

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

Judgment reserved on: 28.08.2019
% Judgment delivered on: 08.11.2019

+ **CRL.M.C. 1507/2006 & CRL.M.A. 6462/2017**

NEELAM SALUJA

..... Petitioner

Through: Mr. Karan Balraj Mehta,
Advocate.

versus

STATE & ANR.

..... Respondents

Through: Mr. G. M. Farooqui,
APP for the State with
Inspector Anil Jindal and SI
Neeraj Kumar from PS-EOW.
Mr. Pawan Kawrani and
Mr. Akshay Bhasin, Advocates
for DDA.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J.

1. The instant petition has been filed by the petitioner Mrs. Neelam Saluja under Section 482 CrPC for quashing the **FIR No. 247/1988** dated 22.11.1988, under Section **420/468/471/120-B IPC** registered at P.S. Kotla Mubarakpur, New Delhi and charge-sheet filed there under against the petitioner.

2. Concisely, the relevant facts of the present case are that on 14.09.1963, New Friends Cooperative House Building Society Ltd. had issued Share Certificate dated 14.09.1963 in favour of one Mr. Dayal Singh Narag S/o Mr. Jagat Singh Narag R/o. 5/62, W.E.A., Karol Bagh, New Delhi. On 21.03.1975, President of India (Lessor) through New Friends Cooperative House Building Society Ltd. (Lessee) had executed Perpetual Sub-lease in favour of Mr. Dayal Singh Narag in respect of plot bearing no. A-63, New Friends Colony, New Delhi (measuring 504 sq yds). On 18.11.1978, Mr. Dayal Singh Narag had sold and transferred the plot of land bearing No.A-63, New Friends Colony, New Delhi in favour of the petitioner Mrs. Neelam Saluja vide Agreement to Sell dated 09.11.1978, registered General power of Attorney, Special power of Attorney and Will dated 18.11.1978. Mr. Dayal Singh Narag had expired on 26.10.1980. Accordingly, after the death of Mr. Dayal Singh Narag, the petitioner had applied to DDA for mutation in her favour in respect of the aforementioned plot and the plot was duly mutated in favour of the petitioner vide letter bearing no. F.27(91)/78/CS-DDA dated 12.08.1981 issued by DDA.

Thereafter the petitioner had applied for transfer of membership of late Mr. Dayal Singh Narag in her favour in the records of New Friends Cooperative House Building Society Ltd. and the transfer of membership in favour of the petitioner was duly accepted and sanctioned by the Society vide its letter dated 16.09.1981 and Resolution No.8 passed in the meeting of the Managing Committee held on 29.08.1981.

3. It is further submitted that in the year 1983-84, the petitioner and her husband Mr. Surinder Singh Saluja had completed construction on the property and built up a residential house in accordance with the sanctioned building plan but DDA had issued letters and communications dated 14.04.1986 and 08.05.1986 whereby the mutation in favour of the petitioner in respect of property No.A-63, New Friends Colony, New Delhi was suspended and DDA had raised demand of 50% unearned increase amount against the petitioner vide letter dated 14.04.1986 which runs as follows;

Delhi Development Authority
Co-operative Societies Cell

C-III/2nd floor
Vikas Sadan, INA,

Dated 14.04.1986

F. 27(910)/78/CS/DDA

E.V. Wylie,
Deputy Director (CS).

Smt. Neelam Saluja,
42/8, East Patel Nagar,
New Delhi-110008.

Sub:- Suspension of mutation of plot No. 63 Block-A in New Friends Cooperative House Building Society Limited.

Dear Sir/Madam,

I am directed to refer to this office letter of even no. dated 12.08.81 whereby the mutation of above plot was allowed in your favour on the basis of documents furnished by you and to say that on review it has been observed that the mutation was allowed in contravention of Clause II(6) (a) (b) of the sub lease deed and, therefore, the same has been suspended till further orders.

Yours faithfully,

(E.V. Wylie)
Deputy Director (C.S.).

Copy to:

1. The Joint Director (Bldg.) with the request not to entertain the building plan or issue of C& D form and Completion Certificate till the clearance is given by this office in respect of the above mentioned plot.
2. The Hony. Secretary, New Friends Coop. House Building Society Ltd., 91, New Friends Colony, New Delhi-110065.
3. A.O. (CS) for information and necessary action.

Deputy Director (CS).'

Another letter dated 08.05.1986 was issued to the petitioner which runs as follows;

'Delhi Development Authority
Co-operative Societies Cell

C-III/2nd floor
Vikas Sadan, INA,
Dated 08.05.1986

F. 27(910)/78/CS/DDA

From: DY. DIRECTOR (CS)
DDA.

To:
Smt. Neelam Saluja,
42/8, East Patel Nagar,
New Delhi-110008.

Sub:- Suspension of mutation of plot No. 63 Block-A in New
Friends Cooperative House Building Society Limited.

Dear Sir/Madam,

In continuation of this office letter of even number dated 14.4.1996 on the subject cited above, **I m directed to inform you that the mutation allowed in your name on the basis of documents furnished by you tentamounting to sale under the grab of WILL/NOMINEE. Consequently, the right has accrued to the Lessor/L.G. under clause II (6) (b) of the sublease deed to recover the unearned increase equivalent to the 50% of the market value of the land at the time of receipt of application for transfer/mutation.**

It has, therefore, been decided to restore the mutation subject to payment of 50% of the unearned increase in the market value of the land which in this case work out to Rs. 1,85,688.00 (Rupees one lakh, eighty five thousand, six hundred & eighty eight only) and submission of other documents.

You are now advised in your interest to deposit the aforesaid amount within 30 days from the date of issue of this letter failing which the sub-lease deed of the issue of this letter failing which the sub-lease deed of the plot shall stands back without any further reference to you.

Please note that the other documents/formalities will be required to be completed after the aforesaid amount is deposited by you.

Yours faithfully,

(E.V. Wylie)

Deputy Director (C.S.).

Copy to:

1. The The Hony. Secretary, New Friends CHBS, 91, New Friends Colony, New Delhi-110065.
2. A.O (CS) DDA, Vikas Sadan, New Delhi.'

4. It is further submitted that the petitioner had filed suit for permanent injunction against DDA and challenged the letters dated 14.04.1986 and 08.05.1986 in suit bearing No.1247/86 titled "Mrs. Neelam Saluja Vs. DDA". The said suit was decreed by the High Court in favour of the petitioner vide its judgment and decree dated 09.04.1997 and declared both the letters dated 14.04.1986 and 08.05.1986 as illegal. Thereafter, petitioner again applied for transfer of membership of late Mr. Dayal Singh Narang in her favour in the records of New Friends Co-operative Housing Building Society Ltd. and the transfer of membership in favour of the petitioner was duly accepted and sanctioned by the Society vide its letter dated 16.09.1981 and Resolution No.8 passed in the meeting of the Managing Committee held on 29.08.1981.

5. It is further case that in the year 1988, the police registered criminal case bearing FIR No. 247/1988 dated 22.11.1988, P.S. Kotla Mubarakpur, New Delhi under Sections 420/468/471/120-B IPC

against the petitioner and several other accused persons in respect of properties situated at New Friends Colony, New Delhi. The case was registered on the complaint dated 18.04.1988 submitted to the police by Mr. P.K. Tripathi, Commissioner (Lands), DDA.

6. The petitioner has subsequently also applied to DDA for conversion of her property from leasehold into freehold vide application No.63527 dated 13.04.2005 and she had deposited a sum of Rs. 3,72,390/- towards conversion charges vide Pay Order No. 094800 dated 09.04.2005 drawn on Bank of Baroda, New Delhi.

7. It is submitted that in the various other matters relating to the same criminal case bearing FIR No. 247/1988 dated 22.11.1988, the Hon'ble Court has quashed the FIR in favour of the concerned petitioners in those cases and, therefore, on the ground of parity, the proceedings arising out of FIR No.247/1988 dated 22.11.1988, P.S. Kotla Mubarakpur, New Delhi under Sections 420/468/471/120-B IPC be also quashed in the interest of justice.

8. *Per contra*, it is contended by APP for the State as well as by Ld. Counsel for DDA that it is a clear-cut case of cheating, forgery and wrong representation of Will on the part of the appellant. It is

further submitted that it is the Will on the basis of which appellant claimed herself to be nominee of the property bearing no. A-63, New Friends Colony, New Delhi which later on, after through scrutiny of documents, found a case of transfer of property and not a case of devolution of property on the death of the testator in order to avoid the levy of unearned increase. It was submitted that in case of devaluation of property, the transferee has not to pay the unearned increase. The Perpetual lease deed contemplates that in the event of sale, the lesser shall be entitled to claim and recover 50% of the unearned increase in the value of the residential plot.

9. It was, therefore, argued that a fraud has been played upon DDA by getting the property mutated on the basis of devolution of property whereas the transaction was a sale which has resulted in loss of revenue to public exchequer.

10. I have considered the rival submissions and gone through the record.

11. Though, in view of order of High Court as referred above by learned counsel for the petitioner, petitioner was declared owner of suit property bearing no A-63, New Friends Colony, New Delhi in

view of compromise deed executed between Dayal Singh Narang and Smt. Neelam Saluja and the demand of the DDA as contained in its letter dated 14.04.1986 and 08.05.1986 were declared as illegal" and further observation that if on inquiry, DDA found that the Will dated 18th November, 1978 was for consideration, respondent may be directed to pay 33.1/3% excess conversation fee to the DDA and in that eventuality, DDA would then not hold any inquiry on the subject whether the Will was for consideration. In Crl. Appeal No. 8296 of 2016 titled as Delhi Development Authority and Others vs. Shanti Swaroop Goyal and Others, the Hon'ble Supreme Court while disposing off the appeal of the petitioner(DDA) has clearly opined that if DDA wishes to establish that Will in question was not genuine, it is open to the DDA to do so subject to conforming with the procedure contemplated, and by following the rules of natural justice.

12. DDA has filed a criminal complaint that Will dated 18th November, 1978 on the basis of which petitioner is claiming her right over the suit property, is not genuine but it was actuated by monetary consideration and was in fact a sale. DDA is of the opinion that Will was in violation of the terms and conditions stipulated in the lease

deed and that is why an FIR was registered by Commissioner(Lands) DDA. This is the FIR under Section 420/468/471/120-B IPC for which quashing is sought and it is to be seen whether petitioner has committed offences of cheating and forgery and caused loss to the public revenue by not paying the unearned increased.

13. Perusal of the record reveals that at this stage, prima facie, it appears that petitioner has committed offences of cheating and forgery by presenting a Will which was actuated on a sale transaction and is not a case of as one of devolution of property. The factum of cheating and forgery committed by the petitioner in collaboration with DDA officials and staff members of Society is clearly mentioned in the charge-sheet filed in case FIR No. **247/1988** dated 22.11.1988, under Section **420/468/471/120-B IPC** registered at P.S. Kotla Mubarakpur, New Delhi and the relevant facts of the same are as follows:-

As per law devolution is allowed to legal heirs in blood relation and none else, after the death of the sub-lessee by virtue of which the property is mutated in the name of legal heirs. The instant case is not mutation out of blood relation or in favour of legal heir but it is a clear cut sale by sub-lessee in favour of Neelam Saluja(accused Col. No. 4) and it was

shown on the basis of will in order to deprive DDA of 50% unearned increase. The DDA officials subsequently suspended the mutation of this plot and demanded Rs. 1,85,688/- vide their letter No. F.27(910)78/CS/DDA dated 08.05.1986 from the purchaser which was calculated 50% unearned increase and loss to lesser, but the same has not been deposited so far. The Society officials namely M.L.Jaggi and K.K.Mehta were authorized to forward the mutation documents of the concerned members after satisfying themselves about the geniuses of the same and DDA could not allow mutation without recommendation of society. In this case, the seller& purchaser i.e. D.S.Narang and Mrs. Saluja(both accused) conspired together to get mutation of property and to achieve the unearned object they made the society officials namely M.L.Jaggi and K.K.Mehta, members of this criminal conspiracy who recommended the case of mutation of the plot knowingly fully well that the documents i.e. nomination form, letter showing Neemal Saluja as original nominee, will etc. that the documents were bogus, incomplete and mutation was out of blood relation. This was done by society officials of monetary consideration. Thereafter accused Neelam Saluja further made the DDA officials Ram Saran-Dealing Asstt. and S.K.Ratra, Suptd. as member of conspiracy to facilitate the

illegal mutation of property. **In pursuance of criminal conspiracy with purchaser, the DDA officials knowingly accepted these incomplete, unattested and uncertified documents without any verification and further processed it a case of devolution in favour of Neelam Saluja and thus accused Saluja succeeded in her criminal act of cheating DDA by depriving it by 50% unearned increase with the assistance and active role of conspirators i.e. accused Ram Saran, S.K.Ratra of DDA and M.L.Jaggi and K.K.Mehra of society.**

14. It is also relevant to reproduce the contents of compliant made by Sh.P.K.Tripathi, Commissioner(Lands), DDA, Vikas Sadan, New Delhi against the petitioner herein on the basis of which the present case was registered and the same is as follows:-

On the basis of information received in this office and careful scrutiny of the records it is noticed in the will deceased sub-lessee had mentioned as under:-

I wish to make the following will with regard to plot No. A-63, Block No. A measuring 50 Sq. Yds in New Friends Co-op. House Building Society Ltd. New Delhi, in order to avoid litigations and unpleasantness after my demise as I owe obligations and have made commitment

*with Smt. Neelam Saluja w/o Shri S.S.Saluja
r.o 42/8, East Patel Nagar, New Delhi.*

The aforesaid text of the will give an impression that the mutation in the instant case was not one of the devolution of property but one of the sale/transfer so as to attract payment of unearned increase and that Smt. Saliya knowingly misrepresented as legatee of the deceased sub lessee as per cover will produced by her. The transaction in the commercial worlds are known as sale on power of attorney and will etc.

We apprehended in this case and so in many more cases of this type(copy of DC (AC) Delhi Admn. Report enclosed for ready reference); the modus operandi adopted by individual is likely to have involvement of more than one persons who operate in collusion with one another to deprive the President of India of the right to recover 50% unearned increase, which he is entitled in terms of the conditions of the sub-lease agreement above quoted, I would request you to kindly unearth the racket operating and to take necessary action against the individuals as is feasible to save the Government of India continued recurring loss.

15. In the case in hand, petitioner has committed offences of cheating and forgery on the basis of documents and plot no. A-63

NFC H.Building was mutated as a devolution case on the basis of Will executed by Sh. Dayal Singh Narang in her favour. It is the case of the prosecution that the instant case is not mutation out of blood relation or in favour of legal heir but it is a clear cut sale by sub-lessee in favour of Neelam Saluja and it was shown on the basis of Will in order to deprive DDA of 50% unearned increase with the assistance and active role of conspirators i.e. accused Ram Saran, S.K.Ratra of DDA and M.L.Jaggi and K.K.Mehra of society. It is clear that prima facie offences committed by the petitioner are the offences against the society at large and therefore, she cannot be exonerated from the criminal liability on the ground that she has paid the amount of unearned increase later on. Reliance in this regard is placed on ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.,2017 SCC Online SC 1189***, wherein the Hon'ble Supreme Court has held as under:-

"15..the case involved an allegation of forgery; hence the court was not dealing with a simple case where the accused had borrowed money from a bank, to divert it elsewhere. The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in

criminal law: availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court.

The same principle was followed in Central Bureau of Investigation v Maninder Singh by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then

was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system."16. Perusal of the record clearly reveals that offence

committed by petitioner is not an offence against one man but against DDA, a public Authority. The act of the petitioner, in fact, is an intentional act designed to deprive the DDA of its legitimate dues by committing forgery and cheating. This Court is of the view that when such offences are committed, these not only cause loss to the public exchequer but also to the taxpayers and society at large who have a right to access to various welfare schemes of the government. The offences alleged against the accused are serious in nature and committed with a deliberate design and planning with a view to earn personal gain regardless of wrongful loss to the public exchequer which concerns public at large. This Court is, therefore, of the considered view that even if the petitioner and the legal heirs of the deceased Dayal Singh had compromised the matter and unearned increase has been paid to DDA later on, petitioner cannot be exonerated of the offences committed in a planned manner by manipulating the documents with the intention of cheating the DDA and causing loss to the Public exchequer and to quash such kind of proceedings would certainly be a case of misplaced sympathy.

16. Ld. Counsel for the petitioner has, however, argued that earlier also the FIR was quashed qua some of the accused persons by the

Hon'ble High Court of Delhi on the ground that unearned increase was paid by the subsequent purchaser.

17. Ld. APP for the State and Ld. Counsel for DDA have, however, argued that the FIR cannot be quashed if the offence affects the economy of the nation or results in causing loss to the public exchequer, in view of the latest law laid down by the Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.,2017 SCC Online SC 1189.***

18. This court is of the opinion that offences alleged to have been committed by petitioner is not an individual or personal wrong. It is a wrong which affects the society and is committed with an eye on personal profit regardless of consequences to the society. In view of the detailed reasoning given above, this court is of the opinion that FIR cannot be quashed for the reason that the petitioner has cheated the DDA and caused loss to the public exchequer by not paying unearned increase deliberately and in view of the Judgment of Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai***

Bhimsinhbhai Karmur & Ors.(Supra), the offences which affects the economy of the nation and are against the society, cannot be quashed.

19. In view of the above discussion, I find no merit in the petition filed by the petitioner and the petition along with all the pending applications filed by the petitioner are accordingly dismissed.

BRIJESH SETHI, J

NOVEMBER 8, 2019

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