

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
ANTICIPATORY BAIL APPLICATION NO.223 OF 2015

Santosh Namdeo Temnwalkar Applicant
Vs.
The State of Maharashtra Respondent

WITH

APPLICATION NO.177 OF 2015
{For Intervener}
IN
ANTICIPATORY BAIL APPLICATION NO.223 OF 2015

Dr. Anilkumar G. Yadav Intervener
in the matter of
Santosh Namdeo Tembwalkar Applicant
Vs.
State of Maharashtra Respondent

Ms Sartaj Shaikh for the Applicant.
Ms A.T. Javeri, APP, for the Respondent-
State.
Mr. S.V. Marwadi i/b Mr. Kartik S. Garg
for the Intervener.

CORAM: REVATI MOHITE DERE, J.

DATED: APRIL 07, 2015

P.C:

1. Heard the learned counsel for the

applicant, the learned APP for the respondent-State and the learned counsel for the intervener/original complainant.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R.No.I-36/2015, registered with the Virar Police Station, District Thane for the alleged offences punishable under Sections 420, 465, 467, 468, 401 and 404 r/w Section 34 of the IPC.

3. The complainant is one Dr. Anilkumar Ghanshyam Yadav and the said complaint has been lodged as against the present applicant and several others. According to the complainant, as he was in need of a Gala, he went to the office of M/s. Sai Shraddha Construction. He has alleged that he was shown one shop bearing Gala No.3 in Sai Siddhi Apartment, constructed

by M/s. Sai Shraddha Construction, and was informed by the office staff about the consideration to be paid for the said shop. He was also informed that the construction was legal and was introduced to the present applicant, who is the Partner and Developer of M/s. Sai Shraddha Construction. According to the complainant, the applicant re-confirmed with him the consideration amount to be paid for the said shop, and the legality of the building and the shop. Thereafter, the applicant also handed over one Sale Agreement (along with annexures thereto), entered into by M/s. Sai Shraddha Construction with one Nilesh Ramesh Chauhan of Gala No.4. The said document was handed over to the complainant, along with all the annexures thereto, with regard to the permissions granted by the authorities, so as to reassure him, about the legality of the building.

4. It is alleged by the complainant that on 5-11-2014, he made an application under the Right to Information Act to the Deputy Director of Town Planning, Vasai-Virar Municipal Corporation and sought information, regarding the permissions issued by the authorities, i.e. with regard to the commencement certificate of Sai Siddhi Apartment, issued in the name of Dayanand D. Patil and two others, and certain other information. According to the complainant, he received a reply from the Vasai-Virar Municipal Corporation, that no permission was issued to Sai Siddhi Apartment, either by CIDCO or from their office. According to the complainant, on the basis of the said information received by him under the Right to Information Act, it was evident that the present applicant, who is the Partner and Developer of M/s. Sai Shraddha Construction,

had given him a registered Agreement for Sale with documents attached to it, which were all forged and fabricated. Hence, a complaint/FIR was lodged by the complainant as against the present applicant, Dayanand Patil and others.

5. The learned counsel for the applicant contended that the land in question belongs to one Dayanand Patil, i.e. Survey No.125, Hissa Nos.4, 7 at Village Virar. She submitted that the 7x12 extract also reveals that the said land belongs to Dayanand Patil and others. According to the learned counsel, Dayanand Patil had given the said plot for development to M/s. Omkar Developers and who, in turn, handed over the development of the said plot to M/s. Sai Shraddha Construction. According to the learned counsel, the applicant had only developed the plot and constructed the building and that all necessary permissions and

documents were obtained by Dayanand Patil and M/s. Omkar Developers. According to her, all the documents granting the necessary permissions, i.e. the development permission, commencement certificate from CIDCO and N.A. Permission from the authorities were obtained by Dayanand Patil and others. She further submitted that the House Tax Receipt of the said plot on which Sai Siddhi Apartment was constructed, initially stood in the name of M/s. Omkar Developers and this is borne from the receipts, from the year 2011 to 2014. She submitted that, only in the year 2014-15, the House Tax Receipt was transferred in the name of M/s. Sai Siddhi Co-operative Housing Society Limited. She also relied upon almost similar registered Agreements entered into by other Developers, like 'Sai Leela' and 'Mahalaxmi Developers' with purchasers of the apartments. According to her, the said buildings also stood

on Dayanand Patil's land. She submitted that Dayanand Patil, being the owner of the land had obtained all the requisite permissions and the buildings that were constructed on the said land, were pursuant to the said permissions obtained by him. She further submitted that as on today, there are 57 such buildings, which have been constructed on the said land, which stands in the name of Dayanand Patil. According to her, the applicant has only developed an area of 634.21 square metres out of 72 Gunthas.

