

KARNATAKA LOKAYUKTA

Compt/Uplok/MYS-8318/2011/ARE-6

Multi-storeyed Building,
Dr. B. R. Ambedkar Veedhi,
Bengaluru, dated 20.01.2018.REPORT UNDER SECTION 12(1) OF THE
KARNATAKA LOKAYUKTA ACT, 1984

Sub: Proceedings against Sriyuths (1) Manjunath, the then Chief Officer, Town Municipal Council, Sakaleshapura Hassan District; and (2) S.S. Madhukeshwar, the then Asst. Commissioner Sakaleshapura Taluk, Hassan District regarding their misconduct as Government/Public servants.

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One Shri A.G. Nanjundashetty, R/o No.1, Commercial Complex, B.M. Road, Sakaleshapura, Hassan District [in short, referred to as 'the complainant'] filed this complaint against Sriyuths (1) Manjunath, the then Chief Officer, Town Municipal Council, Sakaleshapura Hassan District; and (2) S.S. Madhukeshwar, the then Asst. Commissioner, Sakaleshapura Taluk, Hassan District [hereinafter referred to as 'respondent Nos.1 & 2' respectively].



2. The complainant has alleged that, the respondent Nos.1 & 2 purposefully are not entering the name of successors of deceased - late A.N. Varadarajulu in respect of property bearing Khata No.746/671 ( Sy. No.17/11/B) situated at Sakaleshapura town measuring 2 acres 8 guntas, in this regard, the respondent No.1 has issued an untenable endorsement refusing to enter the name of successor of deceased - late Varadarajulu. The complainant alleged that, despite of court order, despite of all the documents produced before the respondent No.1, the respondent No.1 deliberately and intentionally to deny the right to property to the complainant as a successor to their own property has issued the said endorsement refusing to enter the name of the complainant and others.

3. In pursuance of the allegations made in the complaint, comments were called for from the respondent Nos. 1 & 2. Respondent No.1 mainly stated that, he had already issued an endorsement dated 09.09.2011 inter alia observing that, the

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complainant has not submitted an application in the prescribed form and not produced relevant documents pertaining to transfer of khata. Therefore, he has not entered the name of the complainant in the place of deceased - late A.N. Varadarajulu. Respondent No.1 has further stated that, the allegations made in the complaint are false and made deliberately to tarnish his image.

4. The respondent No.2 submitted his comments inter alia stating that, Sy. No.17/11/B measuring 2 acres 8 guntas was standing in the name of one A.N. Varadarajulu. Same was got converted for non-agricultural purpose. However, the Town Municipal Council, Sakaleshapura has been making use of said place as 'Santhe Maidana' and the matter is pending before the High Court as regard to the land acquisition proceedings (**as per Annexure 'A'**).

5. In order to verify the allegations made in the complaint as well as the stand taken by the respondents, respondents were

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directed to appear in person with relevant original records. Accordingly, on several occasions enquiry was conducted in the presence of complainant, respondents as well as the Counsel for respondent No.1. The respondents mainly contended that, the court order obtained by the complainant does not direct the Municipality to change the khata in the name of complainant. The property in question was a subject matter of acquisition and it is being used by the Municipality as 'Santhe Maidana'. That, the Assistant Commissioner in exercise of power has passed an order observing that, the property is one of Shri Ramanatha, and the complainant has not produced the relevant documents. He also stated that, the decree obtained by the complainant is by suppressing material fact that A.N. Varadarajulu has donated all his property to Government organization and his relatives have not obtained any documents in accordance with law.

6. It is not in dispute that, property bearing Khata No.746/671 was standing in the name of deceased - late A.N. Varadarajulu. It is also not in dispute that, earlier the said



property was bearing Sy. No.17/11/B measuring 2 acres 8 guntas and same was standing in the name of A.N. Varadarajulu and the said A.N. Varadarajulu got converted the said land for non-agriculture purpose.

