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

+ W.P.(CRL) 3436/2016 and CrI.M.A. Nos. 18700/2016 & 20237/2016
HOUSING DEVELOPMENT FINANCE CORPORATION LTD.
THR . ITS MANAGER (LEGAL) AJU ASHOK

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Rajinder Sahu & Mr. Amit Sahni,
Advocates

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Nandita Rao, ASC with SI
Omveer Singh, PS Nand Nagri and SI
Praveen Kumar, PS Barakhamba
Road, SI Afaq Ahmad, EOW
Mr. Vijay Kumar Aggarwal,
Advocate for respondent Nos. 4 to 7.
Mr. Anil Dabas, Advocate for R8.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
01.03.2017

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A status report has been filed on record. As per the status report, on the complaint of the petitioner/complainant, inquiry was conducted and during the course of inquiry, details of loan/flats/properties along with the relevant documents were collected from the complainant. Details of bank accounts of the alleged builder have also been collected. Details of documents pertaining to loans and flats mortgaged with UCO Bank have

also been collected from the said bank. Further details along with documents in respect of alleged M/s AVJ Developers (India) Pvt. Ltd. have also been collected from the office of Registrar of Companies. From the inquiry conducted so far, as per the status report, it has been found that the flats mortgaged with the petitioner have been allotted to some other persons and were mortgaged with other banks for obtaining loans. Consequently, FIR No. 31/2017 dated 23.02.2017 under Sections 420/409/120 B IPC at police Station EOW, Delhi, has been registered and investigation of the said case has been taken up. Ms. Rao submits that in view of the fact that the State has itself registered the FIR after conducting preliminary inquiry on the complaint of the petitioner, the petition does not survive and the petitioner should be satisfied.

Mr. Anil Dabas, Advocate, puts in appearance on behalf of respondent No.8-Regional Passport Officer. He states that the passports of respondent Nos. 4, 5 and 7 have been impounded. However, the passport of respondent No.6 has not been impounded since he could not be located.

Mr. Aggarwal, Advocate, puts in appearance on behalf of respondent Nos. 4 to 7. He has submitted that writ petition to seek a direction for registration of the First Information Report on the basis of the complaint of the petitioner is not maintainable. He submits that the passing of the orders by this Court on 30.11.2016 and 23.12.2016 has prejudiced the said respondents since these orders have been passed behind their back and this Court has virtually directed registration of the First Information Report by directing that, 'investigation' should be conducted by respondent No.3.

A perusal of the orders passed by this Court on 30.11.2016 and 23.12.2016 does not bear out that this Court had directed registration of the

FIR by the respondent Nos. 2 and 3. Notice was directed to be issued in this petition by the order dated 30.11.2016 to respondent Nos. 4 to 7. The notice was returnable for today. In the meantime, the petitioner moved Crl. M.A. No. 20237/2016 with the grievance that the inquiry on the complaint was sought to be transferred to U.P. since FIR No. 639/2016 dated 17.02.2016 under Section 420 IPC has been registered at PS Surajpur, Gautam Budh Nagar, U.P., which was pending investigation. It was in this background that on 23.12.2016, this Court directed, *‘till the next date, no further steps shall be taken in relation to the transfer of investigation by respondent No.3. Respondent No.3 shall continue to proceed with its own investigation in the meantime.’* The use of the expression, “investigation” in the said matter is clearly an over-sight since no FIR had been registered as on 23.12.2016 and, therefore, there was no question of contemplating formal investigation by this Court. All that was proceeding prior to registration of the FIR was merely an inquiry. As pointed by Ms. Rao, State has also not understood the order dated 23.12.2016 as an order directing conduct of investigation which can be undertaken only after registration of the FIR. It is for this reason that only a preliminary inquiry was conducted as noticed in the status report itself. Since the respondent Nos. 2 and 3 have on their own decided to register the FIR, which, in any event, they were obliged to on disclosure of a cognizable offence, the grievance of respondent Nos. 4 to 7, as taken note of hereinabove, is completely unjustified.

The next grievance raised by Mr. Aggarwal is that this Court vide order dated 30.11.2016 has directed the impounding of the passport of respondent Nos. 4 to 7. He submits that this Court should not have so directed impounding of the passports. In this respect, he has placed reliance

on the judgment of the Supreme Court in *Suresh Nanda Vs. CBI* 2008 Law Suit (SC) 1048 and *U.P.State Road Transport Corporation and another Vs. Mohd. Ismail and others* (1991) 3 SCC 239, to submit that the statutory authority could not have been directed to exercise its discretion one way or the other. He submits that the impounding of the passport can be directed by the Passport Officer in exercise of his statutory powers. He submits that the impounding of the passports of respondent Nos. 4, 5 and 7 has been done only on account of the fact that this Court had directed them to be so impounded vide order dated 30.11.2016.

Keeping in view of the aforesaid submissions of Mr. Aggarwal and the fact that the impounding orders have been passed, it is directed that in case the said respondents were to challenge the impounding orders in appeal, the fact that this Court had vide order dated 30.11.2016 directed the impounding of the passports shall not come in the way of the said respondents. The appeal shall be decided on its own merits.

Respondent Nos. 4 to 7 are, however, directed to surrender their passports with the investigating officer so that the same may be seized.

Mr. Mathur has submitted that a perusal of the status report shows that there is a possibility of the offence of forgery also being committed by the accused. Without constituting any direction, let the investigating officer examine the said aspect as well independently.

The petition stands disposed of.

VIPIN SANGHI, J

MARCH 01, 2017

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