ambit of Section 2(c) of the Prevention of Corruption Act and particularly clause (i) and (viii) thereof, which defines public servant to mean:

G “Section 2(c)

“(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;

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(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty.” A

We would also like to refer to the definition of ‘public duty’ as contained in Section 2(b) of the Prevention of Corruption Act, which reads as under: -

“‘public duty’ means a duty in the discharge of which the State, the public or the community at large has an interest.” B

10. Obviously, in the duties that are to be discharged by these public surveyors, the State or the public has interest therein. It is more so, when these public surveyors are bound by the terms of their office as licensed surveyors, viz., the terms on which they are given license by the Government. C

11. As a result, Criminal Appeal No.89 of 2017 and Criminal Appeal Nos. 113-114 of 2017 are dismissed and Criminal Appeal No. 1140 of 2016 is allowed. D