7. Earliest records of the Municipality more particularly, the original khata register at page 59 (copy of which is marked as **Annexure 'B'**) shows that, property bearing No.746/671 was standing in the name of A.N. Varadarajulu and address was shown as 'Santhe Maidan Road'. Hence, there is no dispute that, late A.N. Varadarajulu was the original khatedar.

8. The khata register reveals that, the entry dated 18.07.2009 is covered by applying whitener without any justifiable reason. However, when the said entry was verified in the presence of the complainant and respondents with the help of torch light, the said covered entry clearly reveals that, the khata was changed as per the Khata transfer No. 109/2009-10 dated 23.06.2009 as per the judgment in O.S. No.127/2009 dated 12.06.2009. The said

entry could be easily seen though the whitener is applied on it and which reads as under:-

“ಹಕ್ಕುವರ್ಗಾವಣೆ ನಂ.109/2009-10 ದಿನಾಂಕ 23.06.2009  
ಓ.ಎಸ್.127/2009 ದಿನಾಂಕ 12.06.2009ರ ಕೋರ್ಟ್ ಆದೇಶ ರೀತ್ಯಾ  
ಹಾಗೂ ಕಂ/ನಿ ಮತ್ತು ಕಂ/ಅ/ರವರ ವರದಿಯ ಹಾಗೂ ಕಚೇರಿಯ  
ಮುಖ್ಯಾಧಿಕಾರಿಯವರ ಆದೇಶದ ಮೇರೆಗೆ ಹಕ್ಕು ವರ್ಗಾಯಿಸಿದೆ. ರಸೀತಿ  
ಸಂಖ್ಯೆ.491720 ದಿನಾಂಕ 18.07.2009 ರೂ.1,000/- ಎ.ಜಿ.  
ನಂಜುಂಡಶೆಟ್ಟಿ”

9. Thus, it makes it clear that, the khata was transferred in the name of the complainant in 2009 itself. The application of whitener without any order or change and endorsement is nothing but a tampering of the original public records. Tampering of the original records is apparent and it is done by the officials of the Municipal Council. 1<sup>st</sup> respondent is a Chief Officer and is the custodian of all the records. Further, he knew that, the dispute is for change of khata and has been pending before him since long. Thus, it points that he was quite aware that the khata is already changed and as such he might be party for tampering the original khata register by applying whitener to



cover the entry, as he has issued the endorsement in 2011 i.e., much after the entry of the name of the complainant was made which was later covered with whitener. This clearly prima facie proves that, the officials of Municipal Council, more so, 1<sup>st</sup> respondent knowing full well that, there was no justification to issue endorsement or to hear the matter or to consider the application for change of khata as it has been already done, still to cover his malafide intention, he appears to have applied whitener to cover the said entry to make it believe that, the entry of the deceased A.N. Varadarajulu has not been changed to the name of his successors.

10. The records also show that, way back on 03.11.2006 itself, the deceased - A.N. Varadarajulu has executed General Power of Attorney in favour of Shri A.G. Nanjundashetty, complainant and his sister - Smt. S.L. Geethanjali to look after the property in question (Sy.No.17/11/B) (as per Annexure 'C'). After the death of A.N. Varadarajulu, the complainant had approached the Civil Court seeking 'succession certificate' by filing petition in No. P &



SC 2/2013 before the Civil Judge, Sakaleshapura. The learned Civil Judge by order dated 06.09.2014 allowed the petition and had issued 'succession certificate' (as per Annexure 'D') in exercise of power under Section 287 of Indian Succession Act and in the said proceedings, Shri Ramanatha was the 2<sup>nd</sup> respondent. Thus, the order of succession passed by the Civil Court (as per Annexure 'E') has become final as nobody had claimed any right by filing appeal or otherwise.

