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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1056 of 2019

1. Smt. Reena Naidu W/o Late Raju Naidu, Aged About 54 Years, R/o Baron Bazar, Police Station Kotwali, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Smt. Neha Naidu W/o Late Sunil Naidu, Aged About 50 Years, R/o Baron Bazar, Police Station Kotwali, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station Gole Bazar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

MCRCA No. 1062 of 2019

1. Bhojraj Naidu S/o Late Shri L.R. Naidu, Aged About 58 Years, R/o Near Samudiyak Bhawan, Bairan Bazar, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station - Gole Bazar, Raipur, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

MCRCA No. 1073 of 2019

1. Vimal Naidu S/o Late Shri Latari Ram Naidu, Aged About 52 Years, R/o Baron Bazar, Police Station Kotwali, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Naveen Naidu S/o Late Shri Latari Ram Naidu, Aged About 48 Years, R/o Baron Bazar, Police Station Kotwali, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station Gol Bazar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

MCRCA No. 1118 of 2019

1. Ashok Kumar Khandelwal S/o Brij Mohan Khandelwal, Aged About 63 Years, R/o Mohaba Bazar, Police Station Amanaka, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station

Gole Bazar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- **Non-applicant**

For Applicants – Ms. Sharmila Singhai, Advocate (in MCRCA No. 1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019),

Mr. B.D. Guru, Advocate (in MCRCA No.1118 of 2019).

For Non-applicant/State – Ms. Akansha Jain, Deputy Govt. Advocate.

Mr. Abhyuday Singh, Advocate for the objector.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

29-08-2019

1. As all these four applications arise out of the same crime number, they are decided by this common order.
2. Apprehending arrest in connection with Crime No.146/19, registered at Police Station – Gole Bazar, Raipur, District Raipur, Chhattisgarh for offence punishable under Section 420, 34 of the IPC, the applicants have preferred these applications for grant of anticipatory bail under Section 438 of the Cr.P.C.
3. It is submitted by learned counsel for the applicants that the applicants have been falsely implicated in this case. It is submitted that complainant Somnath Batra is making a claim on the property numbered as 8/68-69 ad-measuring 3800 square feet situated in Gole Bazar, which he claims to have been purchased by his father in auction sale in 1964. According to the documents Annexure- A/4 the auction sale in favour of Shri Khan Chand Dittu Ram has been cancelled in the year 1970, therefore, the complainant has no entitlement over the property claimed. Applicants in MCRCA No. 1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019 are in possession of the property since 1958 and the mutation has also been made in their favour in the municipal records. The complainant had filed an application for mutation in his favour for the said property which was allowed by the Zone Commissioner by order dated 03-05-2016. The applicants had challenged that order in appeal before the Appeal Committee, Municipal Corporation Raipur. The order of the

appeal committee is annexed as Annexure-A/5. The appeal committee allowed the appeal and set aside the mutation order in favour of the complainant. According to the description of the property mentioned in the complaint, that is situated in Gole Bazar Raipur whereas, the property in possession of the applicants is situated in Banjari Chowk. The applicants in MCRCA No.1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019 have inherited the property from Latariram Naidu in the year 2015. The complainant has very cleverly suppressed the fact of cancellation of auction sale in his favour. Therefore, it is prayed that it may be a case of civil dispute, therefore, these applications may be allowed.

4. It is submitted on behalf of applicant Ashok Kumar Khandelwal (applicant in MCRCA No.1118 of 2019) that he is simply a bonafide purchaser of the property he has purchased belonging to one Sofia Khatun who went to Pakistan after handing over the property to one Muqmuddin, her relative. The sale has been executed by one Jilani Khan who is power of attorney holder of said Muqmuddin on 23-12-2010. Therefore, no case is made out against this applicant. Hence, it is prayed that this applicant may be granted anticipatory bail.