6. The learned APP has vehemently opposed the application. She submitted that during the course of investigation, the documents pertaining to N.A. Permission, were found to be forged and fabricated. She also submitted that in the Agreements for Sale, the documents attached thereto, i.e. the commencement certificates 4428 and 4460, showing approval,

are also forged, and accordingly, a letter to that effect has been collected from the Deputy Director of Town Planning, who has confirmed that no such commencement certificates have been issued. She further submitted, that it has also transpired during investigation, that the plans have not been sanctioned by the authorities, which were allegedly submitted by the applicant to the authorities. It also appears, that during investigation, papers of Survey No.125, were collected from the Office of the Deputy Director of Town Planning, which clearly reveal that the said plot was reserved for a play-ground and school. The I.O. has also collected the certified copies of the Agreement for Sale from the Office of the Sub-Registrar, Vasai (Virar) and according to her, the documents that have been annexed to the Agreement for Sale , i.e. the permission granting N.A. and other documents are clearly

forged. The learned APP submitted that the applicant has not produced any document, to show that permissions were granted to him, for construction of Sai Siddhi Apartment, either by CIDCO or by the Municipal Authorities, or that the construction plans were approved, or that N.A. permission was granted by the Collector. With respect to the House Tax Receipt, the learned APP submits that although, it is contended by the applicant that the House Tax Receipt stands in the name of M/s. Omkar Developers, the documents show otherwise. She submits that the rent was being paid by the present applicant and the same is revealed from the Bank statements, which the I.O. has collected in the course of the investigation.

7. Perused the papers of investigation; the Agreement for Sale entered into between M/s. Sai Shraddha Construction through its

partner, i.e. the present applicant and Rajendra A. Kasture (purchaser) and similar other Agreements for Sale. Municipal records show that Survey No.125 has been reserved for play-ground, school, market and DP 20 metre wide road.

8. Several Agreements for purchase of flats/shops in Sai Siddhi Apartment were entered into between the applicant-Developer and the prospective purchasers. Admittedly, one such Agreement was entered into between M/s. Sai Shraddha Construction, through its partner, Mr. Tembulkar, i.e. the present applicant and Rajendra Kasture and Vaishali Kasture, for purchase of a flat in the Sai Siddhi Apartment, which is annexed to the application. The entire agreement, is no doubt relevant, but in particular certain paras are reproduced hereunder:

“(B) Whereas the land owner Mr. Dayanand Damodar Patil, were the owners of the said land By an Development Agreement dated 31/12/2007 sold and Develop the said land to M/s. Sai Shraddha Construction.

(C) AND WHEREAS the said Mr. Dayanand Damodar Patil, Power of Attorney dated 23/04/2008 in favour of M/s. Sai Shraddha Construction.

(D) AND WHEREAS the actual land owner Mr. Dayanand Damodar Patil & others, in favour of M/S. SAI SHRADDHA CONSTRUCTION with a right to develop the said property and have constructed building known as “SAI SIDDHI APARTMENT” on the land bearing S.No.125, H. No.4 & 7, area admesuring 0-72-2 H. R. out of admeasuring 8500 Sq.Ft. Develop area, lying being and situated at Village

Virar, Tal. Vasai, Dist. Thane.

(E) The Commencement Certificate as required under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 is also granted by the City and Industrial Development Corporation of Maharashtra Ltd., vide Letter No.CIDCO/VVSR/BP-4460/E/3585, dated 24/07/2008.

(F) The said land has been converted into Non-Agricultural from the collector of Thane vide its Order bearing No. REV/D-1/T-9/NAP/SR-94/2008, dated 21/07/2008."