11. In the mean while, complainant had approached the Hon'ble High Court of Karnataka in W.P.No.2031/2007 seeking direction against the Deputy Commissioner, Hassan; Assistant Commissioner, Sakaleshapura sub-division; Tahsildar, Sakaleshapura Taluk; Chief Officer, Town Municipal Council, Sakaleshapura; Circle Inspector, Sakaleshapura Circle Police Station, directing the said respondents not to allow any fair to be conducted in their land without the consent of the complainant. The High Court had disposed off the said petition by order dated 07.03.2007 (as per Annexure 'F') inter alia observing,





“It is needless to state that, if the Town Municipal Council has acted in a manner prejudicial to the interest of the petitioner by holding a public function in the petitioner’s property without his consent, he may seek appropriate reliefs before the competent courts of law.”

12. Thus, from the observation made in the Writ Petition also indicate the assertion of rights by the petitioner (complainant) over the property was not only against the Chief Officer, but also, Deputy Commissioner, Asst. Commissioner, Tahsildar, Chief Office and other concerned as they were all parties to the said Writ Petition.

13. As on the date of issue of endorsement by the respondent No.1, Chief Officer on 04.08.2011 (as per Annexure ‘G’), there was already a decree in O.S.127/2009 dated 12.06.2009 and in the original khata register same has been entered and as per the decree, name of complainant – Shri A.G. Nanjundashetty was entered. Hence, there was no occasion or reason for the 1<sup>st</sup>



respondent to issue endorsement dated 04.08.2011. Once the khata has been already changed in the name of the complainant, issue of the said endorsement amounts to issue of false order, and falsifying the public records.

14. Despite there being no legal authority, there being already an entry in the name of the complainant, 1<sup>st</sup> respondent issued a false endorsement dated 04.08.2011 as if there is no change in the entry. Hence, respondent No.1 knowing full well that the entry of the name of the complainant is already made, with a malafide intention and to defeat the rights that are accrued to the complainant issued the endorsement dated 04.08.2011. This act is nothing but unbecoming of public servant, and might have been done at the behest of someone for personal gain.

15. The complainant admittedly had not filed any appeal before the 2<sup>nd</sup> respondent (Asst. Commissioner) nor the respondent No.2 had right to take suo-motu appeal without there being any grievance. However, with no jurisdiction, the



respondent No.2 takes up suo-motu appeal treating it under Section 306 of Municipal Corporation Act which provision may not be applicable to the Municipalities and proceeds to pass order on 22.02.2016 (as per Annexure 'H'). When complainant came to know, he had protested before the 2<sup>nd</sup> respondent. The respondent No.2 despite receiving the objection from the complainant proceeds to pass order exceeding his jurisdiction and authority and further abusing the power vested in him.

16. One of the stands taken by the respondent No.2 was that, the land was the subject matter of acquisition. It is not in dispute that, the land acquisition proceedings came to be dropped by not proceeding with the issue of final notification and to this effect, an endorsement is also issued to the complainant that, no land acquisition proceedings are pending and this fact is also admitted by Respondents No.1 & 2. Despite knowing that, there was no acquisition proceeding nor it was a subject matter of any acquisition thereafter nor there was any dispute to the title to the property as no one had filed any objection for the transfer of



khata from the name of deceased - A.N. Varadarajulu into the name of complainant, Shri A.G. Nanjundashetty.

17. Complainant, apart from there being already entry way back in 2009 itself, still had produced succession certificate, order of succession, khata standing in the name of deceased - A.N. Varadarajulu, endorsement to the effect that, the land acquisition proceedings have been closed and there is no objection from any one, still his name was not entered obviously for the personal reasons of respondent Nos. 1 & 2 who appears to have vested interest in the matter.

18. As regards legal position:- The only provision under the *Municipalities Act* in relation to change of khata is *Section 111* which reads as under :-

“Whenever the title of any person primarily liable for the payment of a tax imposed on any premises in the form of a property tax, is transferred, the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of



the instrument of transfer or after registration if it be registered or after transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Municipal Commissioner or the Chief Officer.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of the deceased devolves, shall give notice of such devolution to the Municipal Commissioner or the Chief Officer within six months from the date of death of the deceased."

