

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Bail Application No.1546/2008**

% **Date of Decision: 19.12.2008**

Ramkaran and Others Petitioners

Through Mr.R.N. Mittal, Sr. Advocate with
Mr.Ankur Aggarwal, Advocate

Versus

State Respondent

Through Mr.Amit Sharma, APP for the State
along with SI Satvinder Singh

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

1. The petitioners, who allege to be *bhoomidars*/their descendents and/or their family members were allotted 5 acres of agricultural land in the year 1974 under 20-Point Program by the Government of India. They seek anticipatory bail in FIR No.24/2006 registered under Sections 415, 416, 419, 420, 463, 464, 466, 468, 469, 471, 506, 120B and 31 of Indian Penal Code, Police Station Mehrauli filed pursuant to a complaint by the complainant, Chandermukhi, who had purchased the

rights in a portion of the land from one of the transferees of the petitioners in 1988.

2. The learned Senior Counsel for the petitioners has argued the matter extensively going into trivial details of other purchasers of 1988 and subsequent purchasers contending that some of them are fake. Many pleas and contentions of the learned counsel do not appear to be relevant for the purpose of granting or refusing anticipatory bail to the petitioners. The learned counsel argued the matter on 25th August, 2008; 26th August, 2008; 19th September, 2008; 26th September, 2008; 17th October, 2008 and today. During and after the hearings on various dates additional documents were also filed by the petitioners from time to time. On 9th September, 2008 the petitioner had filed a set of documents which include the order dated 10th August, 1994 passed in suit no. 1753 of 1994 and order dated 22nd November, 1994, bank statement from 11th April, 2003 to 10th September, 2005, copy of complaint made by petitioners to the SHO dated 20/31st July, 1994 and details of various names of the purchasers who are alleged to be fictitious persons but who were interveners and another 20 fictitious names. The learned senior counsel Mr. Mittal has taken this Court meticulously through all these documents on various dates. The petitioners also filed copies of Khasra Girdwari for the year 1988-89; 90-91; 91-92; 92-93; 93-94; 94-95; 95-96; 96-97; 99-2000; 2001-2002

and 2004-2005 on 17th September, 2008 which do not show and from which it cannot be inferred conclusively that the agreement to sell was not executed in favor of the complainant and/or that she is not in possession of the land which was purchased by her.

3. The complainant is Ms. Chandramukhi wife of Shri Kehar Singh alleged to be a senior citizen aged about 61 years on the date the complaint was filed by her. In the complaint she had averred that she had purchased land measuring approximately 554 sq.yards forming part of khasra No.73 situated within the revenue estate of Village Neb Sarai, Tehsil Mehrauli, New Delhi on 26th August, 1988 from Shri Jaipal Singh son of Shri Chandgi Ram resident of F-80, Lado Sarai, New Delhi. The documents of sale, viz., general power of attorney, agreement to sell, affidavit, cash receipt and a Will were allegedly executed in favor of complainant. It is averred by her that the vacant and physical possession was also handed over to her.

4. The complainant in her complaint has stated that her vendor, Shri Jaipal Singh, had told her that he had purchased land measuring approximately 4340 sq.yards from one Shri Harnand (father of petitioner No.7) son of late Shri Prabhati for a sum of Rs.7,16,100/- on 3rd July, 1987 and the land which was sold by Shri Jaipal Singh to the complainant was part of the said land purchased by Shri Jaipal Singh

from Shri Harnand. It is also averred that Shri Jaipal Singh along with three other acquaintances, Shri G.B. Tiwari son of Shri D.D. Tiwari; Shri Daya Nand son of Shri Ganga Sahai; and Shri Dharminder Sharma son of Shri Daya Nand, in all had purchased 21,700 sq.yards of land out of a total of 5 acres of land owned by five *bhoomidars*, namely, Ram Karan, Ram Dhan, Harnand, Swaroop Singh and Shyam Singh all sons of Sh.Prabhati, resident of Neb Sarai, New Delhi on 3rd July, 1988 for a total sum of Rs.35,80,500/- and the rights in land were transferred by all the *bhoomidars* who had executed documents of sale, viz., agreement to sell, affidavit, general power of attorney, cash receipts, wills etc. in favor of Shri Jaipal Singh, Shri G.B. Tiwari, Shri Daya Nand and Shri Dharminder Singh. The said four vendees had further sold the rights in the land comprising 21,700 sq.yards to 46 different persons including the complainant.

