

KARNATAKA INFORMATION COMMISSION ORDER ON GENERAL POWER OF ATTORNEY AND SECTION 22 OF THE ACT:

KARNATAKA INFORMATION COMMISSION

Appellant : Sri Virupaksha Gowda.

Public Authority : PIO and Sub Registrar, Gubbi Taluk, Gubbi, Tumakuru Dist.

Date: 26.08.2015.

ORDER

KIC 7763 APL 2014

1. Shri C.S. Madhu, Advocate, represents the Appellant and filed an Vakalathamma. Smt. Padmavathi, PIO and Sub Registrar, Gubbi Taluk, Gubbi, Tumakuru Dist. and Smt. M. Sridevi, HQA to FAA & Dist. Registrar, Tumakuru are present.
2. Commission heard the submission made by the Advocate of the Appellant and heard the version of PIO and perused the documents produced by the both the parties.
3. This second appeal is preferred by the appellant/RTI applicant under Section 19(3) of the Right to Information Act (in short RTI Act) calling in question the refusal of information as sought for in the RTI Application by the Sub Registrar & PIO, Tumkur/1st respondent and the same having been upheld in the first appeal filed by the appellant/RTI Applicant before the District Registrar & first appellate authority, Tumkur/ 2nd respondent.
4. The appellant/RTI applicant in his application dated 25.03.2014 has sought for the following information with the 1st respondent:

“ಲೋಕಾಯುಕ್ತ ಪ್ರಕರಣ ಸಂಖ್ಯೆ ಕಂಪ್ಲೇಟ್ / ಉಪಲೋಕ್ -2/ ಬಿಡಿ 5478/2012 ಈ ಪ್ರಕರಣದಲ್ಲಿ ನಾನು ದೂರುದಾರನಾಗಿದ್ದು

ನೀವುಗಳು ಪ್ರತಿವಾದಿಗಳಾಗಿರುತ್ತೀರಿ. ಸದರಿ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನೀವುಗಳು ತುಮುಕೂರು ಜಿಲ್ಲೆ ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು ಸಿ. ಆರ್ ಪುರ ಗ್ರಾಮದ ಖಾತಾ ಸಂಖ್ಯೆ 681/484/864 ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಿಮ್ಮ ಕಚೇರಿಯಲ್ಲಿ ನೋಂದಣಿಯಾಗಿದ್ದ ಜನರಲ್ ಪವರ್ ಅಫ್ ಅಟಾರ್ನಿಯ ನಕಲು ಪ್ರತಿಯನ್ನು ಲೋಕಾಯುಕ್ತಕ್ಕೆ ನೀಡಲಾಗಿದ್ದು ಅವುಗಳ ದೃಢೀಕೃತ ನಕಲು ಪ್ರತಿಗಳನ್ನು ನೀಡಲು ಕೋರಿದೆ.”

5. The 1st respondent on receipt of the application has sent a communication dated 23.04.2014 refusing to part with the information as sought for on the ground that there is a bar under the Karnataka Registration Rules.
6. Not satisfied with the communication and feeling aggrieved by the denial of information, the appellant/RTI applicant has preferred an appeal before the 2nd respondent and had sought for a direction to the 1st respondent to part with the information sought for.
7. The first appellate authority has passed an order dismissing the appeal and upholding the decision of the 1st respondent. In order to come to this conclusion the 2nd respondent has placed reliance on Section 57(3) of the Registration Act, 1908 and Rule 144 of the Karnataka Registration Rules, 1965.

Section 57(3) of the Registration Act, 1908 reads as follows:

“Registering Officers to allow inspection of certain books and indexes and to give certified copies of entries—

(1) _____

(2) _____

(3) *Subject to the same provisions, copies of entries in Book No.4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.*

(4) _____

(5) _____”

Rule 144 of the Karnataka Registration Rules, 1965 reads as follows:

“Grant of copies of deeds in Book No.4—Copies of deeds in Book No.4 cannot be granted to person interested in the deeds in any way other than as agents or representatives of the parties to the deed”

8. The appellant/RTI applicant has preferred this appeal challenging the denial of information to him by the respondents raising several grounds including the plea that the rejection of his application for the above information is contrary to the RTI Act and that any denial of information other than the one exempted under the provisions of Section 8 and 9 of the RTI Act is in violation of Section 3 of the RTI Act. On the other hand the respondents have justified their actions on the basis of Section 57(3) of the Registration Act, 1908 and Rule 144 of the Registration Rules, 1965.
9. This appeal at the first instance had been assigned to the State Information Commissioner sitting at Court Hall-6. Since, there were conflicting decisions of State Information Commissioners with regard to furnishing of the GPA under the RTI Act, this appeal has been placed before us to examine the question as to whether the registered GPA which is entered in Book-4 can be disclosed to RTI applicants or not.
10. The question which arises for our consideration is as to whether the restriction placed under Section 57(3) of the Registration Act, 1908 and Rule 144 of the Karnataka Registration Rules, 1965 are applicable to an application filed under Section 6 of the RTI Act and whether on the basis of such restriction placed under the said Act and Rules, the respondents were justified in denying the information sought for by the appellant/RTI applicant.
11. The very same question as to whether the embargo placed under Section 57(3) of the Registration Act can be taken as a ground to deny the information i.e., the GPA to the applicant has been dealt with by the Hon’ble Central Information Commission (in short CIC) in the matter of Anil Singh Vs. PIO, SDM in Case No.CIC/SA/2014/000372, wherein the CIC has held as follows:

“11. Verification of GPA and other documents used in transactions over immovable property prevents many property related crimes and thus it is in the interest of prevention of crime of fraud and also provide peace of mind to the property purchasers there is a huge public interest involved in disclosing the GPA

12. Even though the Registration Act 1908 limits disclosure of some documents to the executants only, Section 22 of the RTI Act 2005 overrides that law and makes it mandatory for the respondent public authorities to disclose the copies of GPA in the larger public interest. There is no public interest in withholding it; rather huge public interest is involved in its disclosure”
12. The Hon’ble CIC also has referred to a decision of the Hon’ble High Court of Delhi in the matter of Union of India Vs. Central Information Commission in WP (C) 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6058/2008, 7304/2007, 7930/2009 and 3607/2007, wherein the legislative intent in enacting Section 22 of the RTI Act and its scope has been explained. While referring to the observations of the Hon’ble High Court of Delhi, the Hon’ble CIC has concluded as follows:

“15. The commission in conclusion observed that GPA is a public document because the grantee has to use it to convince any prospective purchaser. Because the purpose of GPA is to authorize another person to deal with the others i.e., to lease out, sale or mortgage etc, it is an open document and after being registered it is put in public domain, and when transferred to Delhi Archives, it continued to be in public domain, disclosure of which was permitted by the Registration Act, 1908 also in a limited way. It will be in the interest of that prospective purchaser to verify the veracity of the documents including GPA before finalizing the deal. Registered GPA is an authenticated documentation of giving power of attorney to deal with immovable property, which can be accessed by persons interested in purchasing that property to rule out encumbrances if any. It is the duty of Registrar office to give certified copy of such encumbrance or issue ‘no encumbrance certificate’. The RTI Act made it obligatory to disclose any document which is held by public authority unless exemptions as mentioned in Section 8 are attracted.
16. Therefore, the Commission set aside the order of First Appellate Authority and directs the respondent

/PIO to supply the required information to the appellant within one month from the date of receipt of this order. The appeal is disposed off”.

13. Similarly, the Hon’ble CIC in the matter of Sh.Manish Bansal Vs. Delhi Archives, GNCTD in Case No.CIC/DS/A/2013/ 001968-SA has held as follows:

“8. The Commission thus concludes that GPA is a public document

..... The RTI Act made it obligatory to disclose any document which is held by public authority unless exemptions as mentioned in Section 8 are attracted. Assuming that Section 57 Registration Act, 1908 authorizes them to deny the access to GPA, which the officers from Sub-Registrar office are regularly raising as defense, the Commission would like to reiterate that as per Section 22 of Right to Information Act 2005, the 156 year old law has to yield to 2005 law which Parliament wanted to override the other laws. The Commissions the respondent Public Authority to inform al the PIOs and officers registering the transactions on landed property to abide by the RTI Act and not to quote obsolete British relic Registration Act, 1908. As the age-old maxim says ignorance of law is no excuse, the respondent authority cannot plead ignorance of this law any more as nine years passed after RTI Act came into existence. Any effort to quote British law to deny the copy of GPA or any other document which has to be given under RTI Act will be considered as clever ploy to deny the information and the Commission warns the public authority that this also will amount to violation of RTI Act attracting the penalties under Section 20 RTI Act. The office of PIO should desist from using the archaic law and First Appellate Authority cannot reject first appeals on this ground.”