5. Learned counsel for the State/non-applicant opposes the applications submitting that the predecessors of the applicants had been tenants in the disputed property regarding which tenancy receipts have been seized in the investigation. The transfer that has been made by these tenants is without any authority and illegal. There is no question of disputed identification of the property because the Gole Bazar and Banjari Chowk are interconnected and thus part of the same area. Denying the submission of learned counsel for the applicants regarding cancellation of the auction sale it is submitted that the auction sale was renewed in the year 1981-82. Documents have been seized from the complainant to this effect, which show that father of the complainant

was settled on the same property and sale certificate was issued in his favour in the year 1982. The entry in favour of the applicants in municipal records does not confer any title upon them. Placing reliance on the judgment of Hon'ble the Supreme Court delivered in the matter of **Sau. Kamal Sivaji Pokarnekar V. The State of Maharashtra and others**, 2019 SCC OnLine SC 182, it is submitted that the grounds raised by the applicants side may be grounds in their defence. Therefore, for the present there is prima facie case against the applicants. Hence, the applications may be rejected.

6. Learned counsel for the objector submits that the disputed property is very clearly under the ownership of the complainant. The portion of this property has been sold by Reena Naidu and applicant Neha Naidu to one Lalit Kumar Agrawal on 09-01-2015, on that basis complaint was filed on 07-06-2019 and the investigation is pending. At present, there is clear evidence that all the applicants have usurped the entitlement of the complainant and are posing themselves as owner of the property are openly challenging the title and ownership of the complainant. Therefore, they are not entitled for grant of anticipatory bail.

7. In reply, it is submitted by learned counsel for the applicants that in the appellate order of municipal corporation there is clear observation that there is no record with respect to the house No.8/68-69 with the municipal corporation to connect the same with the property which is numbered as 39/126, 127, 128 and part of 128 and it is held that the house No.8/68-69 and the house No.39/127 and part of 128 are different properties and that order has not been challenged. Reliance has been placed on the judgment of Hon'ble the Supreme Court in **Commissioner of Police and Others V. Devender Anand and others**, 2019 SCC OnLine SC 996, and it is submitted that it is clearly a case of civil dispute as the complainant has civil remedy available. Therefore, it is prayed that the applications may be allowed.

8. Heard learned counsel for the parties and perused the case diary.

9. A complaint was filed by complainant Somnath Batra making statement that his father Khan Chand Dittu Ram had purchased the property numbered 8/68-69 in auction sale in the year 1962 regarding which conditional auction sale certificate was issued to him in the year 1964. After the death of his father on the basis of the will the complainant has become owner of the said property. Allegation has been made against the applicants in MCRCA No. 1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019 that they along with others have by making use of forged papers got their names mutated in the municipal records. One Jilani Khan who was a tenant of the property had sold 1300 s.f. of the disputed property to applicant Ashok Kumar Khandelwal. Similarly, some property has been sold to other persons. The dispute arose that they had no authority to make sale. The complainant came to know about the said sale in the year 2015, then on making enquiry he found that the names of applicants Smt. Reena Naidu, Smt. Neha Naidu, Bhojraj Naidu, Vimal Naidu and Naveen Naidu (applicants in MCRCA No. 1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019) are entered in the municipal records. Hence, the FIR has been lodged.

10. There is no denial that the applicants in MCRCA No. 1056 of 2019, MCRCA No.1062 of 2019 and MCRCA No.1073 of 2019 and vendor Ashok Kumar Khandelwal (applicant in MCRCA No.1118 of 2019) have been mentioned as holder of the property in the municipal records. The title over the property is in question as there is finding of the appellate committee of municipal corporation that the identity of the property claimed by the complainant is not the same as that which is in possession of the applicants. The complainant was also a party in the same proceeding. The documents that have been seized to show the claim of the complainant are with respect to the property numbered as 08/68-69 which has been disputed by these applicants.

Therefore, for these reasons, it is found that there is glimpse of civil nature in this case. Hence, I am of this opinion that the applicants are entitled for grant of anticipatory bail.

11. Accordingly, all these anticipatory bail applications are allowed. It is directed that in the event of arrest of these applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on each of them executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. These applicants shall also abide by the following conditions :

- (i) that they shall make themselves available for interrogation before the investigating officer as and when required;
- (ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

12. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge