

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.10.2019

ORDERS PRONOUNCED ON : 10.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24653 of 2019

AND

Crl.M.P.No.13125 of 2019

P.I.Ashokaraamsekar ... Petitioner/ A3

Vs.

The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Sastri Bhavan,
Nungampakkam
Chennai -6.

... Respondent / Complainant

PRAYER: Petition filed under Section 482 of Cr.P.C. to quash the charge sheet in FIR with No.RC MA1 2015 A 0009, dated 27.02.2015, in respect of the 3rd accused on the file of the respondent, which was taken on file as SpecialC.C.No.2 of 2019, on the file of the learned Special Judge, Puducherry.

For Appellant : Mr.V.Ajaya Kumar

For Respondent : Mr.K.Srinivasan
Spl.P.P for CBI Cases

ORDER

This petition has been filed to quash the criminal proceedings in Special C.C.No.2 of 2019, on the file of the learned Special Judge, Puducherry,

2.The case of the prosecution is that A1, who held the post of Chairman PHB between 05.08.2009 to 19.01.2011, A2, Secretary, Puducherry Housing Board (hereinafter called as "PHB") between August 2009 and April 2019, A3, Executive Engineer, who held additional charge of FA & CAO cum DDO from 02.02.2010 afternoon till 31.03.2010, A4, the then Administrative Officer-cum-Junior Account Officer, who held the post of Development Officer from 25.09.2009 to 14.04.2010 and A5, Assistant - Estate Wing of PHB, conspired and agreed to do an illegal act by grossly violating the PHB Act, 1973, PHB Rules 1975, Regulations and Instructions issued by Government of Puducherry among themselves and infurtherance of the said conspiracy, they made an agreement with A6 to A9 decided and purchased the lands measuring 18,720 sq. ft., 31,680 sq. ft. in R.S.No.31/6 & 32/1 at an exorbitant rate for Rs.84,24,000/- Rs.1,42,56,000/-, Rs.1,42,56,000/- (totalling Rs.3,69,36,000/-) respectively from A6 to A8 respectively at the rate of Rs.450/- per sq. ft. on 03.02.2010 whereas the Guide Line Register (GLR) value of the said land during the period was Rs.18/- per sq. ft. and Rs.300/- per sq. ft. The PHB officials purchased the land without obtaining prior approval of Government of Puducherry which is mandatory as per Section 61 of PHB Act 1973. They paid Rs.1,75,91,040/- more than the GLR value to the land owners and caused loss to PHB and undue pecuniary advantage to A6 to A8. They also made a sale agreement with A9 to purchase the land measuring 29 Ares 38 cents comprising in RS No.32/2B for consideration of Rs.1,42,25,400/- and PHB paid Rs.10,000/- as an advance to A9. The above said act of PHB officials shows that they conspired with the land owners and cheated PHB by abusing their official position while holding the office as public servants and caused undue pecuniary advantage to the land owners. The action of public servants and private persons disclosed commission of offences punishable U/s 120-B r/w 420 IPC and U/Sec 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

3.The learned counsel appearing for the petitioner submits that the petitioner is working as Executive Engineer in the Puducherry Housing Board. The complaints were filed against the housing board alleging corruption in the case of purchase of land for the purpose of starting housing scheme. The Board of Housing Board has taken a decision to purchase a portion of land owned by from A6 to 8 and the allegation are that the property was purchased in excess of the G.L.R. Value. Whereas, the property was purchased at a rate of Rs.450/- sq. ft. which is the then market value of the property. As far as the purchase of land for the housing scheme is concerned, the Site Selection Committee approved the sites and referred the same to the Price Fixing Committee, which fixed the price of land at a rate of Rs.450/- sq. ft. on 04.11.2009. After approval of all the necessary formalities, the matter was

placed before the Chairman of PHB regarding sanction of Rs.4,06,29,600/- towards the purchase of land including registration charges. However, due to various reasons the function of the Drawing and Disbursing Officer has been transferred to the petitioner. Due to previous motive with regard to promotion, one Artchounane and his friends filed petition against the said financial transaction against all the officers of the Housing Board. Though the G.L.R. Value for the property was Rs.300/- the property was purchased by the Housing Board at a rate of Rs.450/- which is the market value. The rival parties viz., Artchounane and others started an Association viz., Puducherry Housing Board Engineering and Ministerial Association for the purpose of victimizing the higher officers and filed W.P.No.3934 of 2019 for repayment of the entire money which is paid to the owners of the property viz., Rs.3,69,36,300/- , which was dismissed on 25.06.2014 by this Court stating that the petitioners therein have not shown any sufficient reason or cause to grant the prayer. However, the Secretary of the said Association viz., Ratna Subramaniam filed Crl.O.P.No.5969 of 2011 to register a case against the accused persons on his complaint dated 11.02.2011. This Court, by order dated, 27.11.2014 directed the CBI to register a case, conduct investigation and submit a final report. Though the Hon'ble Supreme Court granted stay of investigation, in the meanwhile, CBI filed FIR against 13 persons including the petitioner herein, as he signed cheque as a co-signatory in the capacity of Drawing and Disbursing Officer.

4.He further submit that the petitioner is only the Executive Engineer, who is no way connected with the policy decision of purchase of land in any manner. Since he was instructed to issue cheque as he was conferred with the powers of Drawing and Disbursing Officer (DDO), he signed cheque as a co-signatory. The statement that the petitioner was conferred with the powers on FA and CAO in PHB is not correct and records will show that the petitioner was conferred only with the powers of D.D.O. On the raid conducted by CBI in the house of the petitioner, they could not get even a single evidence to show that the petitioner has got some financial advantage either in the issue involved in the case in any manner.

5.He further submitted that the petitioner is an Engineering staff and has nothing to do with the administration and sale and purchase of the property and hence, incriminating the petitioner in the present case with some ulterior motive is nothing but a clear case of injustice and shall amount to miscarriage of justice. Except Chairman and Secretary of PHB, none of the Site Selection Committee and

Price Fixation Committee Members are made as accused in this case, who are responsible to identify the site, compare the price and find out whether the price is legally sustainable on the basis of G.L.R. Value. The petitioner was subjected to disciplinary proceeding for not issuing the cheque and he cannot be punished for performing the official and mandatory duty. It is the duty of CBI to prove that the transaction in the said area has been carried out by the other inhabitants of the said village at the GLR value only and it is a known fact that no person will be ready to sell the property at the GLR value because GLR value is fixed for the purpose of stamp duty and other revenue purposes. In the charge sheet, there is no whisper regarding the actual loss incurred by the Housing Board through the said transaction in issue.

6.The learned counsel for the petitioner submitted that the petitioner's residence was searched on 09.05.2015 and no incriminating materials were seized. During the search, the inventory of the articles found in the house of the petitioner were also taken and no disproportionate items were found. There is no iota of materials found to prove that the petitioner benefitted in any manner, in view of the transaction between the PHB and the land owners. The petitioner never contacted the public, who were willing to sell their lands other than for official purpose.

7.He further submitted that it is admitted case that the petitioner is neither a member of the Site Selection Committee nor the Price Fixing Committee and PHB. The Chairman, Secretary and the Board members of PHB are appointed by the Government. The Chairman heads the Housing Board and the Secretary appointed by the Board in the rank of Under Secretary to Government of Puducherry on deputation to assist the Chairman in day to day function of Puducherry Housing Board. The Board constitutes of high ranking officials of Government from various departments. The functioning of the officials of the Board is clearly demarcated as Administration and Accounts Wing, Engineering Wing and Estate Wing. The Administration and Accounts Wing is headed by Financial Advisers & Chief Accounts Officer (FA & CAO), Engineering Wing is headed by Executive Engineer (EE). The Estate Wing is headed by Development Officer (DO), which looks after purchase of lands for housing purposes and payments are made by the Financial Advisers and Chief Accounts Officer.

8.He further submitted that the Secretary, Puducherry Housing Board is the signing authority and the petitioner, by the order of Chairman on 02.02.2010 was directed to function as Drawing and Disbursing Officer in addition to he being

Executive Engineer till 01.03.2020. During this time, the petitioner was directed to put up "sanctioned" and prepare cheques in favour of the land owners. The cheques were prepared by the Account Section signed by the Secretary, the signing authority and the petitioner had signed as co-signatory, who was directed to function as Drawing and Disbursing Officer at the relevant time. The petitioner had no other role in the entire transaction by obeying the orders of the superior, the petitioner has been roped in. Hence, he prayed to quash the charge sheet as against the petitioner alone.

