

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

+ **CRL.M.C. 455/2012**

% *Judgment reserved on: 14th September, 2012*
Judgment delivered on: 3rd December, 2012

NAVEEN GARG & ORS Petitioners
Through: Mr.Rakesh Tiku, Senior
Advocate with Mr. Ajay Arora and
Mr. Kapil Dutta, Advocates for MCD.

Versus

THE STATE OF NCT OF DELHI & ORS Respondents
Through: Mr. Navin Sharma, Ld. APP for the
State/R1.
Mr.Arun Kaushal, Advocate for respondent
No.2.
Mr.Satish Tamta, Advocate for Respondent
No. 3/DDA.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioners have sought to quash the Crl. Complaint No. 493/2011 dated 06.09.2011, the impugned order dated 12.12.2011 and also to set aside/quash the consequent FIR registered vide No. 394/2011 at P.S.-Pul Prahladpur, under Section 13 of Prevention of Corruption Act r/w Sections 345/461 of Delhi Municipal Corporation Act r/w Sections 406/420/466/467/468/471/120-B/34 I.P.C.

2. Mr. Rakesh Tikku, Id. Sr. Advocate appearing on behalf of the petitioners submitted that respondent no. 2 initially filed a Complaint Case no. 440/2011 under Section 156 (3) Cr.P.C. wherein police officers were impleaded as respondent nos. 1 to 4, Commissioner, Land Management, Delhi Development Authority as respondent no. 5 and respondent nos. 7 to 13 were Officers of MCD, and thereby sought directions against the accused persons in committing the Offence in terms of the order of this Court (High Court) in W.P. (C) No. 4771 of 1993 vide its order dated 03.11.1997.

3. Thereupon, Ld. MM-5 (SE) vide its order dated 06.06.2011 has passed the following order:-

“Complainant with Counsel

On the last date of hearing, it was pointed out to the counsel for complainant that in the main complaint, it is not clearly mentioned as to on which land the illegal construction / encroachment is going on. Counsel submits that he do not want to file any supplementary complaint or he do not want to supplement his complaint by providing those particulars and whatever decision as to be passed on the basis of the complaint and reply filed by the SHO, Pul Prahlad Pur, where he has admitted the illegal constructions.

To come up for orders on 30.06.2011.”

4. Thereafter, on 30.06.2011, the same learned MM has passed the following order:

“Complainant with Counsel

Today's date is fixed for orders. An application to amend the present complaint has been filed by counsel for complainant.

Put up for consideration on 15.07.2011”

5. Thereafter, the matter was listed on 15.07.2011. It is recorded in the said date that “*neither the complainant nor the counsel was present.*” However, the matter was put up for the purpose as enumerated in order dated 30.06.2011.

6. Ld. Sr. Advocate has pointed out that the same learned MM received another Crl. Compl. No. 493/2011; therefore, on receiving the fresh complaint “Action Taken Report” was called from the concerned police station whether any FIR has been registered on the facts of the case or whether any action has been taken or not.

7. Ld. Counsel further submits that in the second complaint it is stated by the complainant that part of the said land belongs to DDA. However, he has not indicated that the said land belongs to MCD.

8. It is further submitted that the reply to the first complaint filed by the Police did not disclose the fact that the same issue was seized by this Court in W.P.6672/2008 and dealt with the land purchaser to the village – Pul Prahlad Pur and respondent no. 2.

9. On oral request, Ld. MM has given the opportunity to the complainant/ respondent no. 2 to withdraw the first complaint vide its order dated 21.10.2011. However, his statement was recorded. Ld. MM, thus allowed the petitioner to withdraw the same and accordingly, complaint case was dismissed as withdrawn. In this situation, when the complainant wanted to file the supplementary complainant, the Judge should have allowed the complainant to file the additional affidavit thereto.

10. If it is allowed, then the same judge, would not have, without

seeking the ATR (Action Taken Report) from the police, straightway issue direction to the police to register the FIR under the provisions / contents mentioned therein.

