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

Date of Decision: May 31, 2019

+ **CRL. A. 74/2013**

YOGENDER GARG Appellant
Through: Mr.Rakesh Munjal, Sr.Advocate with
Mr. R.P.S.Sirohi, Ms.Yashita Munjal,
Advocates
Versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

+ **CRL. A. 54/2013**

C. B. SINGH Appellant
Through: Mr. Pramod Kumar Dubey and
Mr. Amit Rathor, Advocates.
Versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **J U D G M E N T**

1. The above two captioned appeals arise out of common judgment of 19th December, 2012 which pertains to R.C. CY 1 2006 E 0005. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided by this common judgment.
 2. Appellants *C.B.Singh* and *Yogender Garg* have been held guilty of the offences under Section 120B IPC read with Section 13(2) read with Section
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13(1)(d) of The Prevention of Corruption Act, 1988 (*henceforth referred to as the P.C. Act*). Appellant-C.B. Singh has also been held guilty for offences under Section 13(2) read with Section 13(1)(d) of P.C. Act as he had misused his official position as Junior Engineer, Shahdara South Zone, MCD being a public servant by facilitating appellant-Yogender Garg, a private builder, in raising of unauthorised construction in subject property No.446-447, West Guru Angad Nagar, Laxmi Nagar, Delhi and caused pecuniary advantage to him.

3. Vide impugned order of 21st December, 2012, both the appellants have been sentenced to rigorous imprisonment for three years with fine of ₹25,000/- each for the offences under Sections 120B IPC read with Section 13(2) read with Section 13(1)(d) of P.C. Act with default clause. In addition, appellant-C.B. Singh has been further sentenced to rigorous imprisonment for three years with fine of ₹25,000/- for offences under Section 13(2) read with Section 13(1)(d) of P.C. Act with default clause.

4. The facts emerging from the impugned judgment are as under:-

“Briefly stating, the facts of the case are that during the year 2006, Hon’ble Delhi High Court passed orders in WP(C) 4582/2003 against the Engineers and Officials of MCD regarding unauthorized construction and CBI was directed to probe their nexus with their hierarchy in Engineering Department, Builders as well as Politicians. Preliminary inquiry was entrusted to Inspector J.R.Katiyar (PW-3) who after inquiry submitted a complaint Ex.PW3/A against accused persons and others regarding unauthorized construction in different properties. On the basis of complaint, FIR Ex.PW-3/B was registered. Investigation of the case was entrusted to Inspector R.C.Karnatak (PW20). During investigation, it

revealed that accused C.B. Singh abused his official position and caused undue pecuniary gain to co-accused Yogender Garg in the matter of unauthorized construction on property No.446-447, West Guru Angad Nagar, Laxmi Nagar, Delhi carried out by accused Yogender Garg. Accused C.B. Singh did not take any coercive action against unauthorized construction raised on the said property. It also revealed that accused C.B.Singh entered into a criminal conspiracy with accused Yogender Garg in completion of unauthorized construction. Investigation also revealed that the said plot measuring 180 sq. yards was in possession of accused Yogender Garg since 1998 and during the year 2001, construction activities on the said plot were started without getting any sanctioned building plan approved by MCD. It also revealed that unauthorized construction on the said plot was booked by accused C.B.Singh but he did not take any demolition action on 25.11.2002, 2.12.2002, 3.1.2003 and 5.3.2003. It is also alleged that accused C.B.Singh had shown wrong entries about the action taken by him in the ongoing property action register. It is also alleged that on 2.12.2002, demolition action was supposed to be taken on the property in question but accused C.B. Singh did not take any action and made false entries in the record.”

5. Prosecution to prove its case had relied upon deposition of twenty witnesses. Out of whom *Inspector J.R.Katiyar* (PW-3) is the complainant and *Inspector R.C.Karnatak* (PW-20) is the Investigating Officer. Trial Court has relied upon the prosecution version and has discarded the stand taken by appellants in their statements recorded under Section 313 Cr.P.C. and evidence of four defence witnesses, to convict and sentence the appellants as noticed above.

