

Court No. - 74

Case :- APPLICATION U/S 482 No. - 23708 of 2024

Applicant :- Anil Chauhan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Awadhesh Kumar Malviya

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Awadhesh Kumar Malviya, learned counsel for applicant and Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Ridam Gupta, Advocate holding brief of Sri Kaushalendra Nath Singh, learned counsel for opposite party no.2 who is being represented although by name as an officer for NOIDA as well as learned AGA for the State.

2. The instant application has been filed with the prayer to quash the summoning order dated 11.01.2024, passed by the Additional Chief Judicial Magistrate-III, District Gautam Buddha Nagar as well as entire proceeding of Criminal Case No. 17020 of 2018, titled as State v. Anil Chauhan and others, arising out of Case crime No. 1315 of 2017, under Section 447 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984.

3. While challenging the veracity and genuineness of impugned summoning order dated 11.01.2024 especially against applicant herein, learned counsel for applicant submitted that applicant is not the owner of plots in question whereupon certain alleged illegal constructions have been raised, role of applicant is only as a contractor who performed civil constructions works over the plots which belong to other co-accused, namely, Rajbala and Vijendra Yadav who are the owner of 40 square meter plot each as allocated by NOIDA. It has been further submitted by learned counsel for applicant that none of the sections in which applicant has been implicated, are attracted, precisely Section 447 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984 since no notice

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has been issued in pursuance to Section 441 IPC and the properties belong to other co-accused, is not at all disputed by learned Senior Advocate appearing on behalf of NOIDA. Learned counsel for applicant also submitted that Section 3 of Prevention of Damage to Public Property Act, 1984 will come into play when any person is encroaching or approaching over property belongs to public utility and as such, entire criminal proceedings initiated against applicant herein may be quashed.

4. For substantiating his arguments, learned counsel for applicant relied upon the judgment passed by Coordinate Bench of this Court in **Akhilesh Kumar Sachan and 3 others Vs. State of U.P. Thru. Addl. Chief Secretary, Deptt. Home Affairs Govt. Lko and 3 others** [passed in Application U/S 482 No.4282 of 2024, decided on 09.05.2024] wherein it has been held that once the FIR has been lodged under Section 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984, the essential requirement mandatory on the part of prosecution has to prove and the court has to return a finding on the fact that trespassing was committed with one of the intent enumerated in Section 441 IPC, prosecution has not only to allege but also to prove that entry of unlawful occupation must be with the intention "to commit an offence" or "to intimidate, insult or annoy any person in possession of property". Every trespass by itself is not criminal and in absence of such finding, criminal proceedings initiated, will not be maintainable.

5. Per contra, Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Ridam Gupta, Advocate holding brief of Sri Kaushalendra Nath Singh, learned counsel appearing on behalf of NOIDA vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel for applicant on the grounds narrated in the counter affidavit preferred at the behest of opposite party no.2 through which it has been stated that Rule of New Okhla Industrial Development Area Building Regulation, 2010 deals with regard to obtaining prior permission from Chief Executive Officer or an Officer authorized by the Chief

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Executive Officer for erection of any building or boundary wall or fencing, applicant is in collaboration with Rajbala and Vijendra Yadav constructed a six floor hotel on the allotted plot without prior permission from NOIDA which is strictly in violation of Rule of the said Regulation. It has also been submitted by learned Senior Advocate that at present, an OYO Hotel is running on the allocated land which allotted for residential purpose but without permission of NOIDA, illegal construction was raised by applicant and it is also being used for commercial purposes.

6. One more argument has also been raised by learned Senior Advocate that notice has already been issued against plots owner for carrying out the illegal constructions and as such, the instant application deserves to be dismissed on the ground of perpetuating illegality in spite of proper intimation and the entire proceedings have been initiated on the factual grounds which are already narrated in the counter affidavit. At last, it has also been argued that there is alternative remedy available before applicant to prefer discharge application if charges are not sustainable against applicant.

7. Learned AGA for the State also opposed the prayer sought through the instant application and seconded the arguments raised by learned Senior Advocate appearing on behalf of NOIDA.

8. After having the rival submissions raised by learned counsel for parties and thorough reading of the narration available in the counter affidavit as well as rejoinder affidavit, one thing is crystal clear that applicant is neither the owner nor possessor over the plots in dispute. It has been admitted by learned Senior Advocate appearing on behalf of NOIDA and the same has also never been disputed while preferring counter affidavit that both the plots measuring about 40 square meters, do not belong to one Rajbala and Vijendra Yadav, role assigned against applicant through the arguments raised by learned Senior Advocate appearing on behalf of NOIDA that he has to prove his bonafide in shape of a contractor as

mentioned in the present application through which prayer has been made for quashing the entire criminal proceedings initiated at the behest of opposite party no.2.

9. A precise query has been made before learned Senior Advocate appearing on behalf of NOIDA that under which circumstance, once the Regulation does not permit the land owners to erect even boundary or fencing, a multi-story building up to the level of six floors has been raised and the same was not raised in a day which might be taken at least one year, what action has been taken up by NOIDA for creating any impediment and stopping the land owners from raising six story building?

10. Second query is that is there any procedure which enables the NOIDA to seek proper information regarding the person who is taking contract for civil constructions over the plots pertain to legal owners in the eyes of NOIDA?

11. In both the queries, learned Senior Advocate appearing on behalf of NOIDA fairly submitted that the action whatsoever has been taken up by the Authority, is not intimating and perpetuating illegality in shape of raising constructions of six story building, was not the issue in the instant matter and as such, precise instructions have not been called for. Insofar as second query is concerned, learned Senior Advocate appearing on behalf of NOIDA submitted that there is no procedure available through which the person who is legal owner of any plot, has to submit information of legal contractor at the time of raising constructions over the undisputed plot allocated by NOIDA.

12. In view of the aforesaid facts and circumstances, the arguments raised by learned counsel for applicant, seem to be justified, the applicant is nowhere in the picture of NOIDA for initiating any type of criminal proceedings against him. The entire proceedings whatsoever have been initiated in pursuance of chargesheet dated 22.12.2017 is baseless and the chargesheet has been preferred only on the basis of conjunctures and

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surmises and there is hardly any attraction of Section 447 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984. Needless to mentioned that order dated 17.07.2018 taking cognizance of offence by learned Chief Judicial Magistrate, Gautam Budh Nagar is also illegal in the eye of law.

13. In view thereof, entire proceeding of Criminal Case No. 17020 of 2018, titled as State v. Anil Chauhan and others, arising out of Case crime No. 1315 of 2017, under Section 447 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984 alongwith chargesheet dated 22.12.2017 and order dated 17.07.2018 taking cognizance of offence as well as summoning order dated 11.01.2024 passed in the said case, are hereby quashed and set aside.

14. However, it is made clear that the abovementioned order is strictly pertains to protecting the legal interest of applicant herein.

15. Accordingly, the instant application is **allowed**.

Order Date :- 4.4.2025

Vivek Kr.

(Saurabh Srivastava, J.)