11. It is further submitted that till the passing of the order dated 21.10.2011, there was no Action Take Report (ATR) qua the second complaint, whereas directed against the first complaint vide its order dated 06.09.2011. However, the Id. MM has not even gone through the contents of the second complaint and previous order as well.

12. It is further pointed out, in the second complaint, which is in question, those four Police Officers, were made respondent nos. 1 to 4 in the first complaint, were deleted and respondents no. 9 to 42 were newly added. The petitioners are impleaded indiscriminately whether they are relevant parties to the issue raised by him.

13. Mr. Rakesh Tikku, Sr. Advocate has drawn the attention of this Court to the complaint wherein no allegations have been made against the petitioners and stated therein as under:-

“That after receiving the status report of SHO, PS-Pul Prahladpur, this Hon’ble Court directed the complainant to file a amended complaint incorporating therein the details of unauthorized properties raised by the builder mafia, property dealer, land grabbers and encroachers. The details of properties encroached and grabbed by the accused no. 9 to 26 and others i.e. builder mafia, property dealers and unauthorized construction raised by them are annexed with this complaint as Annexures C-1 to C-3. That in the present case, the complainant has come to this Hon’ble Court for appropriate order and directions as the accused No. 9 to 26 with the active connivance of accused no. 1 to 8 are causing wrongful

loss to the Government and wrongful gains to themselves by illegal means from the Builder Mafia and the encroachers who have been permitted for encroachment over the government land by raising unauthorized construction and after making complaints time to time not to take action over those complaints in time by the accused No. 1 to 8 established the nexus between the accused no. 9 to 26 and the encroachers who are actively violating of provisions of law and Hon'ble High Court orders.

That the area of Village Pul Prahladpur was acquired by the government for the plan development of Delhi time to time and physical possession of the lands was taken up by the Government i.e. DDA and accused NO. 1 is responsible person and in charge of the area in question for land protection branch of DDA.

That after completion of acquisition proceedings the officers of Government i.e. DDA, deliberately and intentionally not executing the planned project for which the land of the area in question was acquired, the reason best known to them.

14. Mr. Tikku further submitted that MCD is a civil body. It has nothing to do with the unauthorized construction. The land belongs to DDA. As stated in the present complaint, accused no. 1 is the Incharge of DDA Land and accused no. 2 to 8 are Officers Incharge of Municipal Corporation of Delhi (Central Zone), therefore, the responsibilities of accused were to protect the Govt. land from unauthorized construction, and, if it is raised, the same was to be removed forthwith.

15. It is also stated in the said complaint that:-

“That the accused no. 1 to 8 are incharge of the area in question where the offence was committed by accused no. 9 to 26 and others encroachers i.e. builder

mafia and property dealers as without the active connivance and support of accused No. 1 to 8 the said offence of encroachment by raising of unauthorized construction over Government land accused no. 9 to 26 and others was possible as the physical possession of the land was with the accused no. 1.

That the accused no. 1 to 26 and others are liable to be prosecuted for the offence which they have committed under the provisions of the Prevention of Corruption At, 1988 read with the provisions of Indian Penal Code etc. as the averments made herein above and the annexures which are annexed herewith establishes the active participation and meeting of mind of each of the accused persons with each other with the common intention and motive to commit an offence with the sole motive to cause wrongful loss to the government and wrongful gain to themselves in a well planned and conspired manner which also attract cheating, fraud and criminal breach of trust apart from, the other offences on individual capacity as well as with the participation of common object by providing active support and aid for not taking appropriate step within time for protection of the government property which was exclusively in possession and supervision of accused no. 1 and non-implementation of the order of the Hon'ble High Court of Delhi passed from time to time for prevention of unauthorized construction over government property which is their prime and statutory duties deliberately and intentionally for their personal motive and enrichment is a penal offence and accused persons are liable to prosecuted for the same.

16. Ld. Counsel has drawn the attention of this court to the order dated 03.11.1997 passed in CWP No. 4771/1993 which is as under:-

“Having heard the ld. Counsel for the parties and having examined the report, the comments and the suggestions and the affidavits filed later and also

hearing in mind the view points of the Senior Officers, who have attended personally the court hearing today, we are of the considered opinion that directions are required to be issued restraining forthwith the unauthorized construction in unauthorized colonies.

