

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.10964 OF 2017

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioners/A.2 and A.3, seeking anticipatory bail in the event of their arrest in connection with C.C. No.25 of 2017, pending on the file of the Court of III Additional Chief Metropolitan Magistrate, Hyderabad City, registered for the offences under Sections 420, 468, 471, 427 R/w.34 of I.P.C. and Section 5 of the A.P. Land Grabbing Act, 1982 (for short, 'the Act').

Heard the learned counsel for the petitioners/A.2 and A.3, learned Additional Public Prosecutor appearing for the respondent-State, and perused the record.

Learned counsel for the petitioners would submit that the petitioners are innocent persons and they are falsely implicated in this case. The petitioners are owners and possessors of Plot No.864, which was gifted to them by their father *vide* two registered gift settlement deeds bearing Nos.4197 and 4198 of 2016 and, subsequently, the petitioners entered into an agreement of sale with A.1 for a valid sale consideration and put him in physical possession of the said Plot; thereafter, A.1 constructed a compound wall in the said Plot. The *de-facto* complainant, who is the Secretary of the Jubilee Hills Co-operative Housing Building Society Limited (for short, 'the society'), foisted a false case against the petitioners. The petitioners are the businessmen and law abiding citizens and in case of their arrest, their image would be tarnished in the society. Except this crime, there is no other criminal case is pending; charge sheet is already filed in this case, A.1, A.8 and A.9 got arrested and released on bail and ultimately prayed to allow the Petition.

The learned Additional Public Prosecutor appearing for the respondent-State opposed grant of bail to the petitioners.

The material on record reveals that One Bhisweshwarnath Gupta, Member of the Society with membership No.1349, was allotted Plot No.974 on 04.02.1970 and again Plot No.512-H was allotted to him in the draw held on 19.06.1982, with a requisition to file an affidavit on Rs.5/- Non-Judicial stamp paper and to pay the balance development charges of Rs.9,973.50 as per their bye-laws to claim the said Plot. As he neither submitted an affidavit nor paid the said amount, allocation of Plot No.512-H to Bhisweshwarnath was cancelled. Again Plot No.864 was allotted to him in 1988. On 09.08.1999 Shiv Charan Gupta and Rajendra Prasad Gupta, legal heirs of Bhisweshwarnath Gupta, requested the Society to transfer the Membership No.1349 and Plot No.864 in their favour; on 19.09.2000 the Society asked them to prove their genuineness to claim the said membership and plot. Upon which, Rajendra Prasad Gupta submitted an application along with a notarized affidavit, showing no objection from all other legal heirs, to transfer the same in his favour. Rajendra Prasad Gupta also filed an Arbitration Case in ARC No.3 of 2005 against the society, which was disposed of directing the Society to transfer the membership, share/interest of his late father, including registration of the Plot in his name. Thereby, the Society approached the Co-operative Tribunal and the said Appeal (CTA No.83 of 2006) was dismissed. The Society preferred Writ Petition and thereafter Writ Appeal No.1667 of 2008 before this Court. On 28.01.2009 this Court disposed of the Writ Appeal with certain directions. As per the said directions, when the Society published a notice in Eenadu news paper on 25.02.2009, also placed the same in their Notice Board, calling for objections against the application of Sri Rajendra Prasad Gupta; one J.S. Rama Murthy, filed his

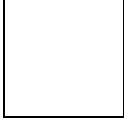
objections drawing the attention to the order of the Supreme Court in Civil Appeal Nos.306 and 307 of 2005, dated 20.05.2006. Subsequently, the matter was placed in their General Body Meeting, considered the request of Rajendra Prasad Gupta and effected transfer of Membership No.1349, share and other interests of late Bhishwesharnath Gupta in favour of Rajendraprasad Gupta as per bye-law No.13(4) of the Society *vide* letter No.JCS/1080/2008, dated 13.03.2009. Subsequently, Rajendra Prasad Gupta filed E.P. No.49 of 2009 seeking registration of Plot No.864 and the same is pending. Under these circumstances, it can be culled out that the Society has ownership over Plot No.864. The ownership of Plot No.864 can be decided only after due trial in the cases pending between the parties to this litigation. The truth or otherwise of gift settlement deeds cannot be gone into at this stage. Filing of charge sheet is not a ground to enlarge the petitioners on bail. No document showing the ownership and possession of the father of the petitioners is filed. The allegation is that they have fabricated the gift settlement deeds. The allegations are grave. If the petitioners are released on bail, there is a chance of winning over the witnesses, causing disappearance of the material evidence and hindering the investigation process. It is not a fit case to enlarge the petitioners/A.2 and A.3 on bail under Section 438 Cr.P.C.

Hence, the Criminal Petition is dismissed.

Dr. SHAMEEM AKTHER, J

Date: 05.12.2017.
Dsh

HON'BLE Dr. JUSTICE SHAMEEM AKTHER



05122017

CRIMINAL PETITION No. 10964 OF 2017

Date.05.12.2017

DSH