

2. By this petition, the Petitioners who are developers are challenging the orders passed by Respondent Nos. 1 and 2, refusing to grant “no objection” for development of land at Survey No. 172 / 2 at village Wakad, taluka Mulshi, district Pune, on the ground that a criminal case registered at Swargate Police Station, concerning the said land is pending. The question that arises for consideration is – whether pendency of the said criminal proceeding can be a valid ground for refusing to grant permission to develop the land in question by the Petitioners when they have entered into a valid agreement for development with the original owner, as per development agreement dated 12.3.2008.

3. The facts of the present case, relevant for deciding the controversy, are as follows:

. The original owner of the aforesaid land alongwith other pieces of land is one Yamunabai Pawar. On 6.5.2004 she had executed a development agreement in favour of Sharad Subrao Kokate only in respect of Survey No. 173 / 1 / 1A / 1 of Mulshi taluka, district Pune. This property is separate and distinct from the aforesaid Survey No. 172 / 2 with which the Petitioners herein are concerned. An FIR

bearing No. 32 of 2011 was registered against the said developer – Sharad Subrao Kokate and others in respect of preparation of false and fabricated order under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976. Pursuant to the said FIR, a charge-sheet came to be submitted on 6.3.2013 wherein Sharad Subrao Kokate and others were charged for the offences punishable under Section 420, 467, 468, 472, 474, 201, 120-B read with 34 of the Indian Penal Code. In this proceeding, the original owner Yamunabai Pawar has been added as witness on behalf of the prosecution.

4. As stated above, on 12.3.2008 the Petitioners entered into a development agreement with the said original owner Yamunabai Pawar for development of land Survey No. 172 / 2, which had nothing to do with the earlier development agreement entered into between the said owner Yamunabai Pawar and Sharad Subrao Kokate, who was arraigned as an accused in the said criminal proceeding. An irrevocable power of attorney was also executed in favour of the Petitioners pursuant to the said development agreement. The Petitioners applied for development of the said land before Respondent No. 3 Municipal Corporation, but said Respondent No. 3

refused to grant permission on the ground that FIR No. 444 of 2005 registered at Swargate Police Station, Pune was pending. The said FIR was in respect of another piece of land bearing Survey No. 172 / 1B, which again has nothing to do with land Survey No. 172 / 2 for which the Petitioners were seeking permission for development. In this backdrop, the original owner approached the concerned authority for clarification as to whether any criminal proceeding was pending in respect of Survey No. 172 / 2. In response to such query, on 30.6.2008, the Dy. Superintendent of Police informed the original owner that the said land at Survey No. 172 / 2 was not part of any criminal proceeding / inquiry in respect of cases under Urban Land (Ceiling & Regulation) Act.

5. In the backdrop of these facts, the Petitioners filed a representation before Respondent No. 1 State Government requesting that a direction to Respondent No. 3 Municipal Corporation be given to consider their building proposal for development of the property in question. But when there was no response to the said representation, the Petitioners were constrained to file Writ Petition No. 5398 of 2012 before this Court. On 10.8.2012 the said petition was disposed of by

this Court with a direction to the State Government to consider the representation of the Petitioners within eight weeks.

6. Pursuant to the said directions of this Court, the representation of the Petitioners was decided by the impugned orders dated 1.1.2015 and 2.1.2015 whereby the Petitioners were communicated that the permission for development could not be granted due to pendency of the criminal proceeding and also the fact that a proceeding arising from the same was pending before the Hon'ble Supreme Court. It was also stated that since Criminal Investigation Department (CID) had not completed investigation, permission for development could not be granted.

7. Mr. P. K. Dhakephalkar, learned senior counsel for the Petitioners contended that the Respondents were not justified in refusing to consider the application / representation of the Petitioners for permission to undertake development on the said land on the ground that criminal case was pending. According to him, as neither the land owner Yamunabai Pawar nor the Petitioners have been arraigned as accused in the pending criminal case, there is no reason for the Respondents to refuse permission for the development.

According to him, the criminal case does not concern the land survey No. 172 / 2 for which development permission is sought by the Petitioners and that the criminal case pertains to an earlier development agreement executed between the land owner and some other developer concerning separate and distinct parcel of land. It was also contended that in the year 2007, the Urban Land (Ceiling & Regulation) Act, 1976 stood repealed in the State of Maharashtra and that the original land owner was entitled to enter into an agreement for development, as she continued to retain possession of the land. The learned senior counsel relied upon judgment and orders passed by the Division Bench of this Court in the case of - (i) M/s. S. P. Developers Vs. The Municipal Corporation for the City of Pimpri-Chinchwad & Ors (Writ Petition No. 11329 / 2014, dated 6.6.2017); (ii) Savita Narsing Tupe & Ors. Vs. State of Maharashtra & Ors. (Writ Petition No. 7050 / 2014 & 7659 / 2015, dated 6.6.2017), as also other orders passed by this Court in similar facts, wherein writ petitions stood allowed.

