

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2018

PRONOUNCED ON: 13.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.32825 of 2017
and W.M.P.Nos.36170 and 36171 of 2007

1.S.Praveen Kumar
2.Janaki Meenakshisundaram

Petitioners

Vs

1.The Commissioner of Police,
Chennai 7.

2.The Additional Commissioner of Police,
CCB, Chennai 7.

3.The Sub Inspector of Police, Team I, EDF,
Central Crime Branch, Madras-7.

4.The Management of Ozone Projects Pvt.Ltd.
rep. by its Chairman Mr.Vasudevan

5.Srinivasan Gopalan

6.Kannian

7.Dilip Kumar

8.Core Committee
rep by S.Muthu.

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records in C.No.5348/CCB-V/2017-No.994/DC-CCB-II/PE/2017-No.186/AC-EDF-I/CC/PE/2017 dt.15.11.2017 on the file of the 3rd respondent and quash the same as ultra vires unconstitutional against the Rule of Law and contrary to the facts and circumstances of the case and consequently direct

the respondents 1 to 3 to summon and enquire the entire Management of Ozone Projects Private Ltd. viz. respondents 4 to 7 and the Directors of Ozone Projects Private Ltd. No.44 Pilliar Koil St. Jawarlal Rd. Anna Nagar Chennai-600 040 as well as the self styled "Core Committee" Members the 8th respondent as to the collection of nearly several hundreds crores of rupees from innocent persons like the petitioners, by means of Criminal inducement and Criminal Breach of Trust committed by the entire Management of Ozone Projects Private Ltd., on the false promise made by them (the Management of Ozone Projects Private Ltd.,) that the completed and finished Flats in Metro Zone of Ozone Projects Private Ltd., including the petitioners' allotted flat Y/704 , Phase IV, Metro Zone of Ozone Projects Private Ltd., would be handed over by February/March 2014, and to direct them (Ozone Projects Private Limited) to complete and hand over the finished Flat Y/704, Phase IV, Metro Zone of Ozone Projects Private Limited., to the petitioners while obtaining a detailed statement of accounts from Ozone Projects Private Ltd., as to the total receipts and payments in respect of Metro Zone of Ozone Projects Private Ltd., as well as the bank statements showing the balance available in respect of Metro Zone of Ozone Projects Private Ltd., as on date.

For petitioners	Mr. Shanmugam for M/s Shanmuga Associates
For R1 to R3	Mr. D. Raja, Additional Government Pleader
For R4 to R7	Mr. P. V. Balasubramaniam for BFS Legal
For R8	Mr. S. Sivasankar

ORDER

Ozone Projects Private Limited, a Real Estate Company, floated an apartment project sometime in the year 2009 after getting necessary permission from the statutory authorities. The writ petitioners booked a residential apartment in Tower 'Y' Unit No.704 and entered into an agreement for sale for conveyance of undivided share of land and a

The agreement fairly sets out the mutual obligations of both parties and a detailed payment schedule has been recorded in Annexure 1(a) to the Construction Agreement. It is the grievance of the writ petitioner that Ozone Projects Private Limited has breached the conditions of the agreement and therefore, they had committed acts of criminal breach of trust.

2. The writ petitioner gave a complaint dated 01.11.2017 to the Commissioner of Police and on the orders of the Commissioner of Police, an enquiry was conducted by the Central Crime Branch, Team-1. After conducting the enquiry, the Central Crime Branch, by a detailed proceedings dated 15.04.2017, have closed the complaint on the ground that the allegations do not disclose the commission of a cognizable offence. The same has been communicated to the writ petitioners and this writ petition has been filed to quash the findings of the Investigating Officer.

3. The Investigating Officer has filed a counter affidavit, wherein, he has stated as follows in paragraphs 7 to 10:

"7. It is submitted that a preliminary enquiry was conducted on the petition and it was found that there was a delay of 45 months in completing the construction and as per the construction agreement entered between them in case of delay in completion and delivery of possession exceeding 6 months, the developer shall pay to the petitioners interest at the rate of 10% per annum and petitioner themselves admitted in their statement that 75% of construction of the flat has been over. Hence, the petitioner's representation did not disclose any

ingredients/averments to substantiate criminal inducement and criminal breach of trust.

8. It is further submitted that "an Undivided Share of 728 Sq.ft has been conveyed to the petitioners, vide Sale Deed dated:18.03.2016 registered as Doc No.1289 of 2016 in the file of Sub-Registrar, Anna Nagar.

9. It is submitted that the petitioners further negotiated with the Chief Executive Officer of the Metro Zone of Ozone Projects Private Ltd., the 5th respondent hereto, and "offered to pay additional 10% interest, along with the existing interest rate of 10%, totally 20% on the payment made towards the cost of the flat as compensation for the delay in Construction with an assurance of completing the flat by end March, 2018", which was accepted by the petitioners.

10. It is further submitted that while conducting the preliminary enquiry, it was found that there was no inducement, no entrustment and no misappropriation or conversion of property for their own use, as if the petitioners themselves admitted about the completion of 75% of construction of the flat and conveyance of undivided share of 728 sq.ft. in their favour and also agreed to receive 20% interest on the payment made towards compensation for the delay in construction with an assurance of completing the flat by end March, 2018".

4. This Court also perused the investigation records and found that the petitioners are attempting to give a criminal colour to a purely civil transaction. The learned counsel for the petitioners placed strong reliance upon the judgment of the Supreme Court in **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others [AIR 2013 SC 58]** to drive home the point that Ozone Projects Private Limited has played a huge fraud and as third parties, the petitioners have the *locus standi* to approach this Court for a direction to the police to conduct investigation about their affairs.

5. The above said ruling relates to the appointment of a person as

Certificate issued by the competent authority and hence, can hardly be of any avail to the petitioners.

6. In **Secretary, Minor Irrigation and Rural Engineering Services, Uttar Pradesh v. Sahngoo Ram Arya**, [(2002) 5 SCC 521], the Supreme Court has held that the Court cannot issue a direction to the police to find out if a person has committed the offence, as that would be in infringement of his right under Article 21 of the Constitution of India.

7. In the result, this petition is devoid of merits and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

8. Since the relief claimed in this petition can be granted under Section 482 Cr.P.C., this Court is treating this petition as one filed under Section 482 Cr.P.C. though the same has been filed under Article 226 of the Constitution as a writ petition in tune with the law laid down by the Supreme Court in **Ram Kishan Fauji vs. State of Haryana** [(2017) 5 SCC 533].

13.04.2018

gms

P.N.PRAKASH,J,

gms

To

1.The Commissioner of Police,
Chennai 7.

2.The Additional Commissioner of Police,
CCB, Chennai 7.

3.The Sub Inspector of Police, Team I, EDF,
Central Crime Branch, Madras-7.



Pre-delivery order in
W.P.No.32825 of 2017

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