It appears, from the said Agreement, that despite the fact, that the land bearing Survey No.125 was reserved, the land owner, Dayanand Patil, entered into a Development Agreement, dated 31-12-2007, and sold the land to M/s. Sai Shraddha Construction. For the said purpose, a

Power of Attorney was also given by Dayanand Patil in favour of M/s. Sai Shraddha Construction on 23-4-2008. Though the commencement certificate, as required under Section 45 of the MRTP Act was stated to have been issued by CIDCO vide letter dated 24-7-2008, vide Clause (F), and the land is stated to have been converted into N.A. by the Collector, Thane vide his order dated 21-7-2008, no such permissions were in fact granted by the Municipal authorities/CIDCO.

9. The learned counsel for the applicant, on being questioned, with regard to the development agreement and Power of Attorney given by Dayanand Patil to the applicant's firm states that there is no Development Agreement, as disclosed in Clause (B), nor is there a Power of Attorney, as stated in Clause (C) of the aforesaid Agreement. She, in fact, submits

that no such Development Agreement or Power of Attorney, as set out in Clause (B) and (C) respectively, have been executed between Dayanand Patil and the applicant. It is pertinent to note, from the document that the land was illegally sold by Dayanand Patil in 2007 to M/s. Sai Shraddha Construction and a Power of Attorney dated 23-4-2008 was also given by Dayanand Patil to the firm 'M/s. Sai Shraddha Construction'. It also appears, that the commencement certificate allegedly issued in August, 2008 and the N.A. certificate were forged and fabricated. It also appears that similar Agreements have been entered into with various other builders and identical documents have been annexed to the said Sale Agreements, which also appear to be forged and fabricated.

10. It appears to be a huge scam, where purchasers of flats and the Government

authorities have been cheated. The land in question, was reserved land and today, as informed by the parties, 57 buildings stand on this land. The nature of fraud, the modus operandi of the applicant and others involved in the construction of buildings on the plot, which was reserved for playground and school, on the basis of forged and fabricated documents is indeed a matter of great concern with serious repercussions. It is a case, where Government documents have been forged and fabricated, in order to construct illegal buildings.

11. On being questioned, as to whether the police have taken any steps to apprehend Dayanand Patil, the learned APP states that the I.O. has taken steps to apprehend Dayanand Patil but he is absconding. The modus operandi of creating forged and fabricated Government

documents, including the signature and seals of the Collector on the same, fake sanction orders will have to be investigated and unearthed. The likelihood of more persons being involved, may be even government officials in the same, cannot be ruled out. According to the applicant's own document annexed to the application, i.e. registered Sale Deed entered into between M/s. Sai Shraddha Construction, through its partner Mr. Tembulkar, i.e. the applicant and one Mr. Kasture, the piece of land where Sai Siddhi Apartment was constructed, was sold by Dayanand Patil to M/s. Sai Shraddha Construction in 2007; that a Power of Attorney dated 23-4-2008 was also given by Dayanand Patil to M/s. Sai Shraddha Construction, and permissions were obtained from CIDCO and Municipal authorities in 2008. In these circumstances, the applicant cannot say, that the land was given to him only for

development and that the necessary permissions were obtained only by Dayanand Patil and M/s. Omkar Builders.

12. Prima facie, it appears that 57 such buildings have been constructed unauthorisedly and illegally on a land reserved for playground and school. There is a rise in the number of illegal and unauthorised constructions in the city. It is necessary to investigate, in cases like this, where rampant illegal constructions are on the rise, as to whether any government officials are also involved. Fifty seven buildings are constructed on a reserved land, with no N.A. permission and no action is taken by the Municipal authorities, deliberately or otherwise, needs thorough investigation.

13. Considering the gravity and seriousness of the offence, the custodial

interrogation of the applicant is necessary. The possibility of tampering with the evidence by the applicant also cannot be ruled out. Hence, the application is rejected.

14. Considering the fraud and the systematic manner, in which the Government documents have been forged and fabricated, and 57 buildings have been constructed and are standing on a reserved land, it would be necessary that a Senior Officer be directed to supervise the investigation, to unravel the scam. Hence, the Superintendent of Police of the concerned District, is directed to personally supervise the investigation in the said case.

15. At this stage, the learned counsel for the applicant prays that the interim protection be extended. Considering the nature of the

offence and the manner in which Government records have been forged and fabricated and several innocent people/purchasers of flats, including the Government have been cheated, no case is made out for continuation of the interim protection. The prayer is accordingly rejected.

16. The anticipatory bail application is accordingly disposed of.

17. In view of the above, the Intervention Application No.177 of 2015 does not survive and it accordingly stands disposed of.

18. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)