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

\+ W.P.(CRL) 2440/2016

DR (MRS) S D MALIK & ANR ..... Petitioners

Through: Mr. Dayan Krishnan, Senior Advocate along with Mr. J.K. Chawla, Mr. Rajan Chawla & Mr.Vinay Chaddha, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) & ORS ..... Respondents

Through: Mr. R.S. Kundu, ASC along with SI Jagbir Yadav, PS-DIU East, for the State.
Mr. Vikas Arora & Ms. Radhika Arora, Advocates for respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>O R D E R</u>

% **01.12.2016**

1. The petitioners have preferred the present writ petition to seek quashing of FIR No.63/2016 under Section 406/ 420/ 34 IPC registered at PS – Krishna Nagar (District East), Delhi – which has now been transferred to the District Intelligence Unit, and the investigation conducted by the police station consequent thereupon.

2. The petitioners are the accused in the aforesaid FIR. The case of the petitioners is that they are senior citizens of 72 years and 79 years of age.

During pendency of this petition, petitioner No.2, the husband of the petitioner No.1 has, unfortunately, passed away. The petitioners are working in the field of education. The petitioner No.1 owned a property bearing No.C-9/10, Krishna Nagar, Delhi admeasuring 415 sq. yards, having purchased the same from the erstwhile owners by four registered sale deeds dated 20.08.2008.

3. Petitioner No.1 entered into an agreement to sell the same to respondent No.3, who is the complainant in the aforesaid FIR, on 27.06.2013 on terms & conditions mentioned therein. The respondent No.3/ agreement purchaser made payment of Rs.1 Crore as earnest money/ part consideration and the balance consideration was payable in terms of the agreement within four months of the date of the agreement. During this period, the respondent No.3 was obliged to make payment of further amount of Rs.1 Crore. According to the petitioners, respondent No.3 defaulted in making part payment under the agreement and did not make payment of the balance consideration within the stipulated period. The last date for performance of the agreement expired on 26.10.2013. The petitioners claim that they became entitled to forfeit the earnest money. Yet, more time was granted to respondent No.3 to perform his part of the agreement. Since respondent No.3 did not comply with the terms of the agreement, vide legal notice dated 25.06.2014 petitioner No.1 granted 15 days time to make balance payment along with interest @ 12% per annum from 27.10.2013 onwards and also put respondent No.3 to notice that in case of his failure to do so, the earnest money shall stand forfeited and the agreement would stand rescinded. According to the petitioners, respondent No.3 did not respond to

this notice. It is only thereafter that the petitioners were summoned by the Investigating Officer on 15.02.2016 in connection with the aforesaid FIR registered at the instance of the respondent No.3/ complainant.

4. The submission of learned counsel for the petitioners is that respondent No.3, in collusion with the police authorities, are seeking to exploit the criminal pprocess and to coerce and pressurise the petitioners and harass them even though the disputes between the parties are purely civil in nature. Mr. Krishnan has also submitted that the ingredients of an offence under Section 420 IPC are not made out. It is pointed out that the gravamen of the allegation of cheating is that the property was encumbered – to the knowledge of the accused, when the agreement was entered into, and this aspect was deliberately suppressed by the accused. It was encumbered because a part of the plot was affected in the proposed road widening – for which layout plans had been prepared.

5. Upon issuance of notice, two status reports have been filed by the State. In the first status report, it was disclosed that notice under Section 91 Cr.P.C. was issued to the D.M. Shahdara, Executive Engineer (Building), Executive Engineer (Town Planning) and Sub Registrar to provide information/ documents – whether Govt. has made any notification of acquisition of any portion of the property in question. The first status report dated 21.08.2016 is silent as to whether any response has been received to this specific query. However, the second status report, dated 22.11.2016, categorically states that the Deputy Town Planner (EDMC) Udyog Sadan, Patparganj, Delhi has replied that Town Planning Department (EDMC) has not made any notification or initiation for acquisition of any portion of the

said property for road widening. It is observed that the "*property is however affected in road widening as can be seen in the layout plan of Krishna Nagar*".

6. The submission of Mr. Krishnan, learned senior counsel for the petitioner is that the claim made by the complainant that the petitioners were aware that the property was encumbered on the date of the agreement, and that this fact was suppressed by the petitioner, is belied by the aforesaid response given by the Deputy Town Planner (EDMC). No portion of the plot in question has been till date notified for acquisition.

