

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9248 of 2023

Petitioner :- Siraj Iqbal

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Affairs And Others

Counsel for Petitioner :- Ishan Baghel, Avinash Singh Vishen, Mohd. Khalid, Veena Vijayan Rajes

Counsel for Respondent :- G.A., Ratnesh Chandra

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

1. Heard Shri I.B. Singh, learned Senior Advocate assisted by Shri Ishan Baghel, learned counsel for the petitioner, learned A.G.A. for the State/respondent Nos. 1 to 4 and Shri V.K. Sahi along with Shri Ratnesh Chandra, Advocates for the Opposite Party No.4 and perused the material placed on record.

2. This writ petition has been filed with the following main prayers :-

"(i) **CERTIORARI** quashing the impugned First Information Report, dated 28.11.2023, lodged by Imtiyaz Ahmad, Junior Engineer, LDA (Opposite Party No.5), registered as FIR No.156/2023, u/s 420, 467, 468, 471, 120-B IPC at Police Station -Kaiserbagh, District - Lucknow, as contained in Annexure No.P1 to this Writ Petition.

(ii) **MANDAMUS** commanding the opposite parties not to arrest the petitioner in pursuance of the impugned FIR No.156/2023, u/s 420, 467, 468, 471, 120-B IPC at Police Station -Kaiserbagh, District - Lucknow.

(iii) **MANDAMUS** commanding the opposite parties not to take coercive steps against the petitioner in pursuance of the FIR No.156/2023, u/s 420, 467, 468, 471, 120-B IPC at Police Station - Kaiserbagh, District - Lucknow."

3. It has been submitted by learned counsel for the petitioner that petitioner's brothers Shri Monis Iqbal and Mohsin Iqbal, sons of late Iqbal Ahmad are directors of F.I. Builders Pvt. Ltd. along with Shri Iqbal Ahmad, Suhail Ahmad and Shri Shoeb Iqbal. The company signed a builders agreement with Mr. Michael Paul, Power of Attorney Holder of Lucknow Regional

Conference of the Methodist Church of India on 18.02.1997 and got a map sanctioned from the Lucknow Development Authority (herein after referred to as "the LDA") for the property situated at 37 Cantonment Road, Lucknow for approximately 2,00,000 Sq.Ft. out of which 44,500 Sq.Ft. was sanctioned for construction of an apartment bloc/group housing with six floors. The sanctioned map dated 18.02.1997 has been filed as Annexure No.P3 to the writ petition. Only relevant part of the sanctioned map has been annexed because it is too large. On 23.05.1997, in pursuance of the builders agreement a Memorandum of Understanding was signed between the owner of the land and the directors of the F.I. Builders Pvt. Ltd. In the year 1998 construction of the building was completed and the flats were handed over to the allottees with total covered area being 8975.36 Sq.Mts. The company was issued a notice that they had built more floors and covered the set back and deviated from the sanctioned map, by the LDA in 1998 itself but on 19th October, 1998 the Department of Housing issued a policy for compounding, a copy of which has been filed as Annexure No.P7 to the writ petition. Certain conditions were mentioned in the schedule attached to the said policy which conditions were fulfilled by the company and then application was moved for compounding of two extra floors, terrace pent house and coverage of set back. The company deposited Rs.2,12,503/- on 12.04.2000 in pursuance to the compounding permission given on 28.12.1998.

4. Learned counsel for the petitioner has argued that an offence under Section 26 & 30 of the Urban Planning and Development Act, 1973 (herein after referred to as "the Act, 1973") can be compounded under Section 32 of the Act, 1973. An appeal can be considered by the Chairman against any order of the Vice Chairman. It has also been argued that under Section 49 of the Act, 1973 any offence under the Act, 1973 can be prosecuted only after prosecution sanction is granted by the Vice Chairman of the authority or any officer authorized in that behalf. No prosecution was initiated after sanction of the prosecution under Section 49 by the competent authority. On 28th November, 2023, F.I.R. was lodged under various sections of the Indian Penal Code as aforesaid and on 28.11.2023 itself, one of the directors, namely, Mohsin Iqbal was arrested in pursuance of the said F.I.R. It has been argued that impugned F.I.R. is a pure abuse of process of law. It has also been argued that the dispute, if any, between the parties is civil in nature and has been tried to be given a criminal colour. F.I.R. is malafide as no other builder has been proceeded against in the city of Lucknow, although 90% of the buildings that have been erected in the city of Lucknow are in violation of the bye-laws or the sanctioned or

approved map, only F.I. builders is being proceeded against for the reasons best known to the respondents.

5. It has also been submitted by learned counsel for the petitioner that although the F.I.R. mentions that the company has produced forged documents before the innocent allottees/buyers for selling of impermissible constructions, The respondents cannot show any such forged documents as they have none. Therefore, Section 467, 468 I.P.C. are not made out from a bare perusal of the F.I.R.