8. On the other hand, Mr. Kalel, learned AGP appearing for Respondent No. 1 submitted that the impugned orders were justified

because proceedings arising out of criminal cases were pending before the Hon'ble Supreme Court and that investigation was yet to be completed in the matter. The learned AGP relied upon the judgment and order dated 22.2.2011 passed by the Division Bench of this Court in Criminal PIL No. 6 / 2008, particularly directions given in para 12(e) thereof to contend that the impugned orders do not deserve any interference.

9. We have considered the contentions raised on behalf of the parties, as also the documents on record. A perusal of the documents shows that criminal proceedings in the present matter concerns two parcels of land, one bearing Survey No. 172 / 1B (FIR No. 444 / 2005); and another Survey No. 173 / 1 / 1A / 1 (FIR No. 32 / 2011), both registered at Swargate Police Station, Pune. In these FIRs, the Petitioners have no concern at all. In fact, even the original land owner Yamunabai Pawar has not been arraigned as an accused in the said FIRs. The development agreement 12.3.2008 executed between the original land owner Yamunabai Pawar and the Petitioners concern development of land Survey No. 172 / 2. Thus, the land – subject matter of the instant petition is not concerned with any of the criminal

proceedings, relied upon by the Respondents. In fact, letter dated. 30.6.2008 issued by the Dy. Superintendent of Police specifically states that land Survey No. 172 / 2 of village Wakad, taluka Mulshi, district Pune is not subject matter of inquiry in the criminal proceedings concerning Urban Land (Ceiling & Regulation) Act, 1976. Therefore, it is clear that there is no cloud of criminal proceedings insofar as land Survey No. 172 / 2 is concerned, for which the Petitioners have sought permission for development in pursuance of development agreement dated 12.3.2008.

10. It is also clear from the record that neither the original owner nor Petitioners are arraigned as accused in any of the criminal proceeding. In fact, the original land owner Yamunabai Pawar is shown as a witness in respect of criminal case arising out of FIR No. 32 of 2011. In similar circumstances, in the case of – *S. P. Developers (supra)*, a Division Bench of this Court has held as follows:

“12. In the instant case, as well, it is seen that the charge sheet filed does not indicate that the original owner nor the present holder has been indicted and accordingly they were not accused in the cases and merely because the case is pending will not entitle the Corporation to decline

considering the building proposal. The demand of the respondents to produce the no objection certificate from the ULC Department also is devoid of any merit since the lands in any case would not constitute vacant/excess lands since they are within the purview of the ULCRA.

13. The only other aspect to be noted is that one Suresh Borole who is one of the accused persons is the proprietor of one Pankaj Builders had sold the said land to the Petitioners vendor on or about 12th September 2007 i.e. before 29th November 2007, the effective date of repeal of ULCRA. We do not see this by itself as reason to deny the petitioner consideration of the petitioner's application. It is pertinent to note that on behalf of Respondent no.6 Deputy Superintendent of Police EOW, and additional affidavit of Sourabhi Sharadchandra Pawar, Police Inspector, EOW, C.I.D., Pune has been filed in which the deponent in his capacity as officer in charge of the case no.444/2005, states that the present petitioner is not involved in the offence and not charge-sheeted. The case against the said Borole may proceed and does not impact the petitioners right to pursue its application before the authorities.

14. In our view, considering all of the above there is no justification in refusing to consider the building plans for want of a no objection certificate. In the

circumstances, we pass the following order:-

(i) The impugned order dated 20th August, 2014 passed by the respondent no.3 in relation to proposal no. BP/Wakad/ 815/2014 is quashed and set aside;

(ii) The respondents are directed to consider the proposal no. BP/Wakad/815/2014 in accordance with law and uninfluenced of the pendency of the criminal case no.444 of 2005 relating to ULC Order no.1360 BH and without insisting for any no objection certificate from respondent nos.4 and/or 5.

(iii) Rule made absolute in the above terms.

(iv) There will be no orders as to costs.”

11. It has been further held in the case of *Savita Narsing Tupe & Ors (supra)* as follows:

“19. Pendency of the complaint and the trial need not detain the petitioners' application for use of the land. Admittedly, possession of the land is still with the petitioners. It is the petitioners' case that they are still cultivating the land. This contention has not been denied. Furthermore, in case of *Parshuram Joshi (supra)*, it was observed that in the facts of that case, that an application has been made for grant of occupancy certificate which was kept pending. The Court held that the application

could not be rejected though a CID inquiry was in progress. If the document is alleged to be fabricated then the present case as well trial of the C.R. 622 of 2006 can continue as none of the petitioners have been named as accused.

...

