

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11039 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in F.I.R.No.559 of 2017 dated 17.10.2017 on the file of Gachibowli Police Station, Cyberabad, at the threshold of the investigation.

The facts of the case in nut-shell are that, the first respondent along with other associates purchased 10,043 sq.yds of land situated in Sy.No.126(P), Gachibowli, Serilingampally Mandal, Ranga Reddy District. The entire land of 10,043 sq.yds was entrusted for common development by other associates under various Registered Development Agreement-cum-GPA's to the first respondent. Thus, the first respondent company is not only owner of the land, but also developer of the entire land to an extent of 10,043 sq.yds. The first respondent obtained sanction from GHMC for construction of 3 cellars for parking, ground + 7 upper floors vide proceedings No.6/104/BP/WZ/447/08 dated 23.08.2008. While so, the petitioners purchased an undivided share to an extent of 3766 sq.yds with proposed built up area of 1,50,000 sq.ft out of 1,043 sq.yds of land in Sy.No.126(P). The first respondent executed registered sale deed Document No.6464/2011 dated 02.07.2011 conveying an extent of undivided share of 3766 sq.yds with proposed built up area of 1,50,000 sq.ft out of 1,043 sq.yds. Subsequently, the first respondent and the petitioners entered into Construction agreement on 30.07.2011. The actual understanding was to sell the constructed premises @ Rs.3,833/- per sq.ft including the cost of construction work with built-up area of 1,50,000 sq.ft + cellar for parking are of 20,000 sq.ft with undivided share of land to an extent of 3766 sq.yds

out of the total land of 10,043 sq.yds and the petitioners shall pay the cost of construction work regularly to facilitate the first respondent to complete the construction work effectively and hand over the physical possession of the constructed area of the property as per schedule and the petitioners shall not cause any breach of contract. The construction agreement further speaks that the petitioners shall pay all the sums payable before obtaining possession of the property to be developed by the first respondent. The first respondent constructed the complex into two Blocks i.e Block-A as SS Tech Park and Block-B as PSR Prime Towers and the entire construction of Block-B was supervised by the petitioners. It is submitted in the report that, the first respondent could not progress the work as per schedule, due to the breaches committed by the petitioners time and again by defaulting the payable sums and in view of the delays in paying the agreed amount, the first respondent sustained heavy loss due to hike in price of construction material. At this juncture, the petitioners pleaded the first respondent with paucity of funds and requested the first respondent to raise funds from the bank. Accordingly, the first respondent by using goodwill, got sanctioned a loan of Rs.10 crores and secured over draft of Rs.20 crores from Andhra Bank, R.P. Road Branch, Secunderabad. The property of undivided share purchased under sale deed bearing document no.6464/2011 dated 02.07.2011 was subjected to mortgage as security for obtaining loans. However, the petitioners failed to pay the EMIs and monthly interest to Andhra Bank. The total cost of the property to be constructed and handed over to the petitioners, as per the understanding was Rs.57,49,50,000/- and the petitioners have paid Rs.22,70,00,000/- prior to registration of undivided share of 3766 sq.yds and subsequently, after registration, they paid Rs.17,38,00,000/-, in all amounting to Rs.40,08,00,000/-.

Further, the first respondent obtained sanction plan for construction of commercial complex for 10043 sq. yds prior to execution of sale deed in favour of Smt. Asha Jyothi Mandalapu/first petitioner/A-1 to an extent of 3766 undivided share in the year 2011. The first respondent divided the entire 10043 sq. yds. into 2 Blocks, Block B covering your undivided share of 3766 sq. yds and Block-A as SS Techpark. While marking pits and laying pillars, the area around 780 sq. yds were inadvertently covered in Block-B (PSR Prime Towers) thereby the plinth area of the PSR Prime Towers increased from 1,50,000 sq. ft. to 1,73,000 sq. ft. Thus, the first respondent/company and others as stated supra alone are entitled to the excess area of 23,000 sq.ft. constructed in block B known as PSR Prime Towers.

In view of breaches committed by the petitioners time and again the first respondent gave them opportunity and entered MOU dt. 21.10.2015 with them wherein the petitioners have agreed to pay Rs. 5,75,00,000/- towards the costs of 15,000 sq. ft. out of 23,000 sq. of the constructed in Block-B known as PSR Prime Towers. As per the terms of the said MOU dt. 30.1.2017 if the petitioners fail to pay the amount due to the first respondent and associates, they should forgo their right and interest over the property up to the balance amounts payable to respondents and first respondent is entitled to calculate the area @ Rs. 4,000 per sq.ft. for such amount due. Further first respondent and associates had given amount Rs. 78,25,000/- and Rs. 25,00,000/- in total Rs. 1,03,25,000/- to them out of the part payments made to the first respondent and associates, for their family requirements and adjustments in order to maintain good business relation. The said person have agreed to pay an amount of Rs. 4,13,00,000/- (Rs. 2.85 Cr + 1.15 Cr + 0.13 Cr as mentioned in MOU) towards interest for the delay in payment of amounts. Since the

petitioners have not paid the amounts due to the respondents amounting to Rs. 28,32,75,000/- (Rs. 57.495 Cr + 5.75 Cr + 1.0325 Cr + 4.13 Cr – 40.08 Cr) the respondents are entitled to 70,819 sq.ft. in the Block-B (@ 4000/- Per Sq ft on Rs. 28.3275 Cr) and the first respondent and associates are also entitled to retain 8000 sq. ft. in the Block-B (PSR Prime Towers) i.e. over and above 1,65,000 Sq.ft. (1,73,000 – 1,50,000 – 15,000 sq.ft.). It is submitted that the first respondent and associates have complied with all the terms mentioned in Sale Deed, Construction agreement, MOUs and it is the petitioners persons who violated the terms of the said deeds with an ulterior motive to cause hardship to the first respondent and associates.

It is stated in the report that, by violating the terms of sale deed for the undivided share area of 3766 sq. yds. out of 10043 sq. yds, construction agreement and MOUs, the petitioners executed and registered the sale deeds in favour of their parties in Block-B (PSR Prime Towers) and illegally trespassed into the portion of completed/constructed area of the first petitioner.

It is alleged that, in view of defaulting the payments as agreed upon, the first respondent has not delivered the possession of the Block-B (PSR Prime Towers) after completion of construction work to the petitioners. The petitioners with malafide intention without paying the amount due to respondent no.1 illegally trespassed into the part of Block-B (PSR Prime Tower property) and sold the above said property in favour of the their parties by illegally trespassing into area of property of the first respondent. It is alleged that the petitioners also mortgaged portions of the Block-B (PSR Prime Towers) and obtained loans from various banks by suppressing real facts and also without the knowledge and consent of the first respondent. Further, the petitioners also illegally let-out the ground and first floor to M/s.

Talent Sprint Pvt. Ltd. and thereby receiving Rs. 13,54,120/- per month towards rent. The execution of sale deeds, mortgage deeds and leasing the property without making the payment of amount due to the first respondent, illegally trespassed into portions of PSR Prime property and committed breach of trust by the petitioners, also committed offences like cheating, criminal breach of trust and criminal trespass of property, amounts to criminal offence, and therefore, the petitioners are liable for punishment for the offences punishable under Sections 406,420,447,506 r/w 34 IPC.

It is alleged in the report that, the first respondent has been in possession of the remaining area, after execution of sale deeds by the petitioners in favour of the third parties as mentioned above in PSR Prime Towers by engaging security persons around the clock and in order to prevent further damage to the property in PSR Prime Towers, the first respondent got issued legal notice dt. 12.10.2017 to the petitioners and persons who purchased the property, mortgaged by them and premises let out to third parties to come forward for amicable settlement. Thereupon, the petitioners instead of settling the issue, on 13.10.2017 at about 3.45 P.M. came to the PSR Prime Towers and allegedly, bent upon taking law into their hands and mustered strength by gathering 50 unsocial elements who are equipped with knives and deadly weapons and threatened the first respondent and his security not to interrupt their plan and they also warned with dire consequences, if the first respondent interferes in the process of trespass into the area in PSR Prime Towers. Apprehending danger to the lives, the first respondent lodged report with the police.

Based on the allegations, the Station House Officer, Gachibowli Police Station, Cyberabad, registered crime and issued F.I.R No.559 of

2017 against the petitioners on 17.10.2017 for the offences punishable under Sections 406,420,447,506 r/w 34 IPC.

The petitioners, who are arrayed as accused in the above crime, filed the present criminal petition, mainly on the ground that the allegations made in the F.I.R/report lodged with the police did not disclose commission of any offences punishable either under the provisions of Indian Penal Code or any other law and filing such complaint, after execution of sale deed dated 02.07.2011 in favour of the petitioners conveying an extent of undivided share of land to an extent of 3766 sq.yds out of 10043 sq.yds of land with proposed built up area of 1,50,000 sq.ft, which is part of Block-B, PSR Prime Towers is nothing but abuse of process of law and the proceedings in the above crime have to be quashed at the threshold, since the duty of the Court is to protect the rights and interests of the innocent bonafide purchasers/petitioners. It is urged that, none of the allegations made in the complaint, on its face value would constitute any of the offences mentioned supra, and prayed to quash the proceedings in F.I.R No.559 of 2017.

The first respondent filed counter admitting part of the allegations regarding offering the property to sale, being a developer and execution of document etc. It is specifically contended that the first respondent company along with its associates are the absolute owners and possessors and they are in enjoyment of the land to an extent of 10,043 sq.yds in Sy.No.126(P) situated at Gachibowli, Serilingampally Mandal, Ranga Reddy District. The associates of the first respondent entrusted their respective lands for common development to the first respondent in 2006. Thus, the first respondent is not only one of the owners of the land but also developer of the entire land to an extent of 10043 sq.yds in Sy.No.126 (P). The 1st

respondent after entrustment of the land approached the concern competent authority ie., The Zonal Commissioner, West Zone, GHMC and obtained sanction vide proceedings No.6/104/BP/WZ/447/08, dated 23.8.2008 for construction of 3 cellars parking, Ground + 7 upper Floors and has commenced the construction of commercial complex and completed cellar meant for parking. However, due to adverse market, 1st respondent temporarily slowdown the construction activity.

It is stated in the counter that, the petitioners being wife and husband approached the 1st respondent to purchase 1,50,000 sq. ft. @ Rs.3833/- per sq. ft. of constructed area in the combined sanction with undivided share of the land of 3766 sq. yds. out of 10043 sq. yds. After deliberations without entering into any agreement, the petitioners have paid about Rs. 2,70,00,000/- to the 1st respondent. The 1st respondent felt happy that the petitioners are good customers, who are NRI's, in view of paying huge amount as an advance without any agreement. Thereafter they disappeared and came back after lapse of several years in 2011 with a request to register undivided share of 3766 sq. yds.out of 10043 sq. yds. The 1st respondent and others being law abiding citizen without raising any objection executed registered sale deed doc.No. 6464/2011, dt. 2.7.2011 without receiving any consideration to an extent of undivided share of land admeasuring 3766 sq. yds. out of 10043 sq. yds. of combined sanction. The 1st respondent already obtained sanction for construction of commercial complex and commenced the work, as such the possession was with the 1st respondent covered by the said sale deed as a developer. Subsequently a formal construction agreement was entered in between the petitioner and the respondent No.1 on 30.7.2011 confining to area