In an order made earlier we had observed that one of the aspects to be immediately taken care of is to ensure that further unauthorized construction in existing unauthorized colonies do not take place as we had noticed that in spite of the fact that the Govt. had stated way back in 1977 that the Govt. will not continuance any activities to put up fresh structure in existing unauthorized colonies, but still in those colonies unauthorized constructions had been going on unabated.

Accordingly with immediate effect, we restrain all concerned from carrying out any construction activities in unauthorized colonies.

17. He submitted that the petitioners have nothing to do with the issue raised in the complaint.

18. More so, the Ministry of Urban Development, Govt. of India vide its Office Memorandum dated 30.11.2006, has invited the attention on the instruction regarding removal of encroachment from Govt./common lands issued by Directorate of Estates vide O.M.22012/2/90-Pol.III dated 23.12.1993 as amended vide O.M. dated 26.04.2005 as well as the decision taken in the meeting dated 04.05.1999 circulated vide L & DO's Office Order No. 29/89 dated 20.12.1989 as under:-

“2. As has been clarified in the instructions mentioned above, that the action for detection and removal of encroachment is to be taken by the authority which actually administers / keeps watch & ward of the

property in the field. Thus, the broad categorization of the lands and the concerned authorities responsible for the detection and removal of the unauthorized constructions / encroachments are as under:-

- (i) The lands under roads / parks /playgrounds / toilets / common areas / un-alloted lands in Govt. colonies and re-development areas come under the administrative control of CPWD for all purposes and the responsibility with regard to the detection and removal of the unauthorized construction and encroachment in these areas rests with CPWD.*
 - (ii) With respect to the Government lands which have been transferred to DDA for care and maintenance, the responsibility for detection and removal of encroachment rests with DDA.*
- 4. The matter had been considered in the Ministry and it was felt necessary to reiterate that requisite assistance for demolition / removal of encroachment should invariably be provided to L & DO by DDA, CPWD, MCD and NDMC at the earliest, as and when sought by the L & DO, so that the encroachments can be removed in real time for protection of Government land.”*

19. Even the Lt. Governor, Delhi has also made the following suggestion for recovering the land as under:-

- (i) Encroachments on the DDA land should be removed within a specific time frame and with concerned effort by DDA and the local police without any compromise to uphold the Supreme Court order on the subject and also to protect the property belonging to DDA.*
- (ii) To stop dumping of garbage in that area by unscrupulous people. MCD will need to act in a cohesive manner to check such illegal activities. Environment Deptt. GNCTD should also check pollution in the area by*

strictly enforcing the existing rules against burning and dumping of garbage.

20. Although, the said suggestions are regarding the DDA land at Chowkri, Mubarakbad in Anand Parbat Area. However, the same principle is applicable on the petitioners also.

21. W.P.(C) 6672/2008 was dealing with the same Village– Prahlad Pur regarding encroachment and accountability of the Officers therefore on the same issue, therefore, Id. MM should not have entertained the complaint against the petitioners.

22. In the aforesaid petition, (i) Commissioner of MCD (ii) Lt. Governor of Delhi (iii) Secretary, Land and Building, Delhi Secretariat (iv) Commissioner of Police, Delhi (v) SHO, PS-Tughlakabad and (vi) SDM Kalkaji are parties and the relief sought by the petitioner therein is as under:-

(i) Writ, order or directions in the nature of Mandamus directing the respondents to discharge their statutory and legal duties enshrined under the Delhi Municipal Corporation and without regard to discouragement, prevention and stoppage of illegal and unauthorized encroachment and construction over Government land comprised in Khasra No. 239/1/1, 239/1/2, 239/2/2, 239/3/1 and 237/2, 234/1 in the locality known as village Pul-Prahladpur, Tehsil Kalkaji, (District South), New Delhi

(iii) Writ, order or directions in the nature of Mandamus directing the respondents no.1 to 4 to make an inquiry into the inaction and negligence of his subordinate staff and fix the responsibility of individual / individuals concerned who have allowed themselves or through others or abated such illegal encroachment and unauthorized over the Government lands comprised in Khasra No. 239/1/1,

239/1/2, 239/2/2, 239/3/1 and 237/2, 234/1 in the locality known as village Pul-Prahladpur, Tehsil Kalkaji, (District South), New Delhi without any discrimination and favour.