9.The learned counsel appearing for CBI submitted that the respondent had registered the case on 27.02.2015 for the offences under Sections 120(b) r/w 420 IPC and Section 13(2) r/w 13(1)(d) of P.C. Act, against 13 persons and other unknown officials of PHB. On completion of investigation, they had filed charge sheet against 9 persons, of which, A1 to A5 are the officials of PHB, A6 to A9 are private individuals. Against 8 persons, who were named in the FIR, they were not sent for trial and their names were deleted in the charge sheet.

10.He further submitted that according to the prosecution, the accused persons conspired together to cheat PHB, purchased lands measuring 82080 sq. ft. located in Re.Survey No.32/1 and 31/6 at Kirumambakkam village, Bahour Tahsil, Pudhucherry for Rs.3,69,36,000/- in the year 2010, which was Rs.1,75,91,040/- more than the Guide Line Register (GLR) value of the land and further, they did not follow the instructions contained in Puducherry Housing Board Act, 1973 while purchasing the lands. The excess amount paid to land owners was flown back to the accused persons and the same had been distributed/divided amount themselves and thereby, the accused persons caused wrongful loss to PHB and wrongful gain to themselves.

11.He further submitted that the investigation revealed that PHB purchased the lands either from government through Land Acquisition Act or from public through direct negotiation to implement its various housing schemes. Advertisements are being published in leading newspapers inviting the prospective public who are willing to sell their lands under negotiation to PHB. The interested public will submit their willingness in writing to PHB with the copies of their land documents with tentative price of the land. The land documents will be scrutinized by the Estate Wing and Legal Advisor to ensure the authenticity of the Documents/Ownership/Title of the land. Thereafter, Site Selection Committee will be formed which will

inspect the land and submit its recommendation. Based on the Site Selection Committee's report, Price Fixation Committee will be formed for the purpose to fix the price of the land assessing the GLR value and sale of the lands in the nearby areas. If the price of the land higher than the GLR value, the price fixation committee will negotiate with the seller of the land to reduce the price. Once a settlement reached between PHB and Seller, proposal will be submitted to the Board for concurrence of approval. As per the Section 61 of the Puducherry Housing Board Act, 1973, if the value of lands or interest exceeds Rs.03 lakhs, the Board shall not enter into Agreement with any person for acquisition of the land without the previous approval of the Government. The land will be registered in the name of Secretary, PHB.

12.He further submitted that the investigation revealed that the Guide Line Register issued by Sub Collector Revenue, South Villianur, Pondicherry for the financial year 2009-10 in respect of the lands purchased was Rs.300/- per sq. ft. The Board and the officials agreed to purchase the land at the rate of Rs.450/- per sq. ft. fixed by the price fixing committee This was not for justifiable reasons. The Site Selection Committee and Price Fixing Committee accorded approval, thereafter Board of PHB deliberately recommended for the enhancement of powers of the Board to purchase the land, by direct negotiation by increasing the monitory ceiling from Rs.3 lakhs to Rs.10 crores, proposals exceeding Rs.10 crores can be referred to the Government for approval. A2 Secretary sent a letter seeking approval of Government of Pudhucherry for amendment in Section 61, Chapter VI of PHB Act, 1973 to enhance Board's financial powers from Rs.3 lakhs to Rs.10 crores and Chairman's Financial Power Rs.10,000/- to Rs. 1 Crore, which was approved in the 111th Board meeting held on 05.11.2009. The Under Secretary to Government (Housing) raised 3 queries in respect of the request sought by the Secretary, PHB. Further, it is seen that no reply was given by the Secretary, PHB for the queries made by Under Secretary till 01.01.2010. Further, it revealed that on 02.02.2010, the Financial Advisor and Chief Accounts Officer, L.W.9 put up a note for seeking Government approval, without approval from Government, the Chairman had given approval to further process the file and got the acts ratified by Board. Thereafter, on approval of Chairman, the Secretary had directed to prepare cheques in favour of the land owners. In the meanwhile, L.W.9 refused to sign the cheque on 02.02.2010 and he received a telegram that his father's health condition is serious to start immediately. Thereafter, L.W.9 informing the Secretary prayed for 4 days leave till 05.02.2010 and left Pudhucherry to attend the emergency situation at his hometown Madurai. On his return on 05.02.2010, a termination order was served to him.

13.He further submitted that according to the prosecution, since L.W.9 refused to sign, the petitioner was directed to function as Drawing and Disbursing Officer on 02.02.2010 and he had signed the cheques in favour of the land owners. Hence, these cheques were prepared, signed on 03.02.2010. Further, on the 112th Board meeting of PHB, on 22.02.2010, the Board had approved, ratified the decision of the Chairman, PHB for purchase of these lands, for which payment have been made. The approval from the Government is yet to be obtained. Thus, this petitioner viz., A3 had conspired with the other accused in issuance of the cheque. It is admitted that during the house search conducted at the residence of A3, no incriminating material was found. However, the signing of the cheque is a suspicious act of the petitioner. Hence, he prayed for the dismissal of this petition.

14.Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for CBI and perused the materials available on record.

15.Considering the rival submissions made on either side and perusal of the materials, it is seen that the petitioner raised from the rank to the level of Executive Engineer of the Engineering Wing and his work is specified for construction of housing board buildings and its maintenance. The Estate Wing, which is headed by a Development Officer looks after the purchase of lands for housing purposes and the Administration and Accounts Wing headed by Financial Advisor and Chief Accounts Offices looks after the pay and accounts of PHB. PHB constituted by way of the Act, 1974, in which, the Constitution and Working of the Board are as follows:

(1)When effect from such date as the Government may by notification in the Official Gazette specify in this behalf, there shall be established for the purpose of this Act, a Board to be called the Pondicherry Housing Board.

(2)The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property both movable and immovable, and to contract and shall by the said name sue and be sued.

(3)The Board shall consist of the following members, namely:-

(a)a Chairman to be appointed by the Government,

(b)the Secretary to Government in-

charge of Housing;

(c) the Secretary to Government,
Finance Department;

(d) the District Collector;

(e) the Director of Public Works
Department;

(f) the Director of Health and Family
Planning Service;

(g) The Senior Town Planner,

(h) Three non-official members to be
appointed by the Government, one of some
shall be an Engineer or Architect who
possesses experience in housing and who is
not in the employment of the Government or
of a local authority or of any corporation
owned or controlled by the Government; and
one shall be a resident of any one of the
outlying areas of Karaikal, Mahe or
Yanam.

16. Likewise, for scouting of lands for the purpose of
housing schemes, the following site selection committee is
constituted for Kirumampakkam Revenue Village, Puducherry.

1. Thiru. P. Angalane, M.L.A.

Chairman, Puducherry Housing Board,
Puducherry

Chairman

2. Dr. Frankalin Latinkhuma, I.A.S.,

Sub Collector, Revenue (South)

representing the District Collector,
Puducherry.

Member

3. Thiru. R. Sai Subramanian, Executive

Engineer, B & R, PWD (representing
the Chief Engineer, PWD),
Puducherry.

Member

4. Thiru. K. R. Prakash, Deputy Director,

Immunization (representing the Director
of Health & Family Welfare Services),
Puducherry.

Member

5. Thiru. K. Mookaiah, Planning Assistant

(representing the Chief Town Planner,

- Town & Country Planning Department,
Puducherry). Member
- 6.Thiru.A.Jayabalan, Commissioner,
Bahoor Commune Panchayat,
Puducherry. Member
- 7.Thiru.S.Kuppusamy, Secretary,
Puducherry, Housing Board, Puducherry. CO Member

Thereafter, the following price fixation committee is constituted:

- 1.P.Angalane,
Chairman, Puducherry Housing Board Chairman
- 2.N.Rajasekhar, I.A.S. (Retd.) Member
- 3.S.Manohar, Chief Engineer,
Public Works Department, Puducherry Member
- 4.C.Ramaradjou, B.E., M.E., Member
- 5.S.Kuppusamy, Secretary, Puducherry
Housing Board, Puducherry. Co-Member

Perusal of the records would show that in both the committees, the petitioner has no role. From the statement of Price Committee Members viz., L.Ws.13, 14 and 15 it is found that the Price Committee had discussed with the land owners thereafter given weightage for land acquisition, solatium interest thereof and thereafter, the Committee Members decided to fix the purchase price for lands.

17.It is also admitted that the petitioner, who is an Executive Engineer, heading the Engineering Wing was directed to function as Drawing and Disbursing Officer on 02.02.2019 by the orders of the Chairman and Secretary and he had functioned in that capacity till 01.03.2010. During this period, he signed cheques as co-signatory. The cheque signing authority is only the Secretary of the Housing Board. The identification, fixation of price for the land have been deliberated in the 111th board meeting and thereafter, the payments have been ratified by 112th board meeting. Since the board is supreme, the petitioner had only executed the orders of the Board, for which, no criminality could be attributed to

the act of the petitioner. Further, there is no material to show that there have been any flow back of money to this petitioner. It is also submitted that pursuant to the house search and valuation of the articles found there in 2015, no persuasive action has been initiated against the petitioner.

18.It is also seen that there has been some acrimony against the petitioner, who grew up from the ranks, amongst contemporaries and others which could have been the reason for reference against the petitioner by way of statements, at stray instances there are no materials to substantiate the same. Perusal of the entire materials produced would show that the defence of the petitioner is based on sound, reasonable, and indubitable facts and are such, as would rule out and displace the assertions contained in the charges levelled against the accused and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution. In such situation, this Court in exercise of its power under Section 482 of the Cr.P.C. to quash criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

19.In view of the same, this petition is allowed and proceedings in Special C.C.No.2 of 2019, on the file of the learned Special Judge, Puducherry, is quashed, as against the petitioner/A3 alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul

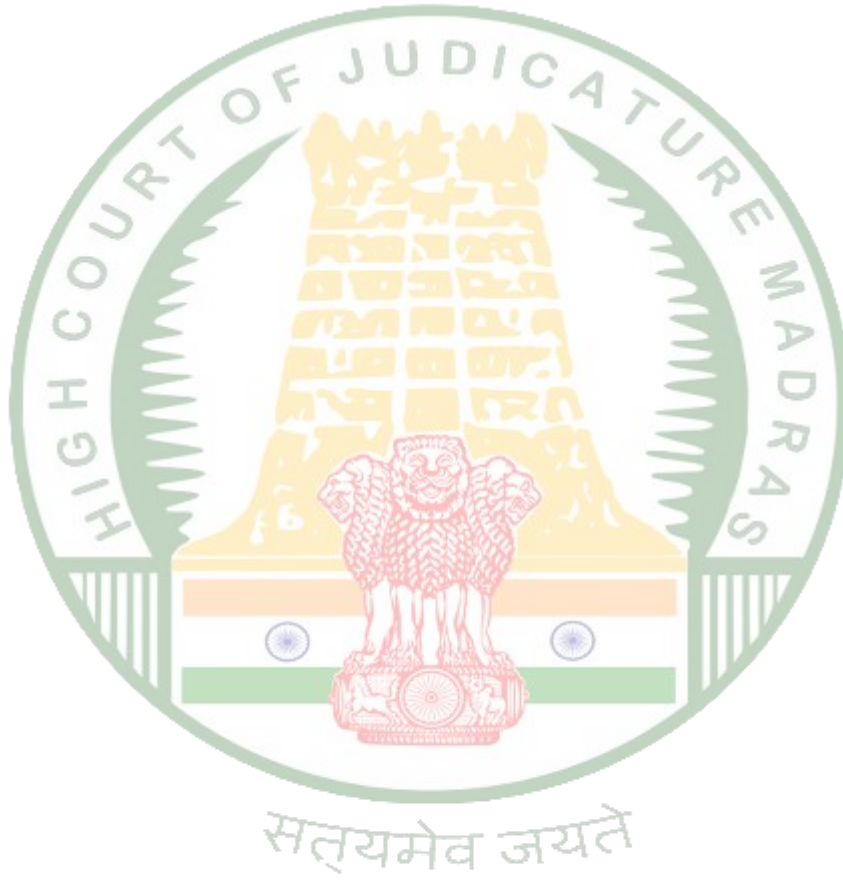
To

- 1.The Specail Judge,
Puducherry.
- 2.The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Brach,
Sastri Bhavan,
Nungampakkam,
Chennai - 6.
- 3.The Special Public Prosecutor,
for CBI cases, High Court, Madras-104.

+2cc to Mr.V.Ajayakumar, Advocate SR.2558,3310
+1cc to Mr.K.Srinivasan, Spl PP(CBI) SR.2877

CrI.O.P.No.24653 of 2019

SV(CO)
CB(29/01/2020)



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