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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 10th August, 2010

Date of Order: August 16th, 2010

+ CrI. MC 3476 of 2009

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Daya Nand Tyagi

Through: Mr.S.K. Tyagi, Advocate

16.08.2010

...Petitioner

Versus

State of NCT of Delhi

Through: Mr. O.P. Saxena, APP for State

Mr. Rambir Chauhan, Advocate for R-2

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By present petition under Section 482 Cr.P.C, the petitioner has assailed an order dated 22nd August 2007 passed by learned Additional Sessions Judge in revision petition, upholding framing of charge.

2. The contention of petitioner's counsel is that no case for cheating was made out against the petitioner on facts and in view of the fact that the alleged land, stated to be of *Gram Sabha*, had again been reverted back to him under the orders of Revenue Assistant dated 25th April, 2008.

3. A case under Section 420 IPC was registered against the petitioner on the complaint of complainant that the petitioner had, on the basis of forged sale deeds of the land, claimed himself to be the lawful owner of the land, induced the complainant as well

as some other persons to part with money for purchase of the plots of land. It was alleged that the petitioner had cut out plots of land out of Khasra No.46/18, Village Burari and sold these plots to complainant and one Hamir Singh and other persons on the basis of fake title deeds. The learned Metropolitan Magistrate after considering the report of SDM and other documents showing that the land in question was a *Gram Sabha* land and finding that the petitioner had sold out this land to complainant and other persons claiming himself to be owner of the land, found it a fit case to frame charge under Section 420 IPC.

4. In revision, preferred by the petitioner, the learned ASJ considered the contention raised by the petitioner and found that as per report dated 6th November 1987 of learned SDM, the land in question vested in *Gram Sabha*. It was also confirmed in the report of SDM that the petitioner had purchased the said land measuring 4 bighas 10 biswas from some persons, out of this, 3 bighas 14 biswas vested in *Gram Sabha* and could not have been sold and the recorded owner of 7 biswas of land was one Kunj Bihari and another 6 biswas was in the name of Narender Dass and 3 biswas was in the name of Rishi Kumar Sehgal. Although the erstwhile recorded owners did not have ownership rights over the entire land but the petitioner purchased the same and created sale deed in his favour even in respect of *gram sabha* land and later on cut out plots and sold the same to different persons.

5. The contention of counsel for the petitioner is that the petitioner had applied for no objection certificate before purchase of the land. This no objection certificate was granted by Revenue Authorities and even if it is believed that the land was gram sabha land, by a subsequent order of Revenue Assistant, it was reverted back to the petitioner and therefore no case of cheating was made out.

6. I have perused the order passed by learned Revenue Assistant which reads as under:-

"I have heard the arguments put forward by the advocates of both sides and gone through the orders of learned Financial Commissioner as well as the relevant provisions of CPC and DLR Act, 1954. Vide order dated 28.11.2002 of the learned Financial Commissioner, it has been established that the present applicant is the affected party. The learned Financial Commissioner while set-aside the impugned orders of court below, further directed vide the above said orders to hear all concern parties and take a decision on all aspects of the case as per law. I have called time to time, the latest status report of suit land from Halka Patwaris. The Halka Patwaris vide their reports dated 18.2.2006 4.7.2006 and 6.2.2008 have reported that suit land is vacant. In this context, the provisions of section 81 and 82 of DLR Act are also consulted. As per section 82(2) of DLR Act.

"The decree shall further direct that if the Bhumidar or Asami repairs the damages within three months next after the date of decree, the same shall not be executed except in respect of the costs".

Thus, in view of the above provisions, any Bhumidar or Asami before ejecting his land for violation under Section 81 is given opportunity to repair the damages within three months. In this case, the applicant has been considered by the learned Financial Commissioner vide his order dated 28.11.2002, as an affected party. Thus, an opportunity provided by the law is required to be given to the present applicant. But without handing over the possession of the suit land to be applicant, there will be no use of providing any opportunity to the applicant as he could be able to convert back the suit land into agriculture use only if the possession is reverted back to him. Hence, in view of the orders of learned Financial Commissioner, provisions of law as well as in view of the natural justice the present applicant is entitled to get revert back the suit land, accordingly, the application for

substitution of possession back to applicant/ respondent Shri D.N. Tyagi is accepted and possession of suit land bearing khasra number 46/18 min measuring 03 bigha 14 biswa in revenue state village Burari is reverted back to him subject to the following conditions:

- 1. That an amount of Rs.3.5 lac will be deposited through pay order in the name of Deputy Commissioner (North)/BDO (North) in advance as cost of damage.*
- 2. That suit land shall be converted back into agriculture purposes within three months from the date of this order failing which the respondent shall be ejected from the above khasra number and suit land automatically be vested in the Gaon Sabha without any further reference to the respondent.*
- 3. During this period, if it is noticed that any non-agriculture activity/ construction has been done by the applicant/ respondent the suit land shall be taken over back from him at once without providing any further opportunity to the applicant.*
- 4. The Halka Patwari/ Kanoongoo will kept a close watch at this land and submit reports time to time about the status of land.”*

7. A perusal of this order of Revenue Assistant would show that the petitioner had even misrepresented before the Revenue Assistant about bringing back the land to agricultural land and converting it back for agricultural purposes, despite the fact that petitioner had already cut a colony out of the said land and various purchasers had already built up their houses over the land. I consider that the order of Revenue Assistant giving directions converting the land into agricultural purposes and thereafter to hear the arguments on merits is not of any help to the petitioner. The charges were framed against the petitioner as the facts stood on the date of recording of FIR. This subsequent order

does not help the petitioner rather shows that the petitioner had not given true facts to the concerned Revenue Assistant about having the land sold. I find no force in this petition. The petition is hereby dismissed being a frivolous petition with costs of Rs.25,000/-, to be deposited with Delhi High Court Legal Services Committee. If cost is not deposited with DHLSC, the trial court is directed to recover the cost from the petitioner.

August 16, 2010
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SHIV NARAYAN DHINGRA J.