23. Ld. Counsel has further drawn the attention of this court to the order 11.05.2011 in W.P. (C) 6672/2008 by the Coordinate bench of this Court whereby MCD, respondent no.1 therein was directed to be deleted from the array of parties.

24. Even the SDM, Kalkaji filed the affidavit in the aforesaid Writ Petition in the Court, wherein it is stated as under:-

“That with the regard to the submission made by the petitioner against the answering respondent, it is duly submitted that the answering respondent is not competent to take action for removal of the unauthorized construction / illegal encroachment on the aforesaid MCD /DDA land comprised in Khasra No. 239/3/1 and 237/2, 234/1 in the locality known as village Pul-Prahladpur, Tehsil Kalkaji, (District South), New Delhi against the relief claimed by the petitioner.

25. Ld. Counsel has further referred the order dated 09.02.2010 passed by this Court in the aforementioned Writ Petition, wherein it is recorded that ld. Counsel for the respondent, MCD will obtain instructions to file the short affidavit. Even vide order dated 04.04.2011, it is recorded as under:-

“Though MCD was deleted as aforesaid but on 9th February, 2010 direction was again issued to the MCD. The counsel for the MCD appears today and states that MCD cannot take action unless land is vested in the MCD. On enquiry, it is informed that MCD would take encroachment removal action with respect to the Government land even though not in the jurisdiction of MCD, at the requisition of the SDM.”

26. Ld. Sr. Advocate has submitted that since the entire issue had been seized by this court, and same was listed on 21.02.2012, thus, ld. Trial Judge had ignored all these facts and had not even bothered to go through the order passed in the Writ Petition as mentioned in the complaint even. More so, the police report being filed in the Ist complaint was silent on the issue of pendency of the Writ Petitions, despite, the police was aware, as the Police Commissioner and SHO are party therein.

27. It is further submitted that vide the impugned Order dated 12.12.2011, ld. MM has recorded as under:-

“Complainant with counsel.

The case is fixed for orders on the application u/s 156 (3) Cr.P.C.

Arguments heard.

An allegation has been made that large scale unauthorized construction are going on Government Land mentioned in the complaint.

On perusal of complaint and other relevant documents, it appears that a cognizable offence has been committed which requires filed investigation by the police and if the allegations of the complainant are true, whoever may be found guilty should also be adequately punished. Therefore, the police station Pul Prahlad Pur is directed to lodge the FIR with all the contents of the complainant in the present case and carry out the investigation in a fair manner and to conclude the same as expeditiously as possible which otherwise also the mandate of the law. The FIR be registered immediately.

To come up for filing the status / progress report / report regarding registration of FIR and regarding investigation on 19.07.2012”

28. It is directed by Id. MM to SHO, PS-Prahlad Pur to register an FIR with all the contents of the complaint and carry out the investigation in a fair manner and to conclude the same expeditiously, which is also the mandate of law.

29. The aforesaid order has been passed in absence of any Action Taken Report, therefore the Magistrate has grossly misused his power without application of mind.

30. He has further drawn the attention of this Court to the FIR lodged, in pursuance of the order dated 12.12.2011 wherein, the police has also registered the FIR under Section 13 of the Prevention of Corruption Act, 1988 apart from the provisions of Delhi Municipal Corporation Act and Indian Penal Code, 1860. Whereas, the Metropolitan Magistrate has no power to entertain the complaint if the allegations are of P.C. Act.

31. It is further submitted that in the instant complaint, there is no averment of any allegation falls under Section 13 of Prevention of Corruption Act and Section 467 & 468 of Indian Penal Code, 1860, therefore the FIR lodged; by the police is also without application of mind.