5. The complainant in her complaint further asserted that she erected a boundary wall around the land which was purchased by her. Some other purchasers out of remaining 45 purchasers of land from the four vendors had also erected boundary walls. All the purchasers formed a cooperative society under the name and style of "Harivansh Vihar Plot-Holders Association" for the proper development of their respective plots. It is also pleaded that the said Association paid a sum of Rs.1.25 lakh to Freedom Fighters Colony Welfare Association, Neb

Sarai, New Delhi, for having access to their respective lands. The grievance of the complainant is that in July 1994 the original *bhoomidars* and widow of deceased Shyam Singh came with goons to the said lands and attempted to demolish the boundary walls, dwellings, etc. and FIR No.213 of 1994 was registered with Police Station Mehrauli. Another FIR No.31 of 2000 under Section 323/341/34 IPC was also registered later on.

6. The complainant contended that one of the son of Ram Karan, Shri Rajinder Singh Sheel is a Police Officer in Delhi Police and the petitioners want to grab her land as the market prices have gone up considerably. The complainant asserted that because in the revenue record, the land is still mutated in the name of original *bhoomidars*, petitioners are trying to take shelter under the said fact and want to dispossess her. It is further contended that in furtherance of their designs, the accused persons have also entered into agreement/memorandum of understanding dated 19th October, 2004 with Shri Raghuvinder Singh and for the said deal for five acres of land the amount settled was about Rs.7.00 crore out of which Rs.1.25 crore has already been paid by Shri Raghuvinder Singh to accused Nos.1 to 3 and accused Nos.5 to 21. A number of criminal cases are alleged to be pending against Shri. Raghuvinder Singh. It is also asserted that initially the sale transaction was entered by the original *bhoomidars*

with Shri Ahmad Sultan Chawla but later on the said agreement was cancelled as the vendee, Shri Ahmad Sultan Chawla, who had filed a civil suit had compromised and the suit was dismissed as comprised. Before the compromise, the plot holders who had been sold plots later on by the transferees of the original *bhoomidars* were also impleaded as parties. The lands have again been sold by the petitioners to Shri Raghuvinder Singh. As for him it is contended that he is a notorious land grabber and various FIRs are already registered against him. The complainant also disclosed that another FIR No.110 of 2005 under Sections 415/418/419/420/448/506/511 of Indian Penal Code is also registered at the instance of M/s. Supreme Infrastructure (India) Pvt. Ltd. The case pertaining to said FIR No.110 of 2005 is also pending adjudication.

7. In the circumstances, it is contended that the petitioners and Shri Raghuvinder Singh have committed offence of cheating and forgery and they are threatening to dispossess the complainant. The complainant contended that she has been receiving threatening calls that the property has already been purchased by Shri Raghuvinder Singh, who is a dangerous person and who also has links in police higher-ups and politicians, and, therefore, the complainant should not even try to go near her plot. Threats are alleged to have been given by the petitioners. The husband of the complainant is alleged to have gone

to her plot on 9th May, 2005 when he was threatened. It is contended that the complainant has been threatened that since land has been purchased by Shri Raghuvinder Singh, complainant and her husband should never come to her land. On complaints filed with the police, she has received threats that she should forget her land in Neb Sarai and should never try to put her foot on her plot, otherwise the consequences would be dire and she would be eliminated. She has complained that the records of P-5 Form have already been taken away from Tehsil Mehrauli by the petitioners and Raghuvender Singh in connivance with the officials. It is also asserted that Shri Rajinder Singh Sheel son of Shri Ram Karan is conniving with petitioners and is also the real kingpin with whom the criminal conspiracy has been hatched to grab the land which was sold in 1988 to four persons including Shri Jaipal Singh who had purchased it from Shri Harnand, the original *bhoomidar*, who in turn had sold the land measuring 554 sq. yards to the complainant. She alleged that sale deed had not been executed in her favour on the pretext that no sale deed can be executed and registered in respect of said land as it is banned in the said area and, therefore, the agreement to sell and other documents were got executed. The complainant has also made allegations against the Revenue officials that they, at the instance of the *bhoomidar*, are giving notices as to why the land, which is not used for agricultural purposes, be not vested in *Gram Sabha*. The application of the complainant and others for

impleadment in the proceedings for complying with the directions given in 1994, was also dismissed.

8. The petitioners have sought anticipatory bail on the ground that *bhoomidar* rights were given to the allottees or their legal representatives by order dated 17th February, 1984 and the applications of complainant and others to be impleaded as a party under Order I Rule 10 of the Code of Civil Procedure was dismissed by Revenue Assistant, Shri Bajrang Lal, by order dated 23rd September, 2003. The appeal filed against the order dated 23rd September, 2003 in Case No.222/RA/92 to 226/RA/92 being case No.226/2003 was also dismissed by Financial Commissioner by order dated 18th December, 2003. According to the petitioner, the said order declaring them as *bhoomidar* has become final which has not been challenged by the complainant and other allottees. The learned counsel for the petitioners very emphatically denied the proceedings in the suit filed by Shri Sultan Ahmed Chawla where it was admitted by original *bhoomidars* that the complainant and others are the owners and in physical possession. It was contended by Shri Mittal that some of the persons who had been impleaded in the suit of Sultan Ahmed Chawla were fake persons and some of them did not have any documents in their favor and the order was obtained by fraud. It will be pertinent to notice that on the basis of agreement to sell in favor of Sultan Ahmed Chawla, a Civil Suit No.287

of 1989 was filed where a compromise was recorded on 29th November, 1990 with defendant Nos.1 to 5 and 46 other persons who had been impleaded in the said suit. According to petitioners, the decree was obtained by fraud. The petitioners have contended that between 1994 to 2004 they were dragged into multiple civil, criminal and revenue cases and that the civil cases filed against the *bhoomidars* were adjudicated in their favour on the question of transfer and the criminal cases are still pending between the *bhoomidars* and their descendents on the one side and the vendees on the other side. The petitioners have admitted that in 2004 the *bhoomidars* entered into an agreement to sell their entire land to Shri Raghuvinder Singh. It was also admitted by them that in March 2005 on the basis of the complaint of M/s. Supreme Infrastructure (India) Pvt. Ltd., an FIR No.110/2005 was registered and they had entered into agreement to sell with Raghuvinder Singh later on.

9. Petitioners have further contended that they have also got a cross FIR No.270/2005 at Police Station Mehrauli registered against M/s. Supreme Infrastructure (India) Pvt. Ltd in which investigation are pending. M/s. Supreme Infrastructure (India) Pvt. Ltd. has claimed to have purchased 95% of the land from 45 persons except complainant who had purchased from Shri G.B. Tiwari, Shri Jaipal Singh, Shri Daya Nand and Shri Dharminder Sharma. It is also contended that a petition

under Section 482 of Criminal Procedure Code seeking quashing of FIR No.110/2005 filed by M/s.Supreme Infrastructure (India) Pvt. Ltd. is pending and orders have been passed staying the arrest of one of the accused which order is still valid.

10. The petitioners have filed a number of documents along with the petition. During the protracted arguments by the learned counsel for the petitioners, a number of other documents were filed. The facts which emerge from these documents and the allegations made by the petitioners can be tabulated as under for easy comprehension.