14. Perusal of the aforesaid orders of the Hon’ble CIC makes it abundantly clear that the RTI Act, being a special enactment and having overriding effect over the other laws in force including the Official Secrets Act would prevail over the other laws in force as on the date of coming into force of the RTI Act and any enactment or provision repugnant or inconsistent with the provisions of the RTI Act, the provisions of RTI Act will have to be given effect to. Under the RTI Act, information can be denied only if such information falls within the exceptions contained in Section 8 or 9 of the RTI Act. All other information is covered within the definition of “Right to Information” and any citizen is entitled to access/obtain the same. Section 22 of the RTI Act contains a non-obstante clause and it overrides all other enactments. The Legislature in its wisdom and in order to bring in transparency in governance and recognizing the right of a citizen to access information which are in public domain and in the control of the public authorities has consciously enacted Section 22 providing overriding effect to the provisions of the RTI Act. Section 22 of the RTI ensures that the purpose of the enactment is well achieved.
15. Yet another point which weighs towards furnishing of the registered GPA under the provisions of RTI Act to the applicant is that the registered GPA is in the public domain and disclosing the same is definitely in the public interest. The GPA acts as a link document in establishing the title to the property in case the sale has been executed by the GPA holder. Therefore, disclosing the same has a larger public interest than in withholding the same.
16. In the light of the specific provision contained in Section 22 of the RTI Act and also having regard to the larger public interest involved in disclosing the registered GPA, we have no hesitation to conclude that that the fetters imposed under Section 57(3) of the Registration Act, 1908 and Rule 144 of the Karnataka Registration Rules, 1965 give way to the express provision of Section 3 of the RTI Act, which entitles any citizen access to the information held by any public authority. The embargo placed under Section 57(3) of the Registration Act, 1908 and Rule 144 of the Karnataka Registration Rules, 1965 do not come in the way of furnishing information under the RTI Act, except the ones specifically exempted under Section 8 and 9 of the RTI Act. In the instant case the appellant’s request is to furnish the GPA registered in the office of the 1st respondent. As the said document does not fall within the exception as contained in Section 8 and 9 of the RTI Act, the 1st respondent was bound to furnish the same to the appellant. Accordingly we hold that any GPA duly registered in the office of the Sub Registrar is accessible under the RTI Act.
17. The decisions rendered by this commission in KIC 385 APL 2008 and KIC 3126 PTN 2012 have not

examined the scope and true spirit of Section 22 of the RTI Act and therefore they do not lay down the correct law.

18. The appellant has made a prayer to impose penalty for non- furnishing of the information sought for. However, in the light of the ambiguity that existed as to whether or not the embargo placed under Section 57(3) of the Registration Act, 1908 and Rule 144 of the Karnataka Registration Rules, 1965 is applicable to the application filed under Section 6 of the RTI Act or not and the communication from the 1st respondent being an outcome of such ambiguity, we are of the opinion that the refusal to part with the information sought for is not deliberate and accordingly we decline to impose any penalty on the 1st respondent.
19. In the light of the above observations, this appeal is allowed in part. The order passed by the 2nd respondent dated 17.6.2014 passed in RTI Appeal No. 04/2015 is hereby set aside.
20. The 1st respondent/PIO is hereby directed to furnish the certified copy of GPA sought for to the Appellant, free of cost, within 15 days, through RPAD, with intimation to the Commission.
21. Appeal is adjourned on 06.10.2015 at 04:30 p.m.
22. Dictated, draft corrected, signed and pronounced in the open court, this 26th day of August, 2015.

T. RAMA NAIK
State Information Commissioner

L. KRISHNAMURTHY
State Information Commissioner

SHANAKAR R. PATIL
State Information Commissioner