32. Mr. Navin Sharma, Id APP for the State has also joined the issue and submitted that the Ld. MM should not have ordered to register the case in the Prevention of Corruption Act, 1988 before taking cognizance. Prevention of Corruption Act is a special Act and it is being dealt by the Special Court. Therefore, the said direction passed and FIR lodged pursuant thereto is without jurisdiction. The

Magistrate is duty bound to go through the contents and thereafter passed the order.

33. In *Subhkaran Luharuka & Anr. vs State & Anr.* reported in *JCC 2010* it has been held as under:-

“In rebuttal, the petitioners further urged that even though a Magistrate can direct investigation in exercise of its powers under Section 156(3) of the Code even when such application is part of the Complaint under Section 200 of the Code, the manner in which the present case has proceeded makes it clear that the impugned order under Section 156(3) of the Code and consequent registration of FIR, are in utter violation of the laid down procedure besides being actuated with mala fides. The order has been passed without application of mind. The complainant has also suppressed material facts. Even otherwise the disputes between the parties are of civil nature and are already before an Arbitrator.”

34. Even otherwise, respondent no. 2 / complainant does not enjoy the credibility in the society. He is involved in number of cases. It is further submitted that before prosecution, sanction is required to be obtained by the concerned Department, as the petitioners are public servant. In the present case no sanction has been received.

35. Mr. Arun Kaushal, Id. Counsel appearing on behalf of the respondent no. 2 / complainant has submitted that respondent no. 2 filed an application under Section 156 (3) Cr.P.C. before the Id. ACMM, Saket Courts, New Delhi, which came up for hearing before the court of concerned MM for issuing the direction to the SHO, PS- Prahlad Pur, New Delhi for registration of FIR against the petitioners,

respondent no. 3 & others i.e. Builders Mafia, Land Grabbers, Encroachers and Property Dealers who were indulged in selling of the public land and raising unauthorized construction with active connivance of the petitioners, respondent no. 3 in the area of Pul Prahlad Pur and its adjoining area.

36. Ld. MM has called for the Action Taken Report from SHO of concerned area. The said SHO filed a detailed report along with list of properties built up unauthorizedly.

37. After perusal of the records, considering the facts, status / action taken report and arguments advanced by the parties, ld. MM has directed the SHO, PS-Prahlad Pur to register FIR vide its order dated 12.12.2011.

38. Accordingly, a case vide FIR no. 394/2011 was registered for the offences punishable under Section 406/420/466/467/468/471/120B/34 IPC and under Section 13 of Prevention of Corruption Act also under Section 345/461 of the Delhi Municipal Corporation Act.

39. Ld. Counsel for respondent no. 2 / complainant has further submitted that there is no statutory provisions under the Code of Criminal Procedure 1973 by which power has been imposed upon the MM that it is pre-requisite for him to call status / action taken report before passing an order under Section 156 (3) Cr.P.C.

40. To strengthen his arguments on this issue, he has relied upon a case of ***Dr. Rajni Palriwala v. Dr. D. Mohan & Anr. 2009 (3) JCC 1896***. The relevant part of the said order is reproduced as under:

“Section makes it clear that the only option available thereunder to the Magistrate is to order "an investigation." There is nothing in Section 156 (3) Cr.PC to suggest that a Magistrate can ask for a ‘status report’ from the police which is not meant to be a report of investigation in terms of Section 173 (1) Cr.PC. Even if the Magistrate does not expressly pass an order to that effect, when pursuant to an application under Section 156 (3) Cr.PC he asks for a report from the police, the police has to register an FIR and submit a report of investigation.”

41. Ld. Counsel has further submitted that the stage of registration of FIR is to collect material against the accused persons against whom, allegations are made by the complainant and till the materials are not collected to substantiate the allegations, against the accused / public servant, the question of sanction does not arise as the stage of seeking sanction comes only after collection of an evidence against a public servant for his prosecution. The sanction is not required for holding an investigation and enquiry against the public servant. The sanction from the competent authority is required only for prosecution of public servant and as such the investigation and enquiry does not include the meaning of prosecution.

