

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1454 OF 2014

Mr. Kanaiyalal N. Shah	)	
partner of:		
M/s. Western Developments	)	Applicant
vs.		
1. The State of Maharashtra	)	
2. The Sr. Inspector of Police	)	Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 1455 OF 2014

1. Mr. Yatin Ajay Kadam	)	
2. Mr. Mukesh Vidhyarthi Singh	)	
all partners of M/s. Western	)	
Developments	)..	Applicants
vs.		
1. The State of Maharashtra	)	
2. The Sr. Inspector of Police,		
Mumbai.	)	Respondents

with
CRIMINAL APPLICATION No. 774 of 2014
with
ANTICIPATORY BAIL APPLICATION NO. 1454 OF 2014

Mr. Deepak Vallabhadas Thakkar	..	Applicant/Intervener
In the matter of :		
Mr. Kannaiyalal N. Shah	..	Applicant/accused
vs.		
State of Maharashtra & Anr.	..	Respondents.

With

CRIMINAL APPLICATION NO. 773 OF 2014
in
ANTICIPATORY BAIL APPLICATION NO. 1455 OF 2014

Mr. Deepak Vallabhadas Thakkar	..	Applicant/Intervener
In the matter of :		
Mr. Yatin Ajay Kadam & Anr.	..	Applicants/accused
vs.		
The State of Maharashtra & Anr.	..	Respondents.

Mr. A.P.Mundargi, Senior Counsel a/w Mr. Niranjan Mundargi i/b. Mr. Vaibhav G. Bagade for applicant in ABA No.1454 of 2014 and ABA No.1455 of 2014.

Mr. A.H.H. Ponda i/b. Mr. Ganesh S. Vaidya for Intervener in AAPP No.774 of 2014 and AAPP No.773 of 2014.

Mr. S.S.Pednekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 25th June,2015.

P.C.

These are the applications under Section 438 of Cr.P.C. The applicants herein are apprehending their arrest in Crime No.372 of 2013 registered at Kasturba Marg Police Station, Mumbai for the offences punishable under Sections 420,427, 465, 467, 468, 471, 427, 120B read with Section 34 of IPC.

2. It is the case of the prosecution that on 7.12.2013, Deepak Thakkar lodged a report at the police station alleging therein that the husband of his maternal aunt was residing at CTS No.332/1, 332/3 to 8,

Kasturba Road, Borivali. He had taken the said flat on rent from Jadhavji Ruparelia. That the complainant was being taken care of as an adopted son and he has been referred to as a 'son' in the Will of his maternal aunt namely Laxmibai Thakkar. According to the complainant, Plot Nos. 43 and 44 on Kasturba Road were owned by one Shri Khot. Ruparelia had taken the said land on lease. That Mr. Ruparelia had given CTS No.332/1 and 332/3 to 8 to Mr. Karsandas Premji as a sub-lessee. Mr. Ruparelia had carried out construction of a house on the said plot and had named it as "Ram Nivas". After some years, the couple had gone to Borivli. Khimji Thakker was shown as a sub-lessee on the said property. Shri Khimji Thakker died on 24.6.1974. His wife and the mother of the complainant were shown as legal heirs. The complainant was paying municipal taxes from 1974 to 2003. Laxmibai expired in the year 2003. Since then the complainant was paying the Municipal taxes regularly. That on 18.3.1998 Laxmibai had entrusted the property with the complainant since he was an adopted son. However, she had died in the year 2003. According to the complainant, he had obtained possession from three tenants after giving them appropriate consideration as per the market rate. He had used the said premises as a godown. In the other two rooms, one was used as a Deraser and in the other room, the Jain Trust was running Wardhaman Clinic. In the

year 2012, when he had been to his godown, he saw the board of Western Developments which was to commence SRA Scheme. He enquired with the City Survey Office. The officers in the said Survey office had given evasive answers and, therefore under the Right to Information Act, he had obtained the PR. Card. He was surprised to see that the name of his maternal aunt Smt. Laxmibai had been deleted from the PR Card. Western Developments had written a letter to the City Survey Officer on 18.5.2006 for deleting the name of Laxmibai. But before that on 28.2.2006, the name of Laxmibai was deleted pursuant to the order passed in the mutation proceedings. The complainant has contended that on 8.2.2012, he had written a letter to the City Survey Officer to include the name of Laxmibai pursuant to which by an order dated 15.4.2013, the name was renewed. According to the complainant, the partners of Western Developments in connivance with the architects and the officers of the City Survey Officers had forged and fabricated the PR. Cards in respect of CTS No.332/1 to 3 and 8 and had obtained the letter of intent by fraud, they had also obtained permission for development of the land under the SRA Scheme. That they had forged and fabricated the revenue records for their own benefit and had misled the SRA Authorities. On the basis of his report, Crime No. 132 of 2013 is registered.