19. This provision requires a notice to be given to the Municipal Council of all transfers of title by person primarily liable to payment of property tax. This provision requires a transferor/successor to intimate the Municipality the change in the ownership rights over the property for the purpose of fixing the liability to pay the property tax. This provision does not contemplate any enquiry into the title. In case of any dispute relating to title, parties needs to go to Civil Court and get the titles decided, but when there is transfer by way of succession or by way of transfer, under law it is mandatory for the Municipal

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Council when it is brought to its notice that, there is a transfer of title, it is bound to make an entry into the khata register for the purpose of levying property tax who acquires such rights.

20. The High Court of Karnataka in similar circumstances has held that, the proceedings of mutation of the names in property register of the Municipality are not judicial proceedings in which title to and proprietary rights in immovable property are determined. Controversy regarding title to property has to be resolved only through suit before the competent court as otherwise, Municipal Council is bound to make entry based on undisputed transfer. The decision is reported in 2000(4) KLJ 272.

21. The Chief Officer (respondent No.1) has abused his power by exceeding his jurisdiction in questioning the title of the complainant when no one claimed or disputed the same. He has ignored the court orders and acted in a manner of unbecoming of Government servant and more so, has indulged in tampering of the public records detrimental to the interest of the



complainant which act clearly not only constitutes misconduct within the meaning of Rule 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules, 1966, but also is a criminal offence. If it is done for personal gain, it attracts the provisions of Prevention of Corruption Act, 1988.

22. The Chief Officer (respondent No.1) has no legal right to go into the legality or otherwise of the court proceedings or he has right to sit in appeal over the title of the property by making an enquiry without any dispute.

23. So also, the 2<sup>nd</sup> respondent, without any authority, without there being any petition, without there being any person aggrieved seeking redressal before him suo-motu entertaining an appeal and doubting the order passed by the Civil Court amounts to not only is contempt, but amounts to exceeding and abusing the authority. His act amounts to disrespecting the court order.



24. In this complaint, all the parties including the Counsel for respondent No.1 were heard and based on the original records which were made available, the report is prepared by the Scrutiny Officer and based on which, further report is prepared by the undersigned.

25. Considering all these circumstances and considering the stand taken by respondent Nos. 1 & 2 as well as the comments and the records, it is found that the act of respondent Nos. 1 & 2 is malafide, untenable and contrary to law and the authority vested in them and is violative of the provisions of Karnataka Municipality Act.

26. Since all the records show that, after the death of late A.N. Varadarajulu, name of the complainant was entered in the property register as per the khata transfer No. 109/2009-10 dated 23.06.2009 and in addition to this, the complainant has obtained order from the court as a successor to deceased - A.N. Varadarajulu in proceedings No. P & SC 2/2013 from the Civil





Court on 06.09.2014, the land acquisition proceedings culminated in dropping of the same as no final notification was issued, all these documents clearly indicate that, the respondent No.1 ought to have restored the entry as it was or even otherwise, on the basis of the several orders immediately after they were produced before him, but by not doing, has caused considerable delay, causing loss of time, money and denial of property rights. Hence, the complainant who is a successor is entitled for his name to be entered in khata without any further delay.

27. Hence, in exercise of power under Section 12(1) of Karnataka Lokayukta Act, 1984, it is hereby recommended to the Competent Authority to direct the concerned authority to make an entry of the complainant's property bearing khata No. 746/671 situated at Sakaleshapura town as already existed or restore the entry already made on 23.06.2009.

28. The Competent Authority shall intimate the action taken or proposed to be taken on this report within one month from the

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date of receipt of this report as contemplated under Section 12(2)  
of the Karnataka Lokayukta Act, 1984.

Connected records are enclosed.

*Sg. M. 20/1/18*  
(JUSTICE SUBHASH B ADI)  
Upalokayukta,  
State of Karnataka.

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