

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12071-2014 (O&M)

Date of decision: 28.08.2017

Rajesh Singh**.....Petitioner****versus****State of Haryana and others****.....Respondents****CORAM: Hon'ble Mr.Justice Kuldeep Singh**

Present: Mr.N.S.Shekhawat, Advocate for the petitioner
Mr.Chetan Sharma, AAG Haryana for respondent nos.1 to 4
Mr.Manoj Kaushik, Advocate for the respondent no.5
Mr.Mukesh Rao, Advocate for respondent nos.6 & 7
Mr.S.K.Garg, Senior Advocate with
Mr.Virat Amarnath, Advocate for respondent no.12

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? yes*
2. *To be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldeep Singh, J.

Rajesh Singh petitioner has filed this petition under Section 482 Cr.P.C. for handing over the investigation of FIR No.1 dated 5.1.2013 under Section 406, 420, 120-B IPC registered at Police Station Bhondsi, District Gurgaon to some senior officer or to some independent agency as according to him the local police is colluding with the accused and the investigation is being conducted in the most unfair and partial manner.

Facts of the case as culled out of the petition as well as of FIR No.1 dated 5.1.2013 are that Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 were the owners of share to the extent of the land measuring 4 kanals 16 marlas out of the land measuring 41 kanal 6 marla, situated in village Bhondsi, Tehsil Sohna, District Gurgaon bearing **khewat / khata No.542/628**, Mustil No.233. The mutation of the land stood in the name of Dr.Rishi Chauhan and Smt.Chander Bala – respondent

nos.10 and 11. On 17.9.2008, said Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 vide registered sale deed No.2800 (Annexure P9) sold their share i.e. 96/826 equal to 4 kanals 16 marlas to M/s Jai Hanuman Landcom Private Limited through its proprietor Mr.Rajinder Singhal for a sum of Rs.24 lakhs. However, the mutation was not got entered or sanctioned in favour of M/s Jai Hanuman Landcom Private Limited. Said Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 vide two separate sale deeds dated 25.11.2010 (Annexure P10 and P11) sold 57/826 share equal to 2 kanal 17 marlas and 46/826 share equal to 2 kanals 6 marlas out of **khewat/ khata no.566/644** from the said land measuring 41 kanals 6 marlas to Ankur Gupta and Sunil – respondent nos.7 and 6 for Rs.35,62,500/- and Rs.28,75,000/- respectively. Mutation no.16178 (Annexure P12) and 16223 (Annexure P13) were accordingly sanctioned in favour of said Ankur Gupta and Sunil. Said Sunil vide sale deed (Annexure P14) dated 27.4.2011 sold the said share equal to 2 kanals 6 marlas purchased by him from Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 to Mrs.Rajwati mother of the petitioner for Rs.45 lakhs. Further vide another sale deed dated 23.6.2011 (Annexure P15), Ankur Gupta sold his share equal to 2 kanals 17 marlas purchased by him to Mrs.Kavita Singh wife of the petitioner Rajesh Singh for Rs.40 lakhs and mutation no.17401 (Annexure P16) and 17399 (Annexure P17) were accordingly sanctioned in favour of Mrs.Rajwati and Mrs.Kavita Singh, respectively. Petitioner claimed that the said land already stood sold by Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 to M/s Jai Hanuman Landcom Private Limited and that later on said Dr.Rishi Chauhan and Smt.Chander Bala – respondent nos.10 and 11 had connived

with said Ankur Gupta and Sunil and executed the sale deed of the land which stood already sold to M/s Jai Hanuman Landcom Private Limited. Petitioner also claimed that Hari Singh and Anil Raghav – respondent nos.8 and 9 approached the petitioner for the sale of the said land. It is further alleged that Naresh Aggarwal – respondent no.5 is related to Ankur Gupta. He is witness to almost all the sale deeds and he also played an active role. It is further stated that all the accused have formed land mafia and the petitioner has been cheated. It is further averred that Sunil and Naresh Aggarwal were able to get anticipatory bail and when Dr. Rishi Chauhan and Smt. Chander Bala – respondent nos.10 and 11 applied for bail, they had given assurance before the Court that they will return the money. But they did not do so. Their bail applications were dismissed by this Court. The Supreme Court directed them to deposit Rs.25 lakhs, which they did not deposit and their bail applications were dismissed. The police is not properly investigating the case and colluding with the accused.

By way of an amendment in the memo of parties, one Umesh Aggarwal, MLA, was added as respondent No.12 on the ground that Umesh Aggarwal is brother of Naresh Aggarwal and is hampering the investigation.

In the initial reply dated 30.07.2014, filed by respondent no.1, it was stated that Naresh Aggarwal and Sunil have joined the investigation. Ankur Gupta and Hari Singh have been arrested on 21.4.2013. Anil Raghav has joined the investigation. Dr. Rishi Chauhan has been arrested on 15.7.2014 by obtaining production warrants. No recovery could be made. Respondent no.11 is yet to be arrested. Another accused Naresh Dahiya has also joined the investigation.