42. To strengthen his arguments on the issue mentioned above, ld. Counsel has relied upon a case of ***Pancham Singh. V. State AIR 1967 Pat 416*** wherein it is held as under:

“This section lays down that no Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or Subsection (2) of Section 5 of the Prevention of Corruption Act alleged to have been committed by a public servant, except with the previous sanction of authorities mentioned in Clauses (a), (b) and (c)

as the case may be of Sub-section (1) of that section The bar contained in this section is to the taking of cognizance of an offence by a Court and not to the institution of a police case or the submission of a final form by the police under Section 173 of the Code.”

43. On the issue of the credibility of the respondent no. 2, ld. Counsel has submitted that there is no such provision in Law by which there is a bar on a person from invoking the jurisdiction of the competent court of law for registration of FIR, who does not have credibility in the Society. On this issue, the Apex Court in a matter of ***M. Vishwanathan v. S.K. Tiles & Potteries P. Ltd. 2008 (15) 578*** held as under:

“When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.”

44. On the issue, whether the ld. MM can pass an order under Section 156 (3) Cr.P.C. for registration of FIR for offences committed under the Prevention of Corruption Act, 1988, he submitted that this issue came up before the High Court of Orissa in a case titled as ***Surender Nath Swain v. State of Orissa & Ors. 2006 CrI. L.J. 462*** wherein it is held as under:

“A combined reading of sub section (3) and sub section (4) of Section 5 of the said Act clearly shows that the Special Judge is not to be treated as a Magistrate within the meaning of sub

section (3) of Section 156 of the Code. Sub Section (3) of Section 156 empowers any Magistrate competent to take cognizance under Section 190 to order for such an investigation as mentioned in sub section (1) thereof. Now, a combined reading of sub section (3) of Section 156 of the Code and therefore, the Special Judge is incompetent to refer such complaint to the police to investigate such case.”

45. Ld. Counsel has further submitted that Statutory provisions of Section 19 (3) (c) of the Prevention of Corruption Act reads as under:

“No Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.”

46. Ld. Counsel has further submitted that it is immaterial at this stage that Id. MM who passed an order for registration of FIR under Section 156 (3) Cr.P.C. was competent or not as the order passed by him is interlocutory order and cannot be interfered by this Court while exercising the power under Section 482 Cr.P.C.

47. It is submitted that respondent no. 2 / complainant had approached the Id. MM for issuance of direction for registration of FIR against the accused persons. Accordingly his prayer was considered and allowed by way of order dated 12.12.2011 by directing the SHO, PS-Prahlad Pur to register FIR and as such the application under Section 156 (3) Cr.P.C. was disposed of. Thereafter, Id. MM has no power either to recall its own order or to modify the same in any manner whatsoever and except the Appellate Court can interfere in the order passed by the Id. MM under Section 156 (3) Cr.P.C. subject to the condition that the same is not complied with, i.e. FIR is not

registered. Once the FIR is registered on the orders and direction passed by the Id. MM thereafter, no court has power either to stay the investigation or interfere in any interlocutory order especially in such cases, which are registered under the provisions of Prevention of Corruption Act, 1988.

48. Mr. Arun Kaushal, Id. Counsel has further submitted that the provisions of DMC Act does not restrict the MCD Officers from exercising their administrative powers from restraining the unauthorized construction raised over the Govt. land. The officers of MCD applies pick and chose policy while dealing with the issue of unauthorized construction raised over the Govt. land or private land. The relevant part of DMC is reproduced as under:

Section 336. Sanction or refusal of building or work. – (1) The Commissioner shall sanction the erection of a building or the execution of a work unless such building or the execution of a work unless such building or work would contravene any of the provisions of sub section (2) of the section or the provisions of section 340.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:-

- (a)*;
- (b)*;
- (c)*;
- (d)*;
- (e) That the building or work would be an encroachment on Government land or land vested in the Corporation”*

49. He has further submitted that having knowledge of unauthorized construction undertaken without the sanction plan from the

Commissioner of MCD as enshrined in the aforesaid provisions of DMC Act, the Officers of MCD are duty bound to act properly for restraining the said unauthorized constructions and to demolish the same if the unauthorized constructions have already been done irrespective of whether it is made on the Govt. / public land or on the private land.

50. It is further submitted that after registration of FIR in the present case, the investigation is at the initial stage or to be commenced for enquiry and investigation regarding the properties, which were reported by the SHO, PS-Prahlad Pur along with his status report filed before the Id. Trial Court. Therefore, Id. Trial Court passed an order on 12.12.2011 for thorough investigation. Hence, any interference by this Court by invoking powers under Section 482 Cr.P.C., at this stage, when truth has been unearthed, would be pre-mature and unwarranted.

51. Ld. Counsel for respondent no. 2 is not disputing that on the same issue a Writ is pending before this Court however that does not disqualify respondent no. 2 from initiating any legal action against the petitioners and the respondent no. 3.

52. It is further submitted that there is no iota of evidence filed by the petitioners by which inference can be drawn by this Court that the respondent no. 2 does not have credibility in the Society. Pending litigation, if any, does not establish a credibility of genuine persons. Allegation may be false or not. Till the same are not concluded with the final verdict to make any such observations, same is against the principle of natural justice and law of land. Therefore, the

observations made by this Court on the issue of credibility of the respondent no.2 in Para 37 of the order dated 07.02.2012 is without any basis and same is required to be recalled.

53. I have heard learned counsel appearing for the parties. The respondent No.2/complainant initially filed complaint Case No.440/2011 under Section 156 (3) Cr.P.C. wherein police officers were impleaded as respondent Nos.1 to 4, Commissioner, Land Management, DDA as respondent No.5 and officers of MCD as respondent Nos.7 to 13. The SHO, P.S.-Pul Prahladpur filed Action Taken Report thereto.

54. Thereafter, on 30.06.2011, the respondent No.2/complainant filed an application to amend the complaint mentioned above and the same was put up for consideration on 15.07.2011 by the learned MM. On 15.07.2011, neither the respondent No.2/complainant nor his counsel was present, therefore, the matter was directed to put up on the next date for consideration. On the said date, the learned MM received other Criminal Complaint No.493/2011. In this complaint, it is stated by the complainant that part of the said land belongs to DDA. However, he has not indicated that the said land belongs to MCD.

55. In report to the first complaint filed by police did not disclose the fact that the same issue was seized by this Court in W.P.(C) No.6672/2008, which dealt with the land purchaser to Village-Pul Prahladpur and the respondent No.2/complainant. At oral request and after recording the statement of Respondent No.2/complainant, learned MM has given opportunity to the respondent No.2/complainant to

withdraw the first complaint vide his order dated 21.02.2011. The same was dismissed as withdrawn.

56. I note, on the second complaint, Id. MM did not seek any report from the police. He straightway directed the police to lodge FIR.

57. Undisputedly, the learned MM is not bound to seek ATR from the police, however when the respondent No.2/complainant changed the old scenario of the case by impleading more respondents and deleting the police officers, in such a situation ATR was required for the reasons that after lodging FIR against the public servants which would take time and come in their career specially in a case when they are not at fault. In the second complaint, respondent Nos.9 to 42 were impleaded. Counsel appearing on behalf of the respondent DDA has admitted that the land in question belongs to DDA not to MCD. In such a situation, the petitioners who are MCD officers have no role to play. Therefore, in such a situation, ATR from the police is required in the present case.

58. By the complaint, the respondent No.2/complainant has drawn attention to the order dated 03.11.1997 passed in W.P.(C) No.4771/1993, wherein, it is recorded that after receiving the status report of SHO, P.S.-Pul Prahladpur, this Court directed the complainant to file an amended complaint incorporating therein the details of unauthorized properties raised by the builders, mafias, property dealers, land grabbers and encroachers. The details of properties encroached and grabbed by accused Nos.9 to 26 and others i.e. builders, mafias, property dealers, and unauthorized construction

raised by them are annexed with this complaint as Annexures C-1 to C -3.

59. I note, in the present complaint, the respondent No.2/complainant seeks direction from the Court by stating that accused Nos.9 to 26 with the connivance of accused Nos. 1 to 8 (petitioners herein) were causing wrongful loss to the Government and wrongful gains to themselves by using illegal means from builders and mafias.