6. Learned counsel for the LDA has pointed out that the petitioner Siraj Iqbal is the son of late Iqbal Ahmad and real brother of Mohsin Iqbal and Monis Iqbal, who are the directors of the F.I. Builders Pvt. Ltd. He was working as Junior Engineer on deputation in LDA from the Nagar Nigam at the relevant point of time. He has not disclosed his antecedents before this Court. It has also been pointed out that the policy that was floated by the Government on 19th October, 1998 requiring several conditions to be fulfilled by a builder for getting compounding done. There were certain parts of a building which could not be compounded at all, e.g. construction on the set back. It has also been argued on the basis of documents annexed with the writ petition, namely, Annexure No.P9, which has been pointed out by the learned Senior Advocate as compounding permission having been given on 06.08.1998 by the competent authority to the F.I. Builders; that from a perusal of the same, it is evident that it is a letter dated 21.12.1999 issued by the Executive Engineer of Enforcement Section - 1 of the LDA, raising a demand for certain money as compounding fee, supervisory fees and other dues along with a specific condition that "No Objection Certificate" should be taken from the concerned department before amended map would be issued. The learned counsel for the respondents has also pointed out from the Annexures to the writ petition, a reminder issued on 09.01.2001 by the Executive Engineer, copy of which has been filed as Annexure No.11 to the writ petition, wherein several conditions have been mentioned which had to be fulfilled in pursuance of the conditional compounding permission given on 06.08.1999. These conditions included the demolition of such portion of a building which cannot be compounded/non compoundable construction raised in the building. No Objection Certificate was also to be taken from the Nazul Department, Land Acquisition department, Nagar Nigam and the Fire Department with regard to any defect in title or fire safety of the building concerned. Letter also mentions that all such relevant No Objection Certificates along with fees as mentioned in the reminder be submitted within one week, or else the compounding application shall be rejected. It has been

submitted that the compounding application having been approved only conditionally the matter remained pending because the petitioner was the Junior Engineer and real brother of the directors of F.I.Builders Pvt. Ltd. The constructed flats were allotted and handed over to unsuspecting and innocent buyers by making out that the compounding application of the petitioner had been accepted and an amended approved map has been given to the Company.

7. Learned counsel for the petitioner, at this stage, has interjected and stated that no person aggrieved has filed the F.I.R. The LDA has no locus to file F.I.R. Only the buyers of such flats have locus to lodge the F.I.R., in case they were cheated. In fact, they were not.

8. Learned counsel for the petitioner has pointed out that a copy of one of the sale deeds which has been filed as Annexure to the writ petition made out in favour of the one of the allottees of a flat and sub paragraph (iii) of paragraph 3 has been pointed out wherein it has been stated that in the event any defect is found in the title of the seller in respect of the flat sold to the purchaser, the purchaser shall be entitled to have entire sale consideration refunded to the purchaser on the condition of restoring the possession of the flat to the seller.

9. It has been submitted that none of the buyers of the flats have lodged any complaint that they were shown any forged document of amended map being sanctioned as has been mentioned in the impugned F.I.R.

10. This court having heard learned counsel for the parties has also considered the Annexures to the writ petition carefully and also the contents of the impugned F.I.R. The original map was sanctioned on 18.02.1997 for group housing on 23534.11 Sq.Ft. of land for construction of stilt parking plus six floors, a total of 72 flats. The company, i.e. F.I. Builders Pvt. Ltd. constructed a stilt parking and eight floors along with one pent house on the terrace floor and made construction on the set back area required to be left open under the sanctioned map. The allegation in the F.I.R. is that no compounding process was completed and no compounded/amended map was issued by the LDA. Proceedings were initiated under the relevant sections of the Act, 1973 from time to time and F.I. Tower was also inspected and it was found that most of the flats were occupied by the residents. It was also discovered on inquiry being made that the extra floors and non compoundable construction was made without any sanctioned map and forged documents were shown to the purchasers and on the basis thereof the sale was made by Monis Iqbal and Mohsin Iqbal, sons of late Iqbal

Ahmad and Sri Michael Paul, S/o late S. Paul. The construction of extra floors which was not sanctioned by the builders has resulted in the building being rendered risky for the persons who have occupied it. Therefore, F.I.R. was lodged by Imtiyaz Ahmad, Junior Engineer, LDA, who has been arrayed as respondent No.4 in the writ petition.

11. This Court having gone through the F.I.R. as aforesaid finds that the allegations against the petitioner is of forging documents/sanctioned map, etc. and making out to the buyers that they had all the permissions from the relevant authorities for construction, as aforesaid. A cognizable offence is made out from a bare perusal of the F.I.R. This court, therefore, cannot show interference, as prayed for.

12. Accordingly, the writ petition is hereby **dismissed**.

Order Date :- 6.12.2023

ML/-