1974	Land allotted under 20 point program to, 1.Ram Dhan; 2. Shyam Singh; 3.Sarup Singh; 4.Harnand; 5.Ram Karan
3.7.1987	Five <i>bhoomidars</i> sold their land to 1.Dharmender Sharma; 2.G.B.Tiwari; 3.Jaipal; 4.Dayanand. Jai pal had purchased 4340 sq. yds of land for a sum of Rs.7,16,000 from Harnand. The other three purchasers had purchased 21,700 sq. yds of land out of total 5 acres for a total consideration of 35,80,500/- Later on in the same year, these four purchasers of land further sold the land to 46 persons including the complainant Chandermukhi.
26.08.1988	Complainant purchased about 554 sq. yds of land in Kahsra no..73 situated within revenue estate of Village Neb Sarai from Jai Pal who had purchased the land from Harnand and

	other <i>Bhoomidars</i> . Boundary wall was also erected.
1989	Suit filed by Sultan Ahmed Chawla against the original <i>bhoomidars</i> for injunction on the basis of agreement to sell executed in his favor.
29.11.1990	Suit no. 287 of 1989 filed by Ahmed Sultan Chawla for injunction was compromised. Complainant was impleaded along with original <i>bhoomidars</i> and their transferees. It was admitted that the impleaded defendants are the bona fide owners in respect of their respective portions of land. Complainant had purchased about 554 sq.yds of Kashra no. 73 situated within Revenue estate of Village Neb Sarai from Jai Pal. The counsel for <i>bhoomidars</i> in the application under Order 1 rule 10 had given no objection to impleadment of Complainant. Complainant was defendant no.35.
July, 1994	Ram Karan; Swaroop Singh; Harnand and Chhoti Devi widow of Shri Shyam Singh tried to demolish boundary walls and dwellings . FIR 213 of 1994 P.S Mehrauli was registered.
1994	Suit no.1753 of 1994 titled Ram Karan & ors Vs Jagdeep Rai & ors filed in the High Court seeking injunction against the petitioners.
15.4.1996	written statement filed in suit no. 1753 of 1994 titled Ram Karan & ors Vs Jagdeep Rai & ors denying that the plaintiffs are in actual, physical and cultivator possession of the land and that the plaintiffs were pressurized to sell their lands by the defendants in collusion with revenue staff and the local police.
13.4.1999	Suit no. 1753 of 1994 filed by petitioners against Jagdeep Rai & ors (Shri Jagdeep Rai, Shri Jitender Sharma, Lt.Col Baldev Arora and

- Gram Sabha Neb Sarai) was dismissed with Costs. The Court held that the petitioners had withheld vital and relevant facts. (Apparently this suit was not filed against the complainant Smt. Chandermukhi)
- 20.8.1999 The order dated 13.4.1999 passed in the suit filed by the petitioners against Shri Jagdeep Rai, Shri Jitender Sharma, Lt.Col Baldev Arora and Gram Sabha Neb Sarai was reviewed and the plaint was returned, however, other finding about the concealment of facts by the petitioners was not reviewed or set aside.
- Nothing has been shown and produced that the Plaint which was returned was refilled and it was established that the petitioners are in possession of the their lands which had been sold by them in 1988.
- 15.04.2004 M/s Supreme Infrastructure (India) Ltd purchased 21,000 sq. yds of land in Kasra Nos. 50,51,70,72,73 from 45 persons. Complainant, however, did not sell her plot to M/s Supreme Infrastructure.
- 19.10.2004 Petitioners entered into agreements with Sh. Raghuvinder Singh for the same land which was sold by them to the four persons in 1988 who had sold them to 46 persons out of which 45 persons had sold it to M/s Supreme Infrastructure(India) Ltd, alleging that they are the co-owners and in possession of the lands in Khasra no. 51,70,72 and 73 in Neb Sarai.
- 03.03.2005 FIR no. 110/2005 P.S Mehrauli filed by Yogesh Kumar and Bal Ram Managing Director and Director of Supreme Infrastructure (India) Ltd.
- 9.5.2005 Husband of the Complainant went to plot of land where he was threatened. Complaints dated 11.5.2005 23.5.2005 and 9.8.2005 were made, however, no action was taken.