6. The findings returned by the trial court in the impugned judgment are

as under:-

“49. The prosecution has successfully established that there was criminal conspiracy between both the accused persons, object of which was to cause pecuniary advantage to accused Yogender Garg. It has been established that accused Yogender Garg was the owner of the property bearing No.446-447, West Guru Angad Nagar, Delhi and thereupon he raised unauthorized construction. It has also been established that accused C.B. Singh booked the unauthorized construction raised on the property in question by accused Yogender Garg but despite its booking, accused C.B. Singh had not taken any demolition action on the same.

50. It has also been established that accused C.B. Singh had made false entries in the official record that he carried out demolition on the property but in view of testimony of owners of flats/shops of the property in question and police constables, no demolition on the property in question was ever carried out. In this way, it has been established that accused C.B. Singh by abusing his official position facilitated his co-accused Yogender Garg and caused pecuniary advantage to him and thus a criminal conspiracy between them has duly been established.

51. The prosecution has failed to make out any case against accused C.B. Singh to the effect that he gave any false evidence in any stage of judicial proceedings or fabricated false evidence for the purpose of being used in judicial proceedings. Prosecution has further failed to bring any evidence to show that accused C.B. Singh has committed offence punishable under section 193 of IPC and thus he is entitled for acquittal under section 193 IPC.

52. Prosecution has successfully established that accused C.B. Singh was posted in the ward and was Incharge of the ward where the property in question i.e. Property No.446-447, West Guru Angad Nagar, Delhi was situated. Prosecution has further established that

accused C.B.Singh while posted as Junior Engineer had not taken any demolition action on the unauthorized construction over the property in question and thus abused his official position as a public servant thereby facilitating his co-accused Yogender Garg in raising unauthorized construction and causing pecuniary advantage to him.”

7. Mr. Rakesh Munjal, learned Senior Counsel for appellant- *Yogender Garg*, and Mr.P.K.Dubey, learned counsel for appellant- *C.B.Singh* submitted that appellant-*C.B.Singh* was not posted as Junior Engineer of Ward No.73-74, Shahdara Zone, Delhi wherein the subject property is located during the period from 4th May, 2001 to 27th February, 2002 and so, there was no question of his facilitating unauthorized construction in the subject property. It was pointed out that under the orders of this Court in a ‘*Public Interest Litigation*’, the investigation in this RC was carried out from 12th May, 2001 to 31st October, 2002. It was further submitted that prior to the period of scrutiny i.e. on 1st July, 1999, one shop in subject property was sold to Smt. Vidyawanti vide document Ex.PW-3/DB and Ex.PW-8/A and one flat on the third floor of subject property was sold to one Prakash Chandra Sharma on 30th April, 2001 vide document Ex.PW-3/DC. It was pointed out that on 27th June, 2001, nine water connections were sanctioned in the name of appellant-*Yogender Garg* vide document Ex.PW-19/C and Ex.PW-3/DC. So, it was submitted that construction in the subject property was complete prior to the period of investigation. It was asserted that the subject property admeasures 280 sq.yards and out of it, the appellant-*Yogender Garg* had purchased 180 sq.yards on 30th March, 1998 vide document Ex.PW-20/H. It was pointed out that on 8th October, 2002,

portion ad-measuring 100 sq.yards belonging to *Smt. Radha Devi* in the subject property was booked and it is so evident from Ex.PW-1/DA. It was further pointed out that as per deposition of PW-1, unauthorised construction booked last has to be demolished first and the said circular/policy decision has been proved on record by R.K.Gupta (PW-1). It was asserted that as per Ex.PW-2/E the last property booked for demolition was FF-35, Laxmi Nagar, Delhi and 9-A in Gali No.2, West Guru Angad Nagar, Laxmi Nagar, Delhi, as per entry of 2nd December, 2002 and so learned trial court has erred in holding that appellant-*C.B. Singh* had defaulted in not demolishing the portion of *Yogender Garg* in the property in question.

