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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.205 OF 2016**

Mr. Shailesh Pranlal Vora	... Applicant
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Omkar Mulekar i/by Mr. Niranjana S. Mundargi for the Applicant.
Dr. F.R. Shaikh, APP for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 21st MARCH, 2017

PC.

1 On the last date, parties were put to notice that this application will be disposed of finally at the stage of admission. Rule. Respondents waive service.

2 By this application under Section 482 of the Code of Criminal Procedure, 1973 (for short “the CrPC”), the prayer is for quashing the proceedings of criminal case for the offences punishable under Sections 406, 418 and 420 of the Indian Penal Code read with Sub-Section (4) of Section 38 of the Urban Land (Ceiling and Regulation) 1976 (for short “ULC Act”). The applicant is a developer by occupation. An order of exemption under Section 20 of the ULC Act was

granted in respect of the lands bearing Survey Nos.685 and 812 at Kandivali, Taluka Borivali in Mumbai Suburban District. A scheme for housing was sanctioned under the said order of exemption. As per the conditions incorporated in the order of exemption, the beneficiaries were to place the State Government in possession of 19 flats admeasuring 775.02 square meters at the rate fixed by the State Government. The allegation against the applicant is that the possession of the flat was not handed over by him to the State Government and the flats were sold in open market.

3 On 5th February, 2004 the First Information Report was registered on the basis of which a charge sheet has been filed. On 28th October, 2010, the Additional Collector and Competent Authority of the Mumbai Urban Agglomeration addressed a letter to the Executive Engineer of Building Proposals Department (Western Suburbs) of the Mumbai Municipal Corporation. In the said communication, it is stated that the aforesaid 19 flats which were to be allotted to the State Government were sold in open market by the applicant. The letter further records that by a letter dated 23rd March, 2005 the Competent Authority had called upon the applicant to pay the difference between the market value of the said 19 flats and the value fixed by the State Government being a sum of Rs.1,37,91,407/-. The said letter dated 28th

October, 2010 records that by a communication dated 17th August, 2010 the applicant was called upon to deposit a sum of Rs.2,29,33,961/- which includes interest on the overdue amount of Rs.1,37,91,407/-. By the said letter, the Executive Engineer, Building Proposal (Western Suburbs) of Mumbai Municipal Corporation was informed that the entire amount has been deposited by the developer with the treasury and therefore, the Competent Authority under the ULC Act has no objection for granting 100% occupation certificate. Copies of the challans showing deposit of a sum of Rs.2,29,33,961/- and Rs.1,19,471/- on 18th August, 2010 have been annexed as Exhibit – B to the application.

4 Today, a report dated 21st March, 2017 submitted by the Senior Inspector of Police of Kandivali Police Station is produced by the learned APP. The report confirms the deposit of the aforesaid amount by the applicant. However, in the report, the police have raised an objection to the prayer for quashing.

5 The only allegation which is reflected from the charge sheet is that instead of handing over the possession of the said 19 flats to the State Government at the price fixed by the State Government, the said flats were sold in open market by the applicant and he has indulged in

profiteering. The applicant has complied with the demand made by the Competent Authority under the ULC Act by depositing the aforesaid amounts. The State Government has received the amount equivalent to the difference between the market value of 19 flats and the value fixed by it. The State Government has also received interest on the said amount. The Applicant sold the 19 flats at market value which is much higher than the rate at which he was required to allot the said 19 flats to the State Government. Now, the difference in value with interest is received by the State Government.

6 We have perused the statement of the fourth respondent on the basis of which the FIR was registered. It is stated in the said statement that though as per the decision of the Apex Court in the case of Shanti Star Builders, the State Government was entitled to receive 5% constructed area from the developer, while granting exemption in the present case, a provision was made for allotment of 20% of the constructed area to the State Government. A request made by the applicant for confining the said area to 5% was rejected by the State Government. Perusal of the statement of the first informant shows that Wings A, B, C and D have been already constructed which have been occupied and E-Wing consisting of ground plus seven floors is under completion. In the FIR, it is alleged that the applicant had offered to allot flats in E-Wing to the State Government but it was found that

construction of second to seven floors has been made unauthorisedly. By the letter dated 28th October, 2010, now the Competent Authority has consented for grant of occupation certificate in respect of the E-Wing.

7 Thus, the statement of the first informant itself records that the applicant had offered to allot flats in E-Wing which was under construction and in fact the applicant had sought time for making allotment. The allegation of cheating is made on the footing that there was no permission to the second to seventh floors of the E-Wing.

8 Now, by virtue of the payments made by the State Government, the applicant has fully compensated the Government by paying the difference between the market value as of 2015 and the market value fixed by the State Government for 19 flats. Even interest has been paid. Taking the assertions in the FIR as correct, it is very difficult to hold that any offence was made out inasmuch as when the FIR was registered, construction of E-Wing consisting of ground plus seven floors was nearing completion. The allegation is not that applicant refused to hand over flats in the said E-Wing but the allegation is that there was no sanction to second to seventh floors of E-Wing. Therefore, even otherwise, the offences alleged are not made out in the facts of the case.

9 Now, the State Government has been admittedly fully compensated for the loss caused to the State Government. Therefore, continuation of criminal proceedings will serve no purpose. Chances of conviction are very bleak. Therefore, the applicant must succeed and we pass the following order :-

ORDER

(i) Rule is made absolute in terms of prayer clause (b) which reads thus :-

(B) This Hon'ble Court be pleased to quash and set aside the proceedings being C.C. No.6003/PW/ 2008 pending on the file of the Ld. Metropolitan Magistrate's 17th Court, Borivali Mumbai, arising out of F.I.R. bearing C.R. No.29 of 2004, registered with Kandivali Police Station, Mumbai u/s 406, 418 and 420 of IPC and any proceedings arising thereof, in the interest of justice”.

(ii) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)