3. Learned Senior Counsel appearing for the applicant submits that in fact the complainant has neither authority nor locus to initiate prosecution against the present applicants. That it cannot be believed that for the first time he saw the board in the year 2012.

4. It is submitted that the properties being CTS Nos. 332,333, 334, 336, 337, 338, 340, 341 to 343 of Kanheri were earlier owned by F.E.Dishaw Charities and were occupied by several slum dwellers. The said area was declared eligible to be developed under the SRA Scheme by the Government of Maharashtra by an order dated 21.7.2986 to restricted area admeasuring 6210.4 sqa. Mtrs. as slum under Section 4 of the Slum Act. That F.E.Dinshaw Charities by a registered deed of conveyance had conveyed all their rights, title and interest in respect of CTS Nos. 332 to 335, 337 to 343 which formed part of plot Nos.43 and 44 in favour of Mr. Girish Mehta and others for valuable consideration. The said properties were rec-conveyed by Girish Mehta in favour of the applicants for a valuable consideration and hence the applicants had become owners of the properties admeasuring 1241.70 sq. mtrs. The said properties were occupied by about 46 slum dwellers who had requested the applicants to

implement the SRA Scheme and rehabilitate them. The slum-dwellers had formed Borivali Rakhi SRA Co-operative Housing Society. The occupants had given their written consents in favour of the partners of M/s. Western Developments.

5. M/s. Western Developments had prepared a proposal and submitted to SRA. All the documents submitted by Western Developments were verified.

6. According to the learned Senior Counsel appearing for the applicants, neither Laxmibai Khimji nor the complainant was in possession of any piece of land or tenement which was to be developed under the SRA Scheme. M/s. Western Developments were granted letter of intent dated 2.12.2011 on certain terms and conditions. Pursuant to the receipt of the letter of intent, a public notice was issued in the daily newspapers. Since no objections were received, the proposal was put up before the authorities. The commencement certificate was issued on 29.9.2012. The construction was completed upto plinth level.

7. The applicants had received PR. Card on 28.10.2010. The

applicants had noticed that the name of Laxmibai had appeared on several PR. Card in the properties in which she had no interest nor the concern. It was also noticed that in some PR. Cards, the name of the applicant firm as well as Laxmibai Thakker was deleted. The applicants had sought correction of the records. It is submitted that the complainant herein had filed Special Civil Suit No.2796 of 2012 in Mumbai City Civil Court against the applicant-firm and Borivli Society and others seeking a declaration that the letter of intent as well as permission granted by SRA in favour of Western Developments are illegal and bad in law. The complainant had taken out Notice of Motion No. 635 of 2013 for ad-interim relief, two contempt notices, Chamber Summons as also an application seeking transfer of suit. Th complainant was not granted any interim or ad-interim relief in any of the applications. Finally, the said Special Civil Suit was withdrawn on 26.6.2012. According to the learned Senior Counsel, it is stated in the FIR that he had seen the board, for the first time, in January 2012. However, the first information report is lodged on 7.12.2013. The learned counsel for the complainant submits that after seeing the board, the complainant had made applications to several authorities to obtain the PR. Card and other documents and only upon arriving at a conclusion that the PR. Card is forged and fabricated, the complainant lodged the first

information report.