30.08.2005	Petitioners and others were granted bail in FIR No.110 of 2005 Filed by M/s Supreme Infrastructure (India) Ltd.
23.09.2005	The application of the Complainant with others to implead them as a party to the proceedings u/s 81 of the Delhi Land Reforms Act, 1954 dismissed by the Revenue Assistant mainly on the ground that the matter had been disposed by order dated 24.5.1994 and the only aspect which required adjudication was whether the petitioners had complied with time bound directions and therefore the application of the complainant to implead them was dismissed.
16.12.2005	Status report filed in case no. 1130/1/05 u/s 415/416/419/506 IPC in the Court of Deepak Garg, MM Patiala House.
10.01.2006	Complainant filed complaint against petitioners on account of attempt by them to dispossess the complainant and on account of conspiracy and fabrication of documents. FIR NO. 24 of 2006 police station Mehrauli
21.2.2008	Petitioners petition for quashing of Complaint filed by M/s Supreme Infrastructure dismissed by the High Court.
07.03.2008	Petition for anticipatory bail of the petitioner in FIR NO.24 of 2006 dismissed by the Session Judge in view of the documents placed by the complainant and because the case was still at the preliminary stage.
19.5.2008	Anticipatory Bail Application of Sh. Rajender Singh Sheel being Bail Application no. 651 of 2008 allowed and he was granted bail in case of arrest.
26.6.2008	Second Anticipatory bail application of some of the petitioners dismissed by the session judge in FIR No. 24 of 2006 of the complainant.

11. The complainant had contended that the consideration received by the petitioners or their predecessor in 1988 on sale of their land was deposited by them in their bank accounts. Regarding the opening of five bank accounts where the money given by the vendees of agreement to sell dated 3rd July, 1988, namely, Shri G.B. Tiwari, Shri Jaipal Singh, Shri Daya Nand and Shri Dharminder Sharma is alleged to have been deposited, it is contended by the petitioners that the funds were deposited from the stone mining business which were later on closed due to banning of mining activities.

12. The petitioners have also claimed grant of anticipatory bail on the ground of parity as in the FIR 110 of 2005 filed on behalf of M/s. Supreme Infrastructure (India) Pvt. Ltd. where similar allegations have been made against the petitioners, they had been granted anticipatory bail by order dated 30th April, 2005. It is contended that the petitioners are entitled for anticipatory bail in the complaint filed by the sole purchaser who had not sold her land holding to the company M/s Supreme Infrastructure. It is also contended that the land always continued to be in possession of the petitioners and that a finding to that effect has been returned by the Revenue Authorities and reliance has been placed on the copy of the order of the Revenue Authorities dated 23rd March, 2003. The order dated 23rd March, 2003 is on the application of the vendees for their impleadment under Order I Rule 10

of the Code of Civil Procedure in the proceedings under Section 81 of Delhi Land Reforms Act, 1954. It is also contended that one of the accused, Shri Rajender Singh Sheel has also been granted anticipatory bail by another single Judge of this Court in Bail Application No.651 of 2008 by order dated 19th May, 2008.

13. The petition for anticipatory bail is strongly opposed by the Learned Additional Public Prosecutor Shri Sharma. He has contended that the petitioners are selling the rights in the same land again and again to different persons to defraud the purchasers. It is contended that Petitioners or their predecessors as *Bhoomidar* made an agreement to sell five acres of their land to Sultan Ahmed Chawla and received Rs.3 lacs as advance money and they opened bank accounts at UCO bank, Saket and deposited amount of their shares in the bank on the same day i.e 13th January, 1988. These *Bhoomidars* then sold the rights in the 5 acres of land to G.B.Tiwari, Jaipal, Dayananda, Dharmender Sharma who further sold it to 46 buyers who formed Harvansh Vihar on this land. Few of the plot holders had made their payments through cheques. They deposited amount of their share in the UCO bank. The complainant is stated to be one of such purchaser. It is further contended that yet another agreement to sell dated 19.10.2004 was made with Raguvinder Singh for Kasra No.50,51,70,72 and 73. For this sale complaint FIR NO. 214 of 2005 was filed by Raguvender Singh

against M/s Supreme Infrastructure not against petitioners from whom he had allegedly purchased the land. It was emphasized that the land transaction between the forty five plot holders with M/s Supreme Infrastructure was prior in time.

14. It is contended that the signature of Ram Karan and Swaroop Singh as a witness to the documents executed by Harnand in favor of Jaipal, from whom the complainant had purchased the land, have matched. Similarly the signatures of purchasers i.e G.B.Tiwari, Jaipal Singh, Daya Nand have also matched. The learned APP has contended that the documents executed by the petitioners or their predecessors were sent to Government Examiner of Questioned Documents for analysis and it has been established that the property documents executed in favor of Mr. Yogesh Kumar of M/s Supreme Infrastructure, complainant in FIR NO.110 of 2005 are true.

15. The learned Additional Public Prosecutor has contended that the petitioners have sold the same land again and again to have unlawful gains and have tried to dispossess the complainant. It is contended that in 1990 suit filed by Sultan Ahmed Chawla was compromised in which the predecessors of the petitioners were parties and in the compromise application it was admitted that the impleaded defendants were owners

and in possession of their respective lands. The complainant Chandermukhi was defendant no.35.

16. It is also contended that the petitioners have not joined the investigation even in the FIR which was registered at their instance being FIR No. 270 of 2005 Police Station Mehrauli. Details of notices which were sent to them despite which the petitioners have not appeared before the investigating officers, have been given in the status report dated 15th October, 2008. It is contended that the fact that the petitioners are not joining the investigation was even reported to the Learned Magistrate through the status report filed under section 156(3) of Cr. P.C. The son of the petitioner Ram Karan is also stated to have received notices issued under Section 160 of Cr.P.C in FIR no.214 of 2005 who made an endorsement on the notices to the effect that different persons in whose names the notices were issued were out of Delhi.

17. It is also stated that the documents of PNB filed by the petitioners seems to be forged and detailed investigation is required to unearth the facts. It is also disclosed that the petitioners including Ram Karan got a certificate issued from a Notary Public named Chaman Lal certifying that he had not attested the documents in respect of Khasra no. 50,51,70,72 and 73 Village Neb Sarai in favor of M/s Supreme

Infrastructure (I) Pvt. Ltd who had filed FIR no. 110 of 2005. The said certificate issued by the Notary was filed in the Court and when it was investigated, it transpired that the said Notary Public had connived with the petitioners and had destroyed the original register of relevant period. However, the photocopy of the destroyed register appears to have been found to be authentic. The allegation is also that some of the petitioners have connived with the Notary Public in destroying the original register and fabricating another forged register.

18. From the facts prima facie what emerges is that Ram Karan, Harnand (dead), Swaroop Singh, Shyam Singh (dead) and Ram Dhan (dead) were given *bhoomidari* rights in 1984 and they entered into common agreement to sell with Sultan Ahmad Chawla. After selling their lands to Sultan Ahmed Chawla, the lands consisting of khasra Nos.50, 51, 72, 72 and 73, Village Neb Sarai were again transferred in the names of G.B. Tiwari, Jai Pal, Daya Nand, Dharmender Sharma and the advance money received by the said *bhoomidars* were deposited by them in their respective accounts in UCO Bank. Complainant is one of the purchasers from one of the transferees. Though the Suit No.287 of 1989 was filed by Sultan Ahmad Chawla, however, the said suit was dismissed as withdrawn as a compromise was arrived and the transferees were impleaded as parties and they were admitted to be owner and in possession of their respective plots.