23. Since possession of the said lands have not been taken, the provisions of the repeal Act are of no avail to the respondents. None of the petitioners in either petition are mentioned in the charge-sheet as evident from the copy of the charge-sheet dated 25th November, 2010 and there being only 8 accused persons, none of the petitioners have been shown as the accused. Furthermore, in an affidavit dated 7th April, 2017 of Ms.Seema Sathe, Assistant Police Inspector EOW, CID filed in Writ Petition No.7659 of 2016, the deponent has stated that, in the investigation conducted into the offence, the role and complicity of total eight accused have been established. The petitioners' names did not figure. The petitioners have also filed an affidavit dated 10th April, 2017 in this Writ Petition confirming that the charge-sheet was filed on 25th November, 2010 and that there are no allegations against the petitioners in connection with fabrication of the order under ULCRA.”

12. In yet another judgment and order dated 14th September, 2016 passed in a group of petitions by the Division Bench this Court, in lead petition – Writ Petition No. 4022 of 2016 in the case of *Balwant Nathu Vinode Vs. The State of Maharashtra & Ors.*, it has been held as follows:

“4. Having regard to the stand taken by the Municipal Corporation it is clear that the applications of the Petitioners were not processed because the FIR lodged with Swargate Police Station, Pune and that the applications were not on prescribed forms.

5. Now having regard to the aforesaid affidavits of Ms. Sunanda Gaikward, Additional Collector and Mr. Suresh Ghadge it is clear that there is no legal impediment of registration of criminal case in regard to the grant of permission so far as the present Petitioners are concerned. As we find that the Additional Collector as also the Police Inspector CID have categorically stated that the Petitioners have been exonerated from criminal charges and the Petitioners can develop the property as per prevailing law. That no case is made out against the Petitioners and after investigation there is no evidence surfaced against the owner of the land in question and that

the Petitioners' names have been dropped as accused.

6. In view of the aforesaid we are of the view that these Petitions are deserve to be disposed of by directing Competent Authority of Pimpri Chinchwad Corporation to consider the Petitioners' application without being influenced by the earlier impugned letter. The Petitioners are permitted to file fresh application within 2 weeks from today. On receipt of such application the Pimpri Chinchwad Municipal Corporation shall process the Petitioners' application and take appropriate decision on it in accordance with law as expeditiously as possible, but not later than 2 months from the date of receipt of the copy of this order.”

13. The judgments of this Court quoted above show that when neither the land owner nor the developer have been arraigned as accused in any criminal case, mere pendency of criminal proceedings cannot be the basis for refusal to grant permission for development of land in pursuance of a development agreement. In fact, the said judgments of this Court completely cover the position of law in favour of the Petitioners herein.

14. Reliance placed by the learned AGP on the judgment and

order dated 22.2.2011 passed by the Division Bench of this Court in Criminal PIL No. 6 / 2008 (supra), is misplaced. The said judgment and order considered the question as to whether complaints into fraudulent orders passed by the authorities under the Urban Land (Ceiling & Regulation) Act, 1976, were to be investigated by the Crime Investigation Department (CID) or the Central Bureau of Investigation (CBI). In the said order, the investigation has been directed to be handed over to a Special Investigation Team (SIT), and in direction (in para 12(e) of said order), it has been stated that names of the land owners be added in the CRs already registered. The said order is in a public interest litigation, and it is of a general nature. In any case, the said order has been stayed by the Hon'ble Supreme Court while issuing notice in SLP (Cri.) No. 2404 / 2011 and said special leave petition is still pending before the Hon'ble Supreme Court.

15. The facts of this case clearly demonstrate that the land in question i.e. Surve No. 172 / 2 is not the subject matter of criminal proceedings, and that neither the original land owner Yamunabai Pawar nor the Petitioners are arraigned as accused in any of the criminal proceeding. Mere pendency of special leave petition before

the Hon'ble Supreme Court cannot be a ground for denying permission to the Petitioners for development of the said land because the question being considered in the said petition before the Hon'ble Supreme Court is regarding which authority is to conduct investigation. Even otherwise, if during the course of investigation regarding alleged fabricated order under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 , any person is added as an accused, it would still not concern the land in question i.e. land Survey No. 172/2, which is the subject matter of the present petition.

16. Thus, Respondent Nos. 1 and 2 were not justified in issuing the impugned orders dated 1.1.2015 and 2.1.2015 denying “no objection” to the Petitioners for developing the land in question. In the light of the above, the writ petition deserves to be allowed in following terms:

- (a) The impugned orders dated 1.1.2015 and 2.1.2015 passed by the Respondent Nos. 1 and Respondent No. 2 respectively are quashed and set aside;
- (b) The order dated 15.5.2008 passed by Respondent No. 3 refusing the permission for construction to the Petitioners is quashed and set aside.

- (c) The Respondents are directed to consider the building proposal plan of the Petitioners afresh in accordance with law, without being influenced by pendency of the criminal cases, referred to above.
- (d) Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/-
[MANISH PITALE, J.]

Sd/-
[ANOOP V. MOHTA, J.]

Vinayak Halemth