7. On the other hand, learned counsel for the complainant, who has also been heard, has submitted that the portion of the plot in question admeasuring about 100 sq. yards, as shown in the local development plan of the area, is consumed in the planned road widening. He submits that the petitioners were obliged to disclose the said plan to the complainant at the time when the agreement was entered into, and the statement made by them that property was not encumbered, as contained in the agreement to sell, is, therefore, untrue.

8. The further submission of learned counsel for the complainant/ respondent No.3 is that the petitioner repeatedly sought extension of the agreement – which was granted, and without notice to respondent No.3, the petitioners proceeded to dispose of the said property to a third party.

9. Having heard learned senior counsel for the petitioner, the learned ASC and learned counsel for the complainant, and perused the status reports filed on record, I am inclined to allow the present petition. The disputes

between the petitioners and the complainant stem out of an agreement to sell. Whether or not the petitioners have breached the said agreement to sell is a purely civil dispute. According to the petitioners, it is the complainant who breached the agreement which led to its cancellation and forfeiture of the earnest money. On the other hand, the complainant claims breach of the agreement by the petitioners. This is an issue which the civil court shall address in the suit already initiated by the complainant to seek a decree for specific performance of the agreement to sell. It is well settled that the criminal proceedings cannot be initiated in respect of purely civil disputes. The present is clearly a case of that nature.

10. The submission of the complainant that, from the very inception, the petitioner/ accused intended to cheat the complainant does not appear to have any merit. The agreement to sell contains the following representation made by the petitioner/ vendor:

> "*Whereas, the vendor has all the right and interest and is the absolute owner and in possession of the build up property having property bearing No.C-9/10 Krishna Nagar Delhi-110051 with the land underneath and around the build up area measuring about 347.08 sq mtr (415.15 sq yds) hereafter called the "Property". The vendor owns aforesaid build up property vide four sale deeds ....*".
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> The recital also reads:
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> "*... ... And Whereas, the Vendor have represented to and assured the vender that the said property is free from all encumbrances, attachments, claims court or acquisition proceedings, lien or charges of any kind and that the Vendor have full authority and absolute clear and marketable title and unfettered right to enter into this Agreement and conditions*

contained herein and is well and truly entitled to sell, transfer and convey or otherwise deal with the said property in the manner and as per the terms and conditions of the said Agreement and this Agreement and to receive the sale consideration in their name ... ..."

11. The submission of the complainant is that the petitioners were aware that a portion of the property in question admeasuring about 100 sq yd was affected in the road widening and this is evident from the layout plan of Krishna Nagar which was already existing when the agreement to sell was entered into between the parties. According to the complainant, the petitioner was obliged to disclose the said "encumbrance" to the complainant at the time of entering into the agreement to sell as, if the same had been so disclosed, the complainant would not have entered into the agreement with the petitioner and parted with partial consideration.

12. I do not find any merit in this submission. The petitioner held the legal title to the property under a registered instrument on the date of the agreement to sell. A mere layout plan, whereunder it was proposed to take over a part of the property in question for the purpose of road widening, does not tanamount to encumbrance on the property. The State cannot acquire a property except in accordance with law and upon payment of adequate compensation. For that purpose, proceedings would have to be initiated under a law dealing with acquisition of land. Admittedly, no acquisition proceedings were initiated in respect of any portion of the plot in question when the agreement to sell was entered into. They have not been initiated even till date. The layout plan is not a statutory plan and, even if it were to be accepted that a portion of the land is shown in the layout plan as

being affected by road widening in future, it does not mean that it is a certainty that a portion of the plot in question would be acquired. The petitioner was not obliged to take cognisance of the said layout plan and to make a disclosure thereof to the complainant. The representation held out by the petitioner that the property "*is free of encumbrances, attachments, claims, court or acquisition proceedings, lien or charges of any kind*" was a true representation made by the petitioner while entering the agreement to sell.

13. If the transaction in question had gone through, the complainant would have got a clear and valid title to the entire plot. The vendor is not expected to indemnify the vendee with regard to any future acquisition proceedings which may, at some point of time, be initiated. There is no certainty as to whether, or not, the property or any portion thereof would be acquired by the State by initiation of proceedings under the law or actually acquired by the State. Even if, after transfer of title the property, or any portion thereof, were to be acquired, the vendee would, under the law, be compensated with the market value of the acquired property.

14. For the aforesaid reasons, in my view, the FIR in question and the proceedings arising therefrom cannot be sustained and are, accordingly, quashed. The parties are left to bear their respective costs.

VIPIN SANGHI, J

DECEMBER 01, 2016

B.S. Rohella/sr