

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1105 OF 2019

Hirabai Bhika Gaikwad & Ors.

.... Applicants

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Sanjay P. Shinde, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.
- Mr.Omkar Mulekar i/b. Trisha Bhattacharya, Advocate for the Intervener.
- PSI V. K. Shinde, EOW, Nasik City, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 05th JULY, 2019

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.179/19 registered with Sarkarwada Police Station, Nashik, under sections 420, 406, 427, 467, 120-B r/w 34 of the Indian Penal Code.

2. The FIR is lodged on 11/04/2019 by one Rahul Ashok Tuplondhe.

3. At the outset, the learned Counsel for the Applicants makes a statement that Applicant Nos.1 and 12 are arrested during the pendency of this application and therefore the applications of those Applicants has become infructuous. In this view of the matter, I am considering the application only for the remaining Applicants.
4. The FIR mentions that the Applicants' maternal aunt Nirmala Ramnik Korani had purchased land admeasuring 3 hecters 63 R, Gat No.33/2, village Mauje Akrale. The said Nirmala Korani thereafter gave power of attorney to her sister Vasumati Ramnik Korani and Vasumati Korani in turn gave power of attorney to the first informant to deal with the transaction regarding the said land.
5. Vasumati Korani had purchased that land from Rangnath Kisan Gaikwad and Bhika Kisan Gaikwad. The present Applicants are legal heirs of those two.

6. It is the case of first informant that after his aunt Vasumati Korani had purchased those lands, her name was entered into revenue record since the year 1999. Subsequently, in the year 2007, the legal heirs of Rangnath Gaikwad and Bhika Gaikwad filed Regular Civil Suit No.78/07 in the Court at Nashik for cancellation of sale deed. It is the case of first informant that in that suit the address of the informant's aunt was wrongly mentioned and therefore the proceedings could not be served on her. The suit was decided exparte against his aunt and that order was passed on 30/06/2007. Thereafter the first informant filed Misc. Civil Application No.328/13 for restoration of RCC No.78/07. The said application was allowed and the suit was restored vide order dated 22/04/2015. In the meantime, the aunt of the first informant had registered her objection vide entry of lis pendency in the revenue record in respect of the said land. In the meantime, acquisition proceedings in respect of said land were initiated. On behalf of the first informant's aunt, an objection was recorded through her advocate vide notice dated

26/09/2014 sent to the Collector and Special Land Acquisition Officer. The objections mentioned that the litigation was pending in Civil Court and therefore the compensation amount should not be given to the heirs of Rangnath Gaikwad and Bhika Gaikwad.

7. In spite of that, the compensation amount to the tune of Rs.3,17,62,500/- was distributed amongst the legal heirs of Rangnath Gaikwad and Bhika Gaikwad i.e. to the present Applicants. According to the first informant, thus in collusion with the authorities, the Applicants have obtained the compensation and hence offence was committed. On these allegations, the FIR was lodged.

8. Heard learned Counsel Mr.Sanjay P. Shinde for the Applicants, learned Counsel Mr.Omkar Mulekar for the Intervener and learned APP Mr.Prashant Jadhav for the State.

9. The learned Counsel for the Applicants submitted that

in the land acquisition proceedings, the authorities were aware of the objections raised by the first informant. Therefore it cannot be said that there was suppression of any fact on the part of the Applicants. He submitted that the matter is purely in the nature of civil dispute and there are various corrective measures provided in the procedure for acquisition of land and for distribution of award. He further submitted that no criminality can be attached to the Applicants.

10. As against these submissions, learned Counsel for the Intervener as well as learned APP pointed out that firstly the legal heirs deliberately gave wrong address of the original owner and thereby obtained an order from the civil suit of exparte decree in their favour fraudulently. Thereafter, though the Applicants were aware that the suit was not finally decided, they obtained the amount of compensation for themselves. They pointed out that the suit was restored vide order dated 22/04/2015 and the amount was distributed thereafter. Therefore, according to the learned Counsel for the Intervener

and the learned APP, the Applicants had accepted the amount knowing fully well that they were not entitled to receive it.

11. I have considered the submissions advanced by all the parties. It appears that there is history of civil litigation between the parties. Whether the exparte decree was obtained fraudulently or otherwise, is an issue which will be decided in the civil court proceedings. The validity of the original sale deed entered into in the year 1999 will be decided by the Civil Court. Learned Counsel for the Applicants stated that no interim order is passed in favour of either of the parties, in the pending civil suit. Mr.Mulekar, the learned Counsel for the Intervener, pointed out that after the suit was restored, the lands stood in the name of the aunt of the first informant in the revenue records.

12. Since the Land Acquisition Authorities were aware of the pendency of the suit as was mentioned in the notice dated 26/09/2014 on behalf of the informant's Aunt, it could not be

said that the present Applicant took any part in suppressing this information from the authorities. If inspite of such knowledge the authorities chose to distribute the compensation amount to the present Applicants, they could not be held responsible for such distribution. Of course, ultimately their entitlement for such compensation will be decided on the outcome of the civil suit. Significantly the civil suit is still pending. Therefore at this stage it is difficult to attribute any criminal intent on the part of the any of the Applicants. Secondly, rights of the parties only can be decided at the full fledged civil proceedings. If the amount is wrongly distributed amongst the Applicant, even that can be corrected through proper proceedings in respect of acquisition of land. At this stage, custodial interrogation of the Applicants does not appear to be necessary. Therefore they are entitled for protection of anticipatory bail. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.179/19 registered with Sarkarwada

Police Station, Nashik, the Applicant Nos.2 to 11 and 13 to 15 are directed to be released on bail on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each, with one or two sureties each, in the like amount.

- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)