

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1278 OF 2019

M/s. Proinfra Developers (Ilp Firm) and Ors. ... Appellant

Versus

The State of Maharashtra and anr. ... Respondents

Mr. A.V. Anturkar, Sr. counsel a/w Mr. Yatin Malvankar for the appellant.

Mr. Pravin Chavan, Special P.P. for the State.

Mr. S.R. Shinde, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
NITIN R. BORKAR, JJ.**
DATE : JANUARY 10, 2020

P.C.:

Order dated 16/08/2019 passed by the Sessions Court, Pune as Special Court under MPID Act in Criminal M.A. No. 29 of 2018 is questioned in the present matter mainly with a contention that the period complained of is from 2006 to 2014 and in that grievance notification under section 4 has been issued on 5/5/2018. Ignoring the period, the sale transactions in relation to the properties at Fursungi and in relation to the properties at Hadapsar are now looked into and these properties have been attached.

2. According to learned senior counsel, there are registered sale deeds evidencing these transactions and in the wake of these sale deeds, the provisions of section 8 of MPID Act ought to have been invoked for questioning the transactions.

3. Learned counsel adds that the consideration mentioned in the sale deeds has not been properly looked into. The appellant has agreed to construct and make over 30 flats to the original owners from whom M/s. DSK Developers has purchased the property and undertook that obligation. Developer in the course of business has done 17 bookings and the appellant also undertook to honour that commitment. In addition, the loan taken by the developer M/s. D.S. Kulkarni is also agreed to be liquidated by the appellant. Over and above all these, the burden if any arising on account of demand of capital gain is also to be shouldered by the appellant. The sale deeds therefore, recorded valid consideration and the transactions are absolutely legal. While exercising the jurisdiction under section 4 and considering the application moved by the appellants, these sale deeds and the transactions could not have been over looked.

4. Learned senior counsel states that the said Special Court had on 31/7/2019 in a very same manner rejected almost identical plea/objection raised by the developer M/s. Dnyati

Housing. The challenge to that order by M/s. Dnyati Housing has been considered by the Division Bench of this Court on 18/10/2019 in Criminal Appeal No. 1164 of 2019 and that appeal was allowed. It is submitted that the attachment only to the extent of the flats to be constructed by M/s.Dnyati Housing to honour the commitments of M/s. DSK Developers was permitted. Learned senior counsel submits that in the present matter also, if cognizance could have been taken by the trial court under section 4, at the most similar order could have been passed.

5. Mr. Chavan, Special P.P. strongly opposes the contentions. He submits that the notification issued is dated 5/5/2018 and the transactions in the present matter are prior to the said date. He further adds that the transactions do not show any payment of consideration but adjustments only has been recorded by showing the agreed consideration in kind. It is therefore, contended that this matter and the challenge by M/s. Dnyati Housing do not stand at the same pedestal.

6. Learned counsel states that in this situation, the trial court has rightly looked into the notification dated 5/5/2018 and as the properties there are shown in the name of M/s. DSK Developers, attachment has been rightly maintained.

7. In brief reply, learned senior counsel submits that the sale

deeds in favour of the appellant are duly registered and as such the consequential mutation entries in the land revenue records ought to have been made by the revenue authorities themselves. Not taking such entries, does not enable the respondents to take advantage of their own lapse.

8. We have perused the order dated 18/12/2019 passed in Criminal Appeal No. 1164 of 2019. There, in paragraph no. 16, the Division Bench has taken a note of the investment of huge amount by said appellant in the property. In the present matter, the sale deeds do not show prima facie any such payment or investment in cash. The appellant before this court has undertaken to discharge only that obligations of M/s. DSK Developers in the matter as already noted supra.

9. However, the fact that the sale deeds have been duly registered or the dates thereof are not in dispute. Thus on the date of issuance of section 4 notification i.e. on 5.5.2018, these properties were not the properties of M/s. DSK Developers. In this situation, the question will be whether the attachment is possible under section 4 or then recourse ought to have been taken to some other provisions.

10. Perusal of the impugned order dated 16/08/2019 passed by the Special Court does not disclose consideration of this aspect.

During the arguments, learned senior counsel has fairly invited our attention to the say filed by the State Government before that court on 06/10/2018. That say only mentions that the sale transactions are prior to the notification and hence, special court could pass suitable orders. The implication of this say is not apparent.

11. We are informed that except the arguments advanced on behalf of the present appellant before that court, the Special Court then did not have advantage of hearing other advocate. Advocate Chavan however, disputes this. He contends that all relevant aspects were brought to the notice of the trial court.

12. We find that the order of the trial court runs into about 13 pages and 18 paragraphs. 17 paragraphs are only containing the facts. Even the contentions advanced have not been properly reflected in it.

13. In paragraph 18 the conclusion has been recorded. Briefly stated, it mentions that the period of incident in FIR No. 347 of 2017 is from 2006 to 2014. Then there is mention of date of the present sale deeds and the date of notification. Thereafter the Special Court has observed "There is no material on record to prove that how and when DSK Developers Ltd had become owner of the disputed land prior to his sale deed dt. 15.12.2017 and

17.01.2018.” The trial court finds that for purchasing the said land, DSK Developers Ltd. might have paid the amount to vendor from the amount which it may have received from the depositors or from other source.

14. This application of mind therefore, shows non consideration of the provisions of section 8 of MPID Act. Not only this, the other contentions advanced before this court also are not even mentioned and are not considered.

15. In this situation, though learned senior counsel has earnestly requested this Court to consider the controversy on merits, we are not inclined to do so. We find it appropriate to place the matter back before the said Court so as to enable it to apply its mind afresh in the light of the arguments noted supra.

16. Only for that purpose, we quash and set aside the impugned order.

17. The parties are directed to appear before the Special Court on 20/01/2020. The said court shall attempt to pass final orders on the said application within next four weeks.

18. With these directions, the appeal is partly allowed and disposed of.

(NITIN R. BORKAR, J.)

(B.P. DHARMADHIKARI, J.)