8. The precise submission advanced on behalf of appellants is that a civil suit (Ex.DW-1/1) was filed by one *Rajbir Singh* against *Smt. Radha Devi* in respect of 100 sq.yards portion in the subject property and upon receipt of said notice by the MCD, her portion in the property in question was booked and 180 sq. yards portion of appellant-*Yogender Garg* in the subject property was also booked but action had to be taken as per applicable policy of MCD. It was pointed out that vide order of 21st November, 2002, civil suit filed by *Rajbir Singh* against *Smt.Radha Devi* was permitted to be withdrawn on an undertaking that the unauthorized portion would be demolished. It was pointed out that the unauthorised construction in the 100 sq.yards portion of *Smt. Radha Devi* was demolished because of the undertaking given on 21st November, 2002 in the civil suit by the parties. So, it was submitted that the demolition action was not taken due to the aforesaid reason.

9. Impugned judgment is assailed on behalf of appellants on the ground that the aforesaid vital aspects have not been considered by the learned trial

court and so the impugned judgment and order on sentence deserve to be set aside.

10. On the contrary, learned Special Public Prosecutor for CBI supports the impugned judgment and order on sentence and submits that conviction of the appellants is borne out from the evidence on record. It is submitted that the scrutiny in respect of construction in the subject property cannot be confined to the period in question i.e. May, 2001 to October, 2002, as any construction without sanction is prohibited by law. It is also submitted that despite intimation of unauthorized construction, appellant- *C.B.Singh* did not demolish the unauthorized construction in the subject property. Lastly, it is submitted that the criminal conspiracy entered into by the appellants stands proved from the illegal acts and omissions committed by the appellants and so, these appeals deserve dismissal.

11. The submissions advanced by both the sides have been duly considered and the evidence on record has been scrutinized. Thereupon, it transpires that during the relevant period, appellant –*C.B.Singh* was not posted in Ward No. 73-74, Shahdara Zone, Delhi where the subject property is situated. It is so said in the light of evidence of *Inspector R.C.Karnatak* (PW-20). From the evidence of *J.R.Katiyar* (PW-3); *Raghuvir Singh Shekhawat* (PW-8) and *Satish Chand Sharma* (PW-19), it is revealed that the construction in the subject property was complete prior to the period in question. As per applicable policy/circular of MCD, unauthorised construction booked first has to be demolished first. In the instant case, evidence on this crucial aspect is not forthcoming. Otherwise also, in the civil suit filed by *Rajeev* against *Smt. Radha Devi*, an undertaking was given that unauthorized construction in possession of her 100 sq. yards in the

subject property would be demolished by her and the said undertaking was given on 21st November, 2002. For this reason also, the demolition action could not have been taken. It has come in the evidence of *R.K.Gupta (PW-1)* that the alleged unauthorised construction is of compoundable nature and there is no presumption that in case of inaction by the concerned Junior Engineer, there is a bribe angle.

12. *Inspector J.R. Katiyar (PW-3)* in his cross-examination has admitted that the property in question is in unauthorised colony. The concerned Superintendent Engineer of MCD (*PW-4*) as well as *Inspector R.C. Karnatak (PW-20)* in their evidence have categorically asserted that no building plan is sanctioned in an unauthorized colony and priority in demolition action in an unauthorised colony is never taken. This witness (*PW-4*) in his evidence has categorically deposed that he did not come across any conspiracy in not demolishing the property in question. It has also come in the evidence of *Ravinder Kumar (PW-5)*; *Smt. Amarjeet Kaur (PW-7)*; *Raghuvir Singh Shekhawat (PW-8)*; *Amarnath Dubey (PW-10)*; *Ravi Kanojia (PW-11)* and *Rakesh Kumar Chopra (PW-12)* that the subject property was built up prior to being sold by *Yogender Garg*. That is to say, the aforesaid witnesses have categorically asserted in their deposition that the built up portion in the subject property is in the same condition as when they had purchased it. So far as the evidence of Handwriting Expert (*PW-18*) is concerned, I find that his evidence is not conclusive to implicate appellant- *C.B.Singh*.

13. Upon considering the evidence on record in its entirety, this Court is of the considered opinion that in view of afore-referred infirmities in the prosecution case, conviction of appellants cannot be sustained.

Consequentially, the impugned judgment and sentence is hereby set aside.

14. These appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 31, 2019

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