19. Learned counsel for the petitioner though has painstakingly contended that there are lots of fictitious persons, however, the fact cannot be denied that the *bhoomidari* rights were transferred to G.B. Tiwari, Jai Pal, Daya Nand and complainant got her rights from one of the transferee Sh. Jai Pal. The signatures of some of these purchasers and of the petitioners have been found to be genuine. The suit filed by Sultan Ahmed Chawla was compromised after complainant was impleaded as defendant no.35. It was admitted in that suit that the complainant was the owner and in possession of her plot of lands. The learned counsel for the petitioners have tried to contend that the predecessors of the petitioners were not represented and have also tried to contend that some of the defendants who were impleaded were fake persons. Perusal of the order passed by the Court and the statement recorded clearly reflects that the counsel for Petitioner no.1 and other *bhoomidars* categorically agreed for the impleadment of transferees, including the Complainant. The plea of the petitioners in the facts and circumstances is not acceptable. Though the learned counsel for the petitioners has also tried to refer to suit filed by the petitioner in the High Court being suit no.1753 of 1994, the said suit was dismissed holding that the petitioner had concealed facts and on review the plaint was returned. However, the finding that the petitioners had concealed the material particulars was not reviewed. The suit for injunction which was returned by the High Court was not refilled as nothing has been

filed to show that it was refilled nor any order passed in the said suit after it was returned, has been produced. In any case the complainant was not a party to that suit. Prima facie the petitioners cannot contend that the complainant is not in possession of her plot of land, even on the basis of dismissal of application under order 1 rule 10 of Code of Civil Procedure for impleadment in the proceedings before the revenue assistant, which proceedings were for implementation of direction given in 1994 for restoration of use of land. Prima facie nothing has been shown that the complainant is not in possession of her plot of land since 1990 when in the suit filed by the Sultan Ahmed Chawla, the petitioners and their predecessors had admitted the complainant to be the owner and in possession.

20. Prima facie the signatures of Ram Karan and Swaroop Singh as witnesses to the documents executed by Harnand in favour of Jai Pal are found to be genuine and the complainant Chandermukhi is purchaser from Jai Pal. The documents executed by original *bhoomidars* have also been opined to be genuine and issued prior to date of execution. The documents executed by Ram Karan, Swaroop Singh, Ram Dhan, Harnand and Shyam Singh and submitted by Yogesh Kumar director of M/s Supreme Enclave have the signatures of Ram Karan, Swaroop Singh and Ram Dhan as per the report of the GEQD (Government Examiner of Questioned Documents).

21. The allegation against petitioner No.1 is also about manipulation of record along with his son and conniving with the notary public, Chaman Lal. The notary public has also allegedly destroyed the original notary register and is alleged to have fabricated another register. The petitioners are also alleged to have sold the rights in the same land in connivance and conspiracy to Raghuvinder Singh against whom a number of other criminal proceedings are pending. Shri Raghuvinder Singh is also alleged to be aware of the status of the land as he allegedly runs a godown/card factory outside the disputed land.

22. The petitioners cannot claim parity with the case filed by M/s Supreme Infrastructure (India) Pvt. Ltd. The said company is the purchaser of lands from 45 other plot holders. The learned counsel for the petitioner himself have pointed out various persons out of those persons to be fake persons and in case of some of whom the documents were also not executed before they were impleaded as a party in the suit filed by the Sultan Ahmed Chawla. As far as the complainant is concerned, the documents were executed in her favor and she was impleaded as defendant no.35 and she was accepted to be the owner and in possession of her plot. If the decree passed, pursuant to a compromise, in the case of Sultan Ahmed Chawla was not legal and contrary to the contentions and pleas of the petitioners, they should have challenged the same. The learned counsel for the petitioner has

not been able to show any decree or order passed by the Civil Court holding that the complainant is not the owner and not in possession of her plot. The proceedings before the revenue authorities also do not negate the rights of the complainant. The petitioners cannot claim anticipatory bail as a right on the basis of bail granted to Rajender Singh Sheel who was only an attesting witness to the subsequent agreement executed by the petitioners. The parity as claimed by the petitioners is not available in the facts and circumstances. Even according to the contentions of the learned counsel for the petitioners a number of persons who sold the land to M/s Supreme Infrastructure were fake persons. But that is not the case with complainant.