60. MCD is a civil body. It has nothing to do with the unauthorized construction especially when the land belongs to DDA. Moreover, it is stated in the present complaint that accused No.1 is In-charge of DDA land. The petitioners are made accused Nos.2 to 8 being the Officers In-charge of MCD (Central Zone) only for the reasons that the petitioners have to protect the government land from unauthorized construction.

61. I further note, this Court passed the order dated 03.11.1997 in W.P.(C) No.4771/1993, whereby this Court restrained all concerned from carrying out any construction activities in unauthorized colonies.

62. More so, Ministry of Urban Development, Government of India vide office memorandum dated 30.11.2006, clarified that the action for detecting and removal of encroachment is to be taken by the authority which actually administers / keeps watch and ward of the property in the field.

63. The land in question, as admitted by the counsel for the DDA, belongs to the DDA. Even the Lt. Governor, Delhi has also made suggestion that encroachment on the DDA land should be removed

within a specific time frame and with all efforts of the DDA and the local police without any compromise to uphold the Supreme Court's order on the subject and also to protect the property belonging to DDA.

64. W.P.(C) No.6672/2008, which was pending before this Court, dealt with the same village regarding encroachment and accountability of the officers, which had not been brought into the knowledge of the learned MM.

65. Vide order dated 11.05.2011 passed in the aforementioned petition by a co-ordinate Bench of this Court, whereby MCD, (respondent No.1 therein) was directed to be deleted from the array of parties. Whereas, the learned MM vide the impugned order dated 12.12.2011 directed the SHO, P.S.- Pul Prahladpur to register an FIR with all contents of the complainant.

66. Accordingly, police lodged FIR indiscriminately even under Section 13 of the Prevention of Corruption Act, 1988 apart from the provisions of Delhi Municipal Corporation Act and Indian Penal Code, 1860. Whereas, the learned MM has no power to entertain a complaint, if the allegations are of Prevention of Corruption Act, as admitted by the learned APP appearing on behalf of the State.

67. Vide order dated 21.02.2012, the aforementioned W.P.(C) No. 6672/2008 has been disposed of by directing as under:-

“3. In view of the aforesaid submission made by the respondent No.2/SDM, it is deemed appropriate to direct respondent No.2/SDM to inspect the subject land within a period of two weeks from today and thereafter send a written communication to the respondent/MCD/ appropriate land owning agency within two weeks thereafter so that removal of encroachment on public land is undertaken by

the said agencies within a period of four weeks from the date of receipt of the intimation. A copy of the written communication forwarded by respondent No.2/SDM to the government agencies shall be placed on record by way of an affidavit within a period of one week from the date of issuance thereof alongwith proof of dispatch. Similarly, the action taken reports shall be placed on record by the land owning agency/civic authority within a period of 10 weeks from the date of receipt of the written intimation from the respondent No.2/SDM.

4. The petition is disposed of with directions to the Registry to place the matter before the Court in case the respondent No.2/SDM fails to file an affidavit within the stipulated time and/or if the action taken reports are not filed by the land owning agencies/civic authority within a period of 10 weeks from the date of filing of the affidavit by the respondent No.2/SDM.”

68. I have no hesitation to say that there is no statutory provision under the Cr.P.C. by which the learned MM has to requisition the status report before passing an order under Section 156(3) Cr.P.C.

69. Though, the petitioners have doubted the credibility of the respondent No.2/complainant, however, there is no bar on any person invoking the jurisdiction of any competent Court of law for registration of FIR, who does not have credibility in society. Moreover, no material has been placed by the petitioners against the credibility of the respondent No.2/complainant. Therefore, the observations made in para 37 in the order dated 07.02.2012 are recalled.

70. In view of the above discussion and submissions of the parties, the order dated 12.12.2011 passed against the petitioners and the subsequent proceedings emanating thereto are set aside. However, the

learned MM shall be at liberty to pass a fresh order after getting a proper report regarding the land and the role of the petitioners.

71. In view of the above, the instant petition is allowed.

72. No order as to costs.

SURESH KAIT, J

DECEMBER 03, 2012

Jg/bs/RS