8. It is pertinent to note that the complainant has then filed S.C. Suit No.215 of 2013 against Mr. Hasmukh N. Parikh and others seeking declaration and injunction. The complainant has also filed S.C. Suit No.365 of 2013 against Shri Bhogilal M. Limbaliya for declaration and injunction. That on 5.8.2013, the complainant has filed Appeal No.27 of 2013 before the Slum Tribunal, Bandra, Mumbai against Western Developments challenging the declaration of slum dated 21.7.1986 issued by the Competent Authority in respect of the property being CTS No.332/1 to 3 & 8 and admeasuring 138.3 sq. mtrs.. The applications seeking interim reliefs have been rejected. The complainant has also filed Writ Petition No.2229 of 2013 before the High Court, whereas Western Developments filed Writ Petition (L) No.2333 of 2013 before the High Court and both matters were tagged together. The appeal filed by the complainant before the Slum Tribunal has been dismissed vide judgment and order dated 13.11.2013 and therefore according to the applicants, the complainant has taken recourse to initiate prosecution.

9. The learned counsel appearing for the intervener/complainant

has drawn attention of this Court to several records and has contended that the applicants herein in connivance with the officers of the SRA forged and fabricated documents to deprive the claim of Laxmibai Khimji.

10. Perused the documents of investigation. In the course of hearing of the application, the learned senior counsel has submitted that the applicants herein had obtained certified copies of the PR Cards. The said certified copies were annexed to the application made to the SRA Authorities and only after verifying the correctness and genuineness of the PR Cards and other material documents, the letter of intent was issued in favour of the applicants. It is submitted that since 2006 there are several proceedings pending in respect of the same properties and therefore it cannot be said that for the first time in the year 2012, the complainant alleged that for the development of the said property under the SRA Scheme, the Competent Authority had verified the documents and only thereafter the letter of intent was issued. In view of this, it cannot be said that the letter of intent has been obtained fraudulently.

11. The learned APP has also placed on record statements of officers of City Survey Office. It is submitted by the officers that the

documents were copied and then the certificates of occupation were issued. There is no denial that the copies obtained by the applicant had been issued by the City Survey Officer. That perusal of the PR Cards of the year 2010 indicates that Mutation entry bearing No.143/2000 was an incomplete document, in all probabilities due to some mistakes. That was the first time when computerized PR cards were issued. It is pertinent to note that the said errors had occurred in all 30 PR Cards of CTS Nos. 335 and 333. That late Smt. Laxmibai was concerned only with 332/1 to 3 and 8 the name of Western Development was entered into the PR Card in place of State of Maharashtra. Pursuant to an order dated 11.9.2009, the original certified copy of PR Card which was issued in favour of the applicant was submitted before the office of SRA. The said SRA has clarified the factual aspect. The learned Senior Counsel has also drawn the attention of this Court to the Gazette dated 14.6.2007 wherein it is shown that CTS No.332/1 to 9 admeasuring 579.5 sq. mtrs was to be acquired by the Government of Maharashtra.

12. By an order dated 11.9.2009, the Deputy Collector (ULC), Greater Mumbai, had withdrawn the proceedings in respect of the said letters under Section 10 sub-clause (3) and 10(5) of the ULC Act and the

said proceedings in respect of acquisition was withdrawn. Hence, the name of the Government of Maharashtra was deleted from the revenue records.

13. At this stage, the submission of the learned counsel for the intervener to the extent that the applicants had obtained the letter of intent fraudulently need to be examined in view of the letter issued by the Executive Engineer, SRA Scheme addressed to the Senior P.I., Economic Offence Wing in reply to the letter by Executive Engineer as to whether the SRA Scheme would be sanctioned if the name of Laxmibai Thakker was not deleted. The Executive Engineer has replied that the SRA Scheme is sanctioned on the basis of the record of actual occupants on the proposed plot of land where the Scheme is to be implemented and therefore whether the name of Laxmibai was deleted or not would not make any difference. The case rests upon documentary evidence. There are civil proceedings pending in respect of the said property and the fact that the certified copies of the records have been verified by the Authorities, custodial interrogation of the applicants would not be imperative.

14. The observations made hereinabove are restricted to an application under Sec. 438 of Cr.P.C. to consider whether the custodial

interrogation is necessary. Hence, the same need not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

(i) In the event of their arrest, the applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicants shall report to the concerned police station/Economic Offence Wing as and when called.

(iii) The Investigating agency had issued a notice to the applicants under Section 160 of Cr.P.C. calling upon them to attend the police station on specified date. Pursuant to the notice under Section 160 of Cr.P.C. it shall be issued at least 48 hours prior to calling the accused to the police station barring the public holidays and Sundays.

Applications stands disposed of.

15. Intervention Applications are heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)