23. An undated affidavit which is also not attested has also been filed by the petitioner nos.1,2,3,5,6,9,10,11,12,13,14,15,16 & 17 stating that they do not have ownership rights or right of possession in the land of the complainant. Such a declaration is meaningless as this affidavit is not attested and in any case the said petitioners have not stated that they will not try to dispossess the petitioner and will not take law in their own hands. The Petitioner no. 4 had died on 8th August, 2008. Petitioner no.7 (Sh. Mahender Singh) and petitioner no.8 (Smt. Sunnero Devi w/o Sh. Ram Dhan have not filed even this alleged declaration.

24. It cannot be disputed that the power of granting 'Anticipatory Bail' is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him should the power be exercised. Where there are reasonable grounds for holding that a person will not participate in investigation or otherwise will misuse the liberty while on bail then the power should not be exercised. This power to grant anticipatory bail is unusual in nature and is not to be exercised as a matter of right for the accused. In *Gurcharan Singh v. State Delhi Administration*, (1978) 1 SCC 118, it was observed by Goswami, J., who spoke for the Court, that

“ ...there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

In American Jurisprudence (2d, Volume 8, page 806, para 39), it is stated:

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.

25. The anticipatory bail cannot be granted nor can it be claimed by the petitioner as a matter of right. In *Narinderjit Singh Sahni v. Union of*

India, (2002) 2 SCC 210, at page 219 the Apex Court had noted the 41st

Report of the Law Commission and held:

“It is noteworthy that the 41st Report of the Law Commission recommended for the first time inclusion of a provision for what is called anticipatory bail (vide Section 438 CrPC). Section 438 contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence: the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the court is otherwise convinced that there is no likelihood of misuser of the liberty granted since he would neither abscond nor take such step so as to avoid due process of law.”

26. The learned counsel for the petitioner has also emphatically relied on the decision dated 19th of May 2008 in bail application number 651 of 2008 where anticipatory bail was granted to Shri Rajender Singh Sheel. The said person is not the executant of the agreements which have been executed by the petitioners from time to time to defraud the purchasers as has been alleged. The case of applicant in Bail application no. 651 of 2008 is distinguishable and parity which has been claimed by the learned counsel for the petitioners is not available. Merely because some of the facts overlap with the facts of that case, does not entitle the petitioners for anticipatory bail in the present facts and circumstances nor the parity as has been alleged by the petitioners exist in the facts and circumstances. There were no allegations against the applicant of bail application no. 651 of 2008, Rajender Singh Sheel that he had not participated in the investigation. In contradistinction,

the present petitioners have not joined investigation even in their own complaint. Some of the relevant documents are yet to be recovered and considering all the facts and circumstances especially the insistence of the petitioners to dispossess the complainant even by force, it is apparent that the custodial interrogation of at least those petitioners who are male, is required. The learned counsel for the petitioners has also tried to contend that it is the will of the petitioners to appear or not to appear in the investigation pursuant to their own complaint. Such a plea, in my opinion, cannot be accepted. The allegations against the petitioners are of cheating, forgery of documents and criminal intimidation.

27. Therefore in the totality of the facts and circumstance considering the nature and gravity of the accusation and the antecedent acts on the part of the petitioners and imputable to them, the petition for grant of anticipatory bail to the petitioner nos.1 to 3, 5 to 7, 9 to 13, 15 and 17 is dismissed. The petitioner no.4 has since died on 8th August, 2008 as stated by the learned counsel for the petitioner. The petitioner nos.8,14 and 16 are however, entitled to Anticipatory bail being women in the present facts and circumstances. Therefore petitioner nos. 8,14 and 16 are granted Anticipatory bail and in case of their arrest, they be released on bail on their furnishing personal bonds for a sum of Rs.25,000/- each with one surety each of like amount to the

satisfaction of the arresting officer. The petitioner nos. 8, 14 and 17 shall not try to influence the witnesses and will not threaten the complainant. With these directions the petition is partly allowed and disposed of.

Dasti.

December 19, 2008

'Dev'

ANIL KUMAR, J.