By way of another status report dated 22.2.2016, the police

reported that during investigation, Naresh Aggarwal, Sunil, Naresh Dahiya, Anil Advocate, Ankur and Hari Singh were not found to be involved in the offence. It was stated that the mutation in favour of the subsequent purchasers was cancelled on the application of M/s Jai Hanuman Landcom Private Limited.

Respondent nos.6 and 7 i.e. Sunil and Ankur Gupta in their reply stated that they had purchased the land as claimed above. Ankur Gupta had purchased the land measuring 2 kanals 17 marlas for Rs.35.62 lakhs and respondent Sunil had purchased the land measuring 2 kanals 6 marlas for Rs.28.75 lakhs through registered sale deeds. The mutations were also entered. There was no reason to suspect that the land purchased by them already stood sold to M/s Jai Hanuman Landcom Private Limited who had purchased the disputed land in the year 2008 but did not bother to get the mutation entered. It was further claimed that the petitioner had himself entered into agreement for purchase of the land from the main accused i.e. respondent nos.10 and 11 on 2.9.2009 even prior to the transactions in favour of respondent nos.6 and 7. They further claimed that they had verified the title from the Halqa Patwari and only thereafter, they purchased the land. It is further stated that a compromise dated 23.2.2012 was entered between the petitioner complainant and main accused respondent nos.10-11. Respondent nos.10 and 11 promised to make good for the loss suffered by the petitioner which is reflected in the document. But respondent nos.10 and 11 did not make the payment to the petitioner as per compromise. It is stated that the independent investigation was carried out. Even after filing of the challan, independent investigation was carried out by senior officer, who exonerated respondent nos.6 and 7.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of the documents shows that originally, vide sale deed (Annexure P9), Dr.Rishi Chauhan and Smt.Chander Bala sold their 96/826 share equal to 4 kanals 16 marlas from the land measuring 41 kanals 6 marlas bearing **khewat / khata no.542/628** to M/s Jai Hanuman Landcom Private Limited for Rs.24 lakhs. Unluckily, the vendee did not get the mutation entered and it is apparent that in the revenue record, land still stood in the name of Dr.Rishi Chauhan and Smt.Chander Bala. It comes out that subsequently, vide two separate sale deeds dated 25.11.2010 (Annexure P10 and P11), Dr.Rishi Chauhan and Smt.Chander Bala sold their 56/826 and 46/826 share equal to 2 kanals 17 marlas and 2 kanal 6 marlas respectively, from the total land measuring 41 kanals 6 marla to Ankur Gupta and Sunil for consideration of Rs.35,62,500/- and Rs.28,75,000/- respectively. However, this time the land bears **khewat/ khata no.566/644**, as against **khewat no.542/626**, which was originally sold to M/s Jai Hanuman Landcom Private Limited. What was the original share of Dr.Rishi Chauhan and Smt.Chander Bala in the entire land can only be known from the revenue record to see as to whether they had earlier sold their entire share in the land measuring 41 kanal 6 marla to M/s Jai Hanuman Landcom Private Limited from khewat/khata no.542/626 and were left with share in land measuring 41 kanals 6 marlas from the khewat / khata no.566/644. In any case, it is not disputed that Sunil and Ankur Gupta purchased the land for consideration. This has been admitted by the petitioner in cross-examination in the civil suit pending between the parties.

Now, it further comes out that the petitioner also belongs to

village Bhondsi, where the land is situated. It comes out that said Ankur Gupta and Sunil sold the land purchased by them vide two separate sale deeds of dated 4.11.2011 and 3.6.2011 to Mrs.Rajwati mother of the petitioner and Mrs.Kavita Singh wife of the petitioner for sale consideration, as mentioned above. In most of the sale deeds, Naresh Aggarwal is the attesting witness. The claim of the petitioner is that Ankur Gupta and Sunil knew that they are not the owners of the land. They sold land to them in which they had no title. The mutation in favour of Ankur Gupta and Sunil and subsequent mutation in favour of mother and wife of the petitioner were cancelled by the revenue authorities.

The matter was investigated by the police. From the challan, it comes out that only Dr.Rishi Chauhan and Smt.Chander Bala were challaned by the police. Challan is now stated to be pending for framing of charges and this Court is informed that charge is not being framed on account of pendency of the present petition. Petitioner is not satisfied with the investigation and he claims that police is colluding with the respondents Ankur Gupta and Sunil. It is further contended on behalf of the petitioner that Naresh Aggarwal is the kingpin of the land mafia and that earlier in the first reply the police had taken the stand that they are investigating the matter by joining all the accused but after elections in Haryana, respondent No.12, namely, Umesh Aggarwal was elected as MLA on BJP ticket and the police changed their stand and challaned only Dr.Rishi Chauhan and Smt.Chander Bala.

Learned counsel for the respondents has contended that a fair investigation was carried out. The police took into consideration all the documents and found that respondent nos.6 and 7 and other respondents are

not responsible and that only Dr.Rishi Chauhan and Smt.Chander Bala had committed the crime. He has denied that the police was influenced. To support his contention, learned counsel for the respondents has pointed out that Kavita Singh and Rajwati had already filed two civil suits for recovery against Ankur Gupta, Chander Bala and M/s Jai Hanuman Landcom Private Limited, which are pending in the Court of Civil Judge (Senior Division), Sohna, District Gurgaon. Pendency of the said civil suit is not denied.

Learned counsel for the respondents has further pointed out that when the matter came to the notice of the parties, a tripartite agreement was executed between Kavita Singh, Sunil and Chander Bala (Annexure P19), in which, while noticing all the facts and the previous sale to M/s Jai Hanuman Landcom Private Limited, Rs.10 lakhs were paid in cash on behalf of the first party to Rajesh Singh and remaining amount of Rs.1,05,000/- was to be paid to him at the time of sale deed. In order to safeguard the interest of the wife and mother of the petitioner, an agreement also incorporated that Chander Bala agrees to sell residential house no.1095, Sector 17B in favour of Rajesh Kumar and on the execution of the sale deed regarding the disputed land, Rajesh Kumar will be bound to cancel the agreement to sell. Sale deed was to be executed till 23.5.2012.

Learned counsel has also referred to the agreement to sell dated 25.11.2011, wherein Dr.Rishi Chauhan agreed to sell one house no.1094-A, measuring 225.95 sq. mt. (264.26 square yards) having basement and 2 ½ storey building situated in Sector 17, Urban Estate, Gurgaon, which is having LIC house finance loan to the petitioner for Rs.1 crore 80 lakhs. A sum of Rs.1,50,00,000/- is recorded to have been received in cash as earnest money while recording that there is loan of LIC Housing Finance Ltd. The

vendors were bound to get the sale deed executed till 12.12.2011. If the vendors failed to get the loan cleared, the vendee shall have right to get the sale deed registered in thier name by paying the loan amount or he can also enforce the agreement through Court. The vendees are recorded to have become owners in possession of the same and the possession of the house has been handed over to the vendees. The agreement was signed by Dr.Rishi Chauhan and Smt.Chander Bala as vendors and Rajesh Singh as vendee.

Learned counsel for the respondents has argued that in fact the said amount of Rs.1 crore 50 lakhs was never paid in cash and the said agreement was only as a security on behalf of Dr.Rishi Chauhan and Smt.Chander Bala. Learned counsel for the respondents has also argued that prior to the said transaction in the year 2010, in favour of respondent nos.6 and 7 and subsequent sale deeds in the year 2011 in favour of the mother and wife of the petitioner, petitioner had entered into an agreement with Dr.Rishi Chauhan and Smt.Chander Bala on 2.9.2009 for purchase of 4 kanals 16 marlas of land out of said 41 kanals 6 marlas land bearing **khewat/ khata no.542/626** for Rs.70 lakhs. Sale deed was to be executed till 1.3.2010. Rs.15 lakhs were paid in advance and Rs.10,15,000 were paid by Bhan Singh vendee through cheque. In this agreement, there are 4 purchasers Onkar Singh, Bhan Singh, Bhagirath and Rajesh Singh petitioner, all residents of village Bhondsi. However, the said agreement does not bear the signatures of the present petitioner Rajesh Singh and bears the signatures of Onkar Singh only. It is also a registered agreement.

After considering the above noted documents and the contentions of learned counsel for the petitioner, this Court is to decide as to

whether the police has carried out proper and fair investigation or it is partial investigation?

I am of the view that the police carried out the investigation and considered all these documents. Since Civil Suit regarding the same land are pending and the criminal challan against Dr.Rishi Chauhan and Smt.Chander Bala is also pending, therefore, it is not deemed proper to comment on the evidenciary value and the effect of each of the documents which have been mentioned above. It will be suffice to say at this stage that police after considering all the documents found that Dr.Rishi Chauhan and Smt.Chander Bala have committed the crime and that Ankur Gupta and Sunil along with other respondents, including Naresh Aggarwal have not committed the crime. Police have also found that Ankur Gupta and Sunil were bona fide purchasers. After considering all the documents on the file and the police report filed under Section 173 Cr.P.C., I am of the view that there is nothing to suggest that the police acted in partial manner and did not carry out the fair and proper investigation. Matter was investigated several times by the senior officers. In the given circumstances, I do not find it a fit case where investigation/ further investigation by some other officer should be ordered.

It being so, without commenting on the merits of the controversy, which is pending dispute in the civil and criminal cases, the present petition stands dismissed with the observations that it will have no effect on the pending civil and criminal litigation between the parties.

28.08.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes