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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.9763 of 2018

and

Crl.M.P.Nos.5011 & 5012 of 2018

1. P.Vijay Nataraj

2. V.Shanthi

3. V.Rajesh

... Petitioners

Vs.

1. The State

Rep. by Inspector of Police,
City Crime Branch
Coimbatore.

2. Velusamy

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records relating to the order dated 18.01.2018 in Crl. Rev. Case No.41 of 2015 on the file of the learned Principal District and Sessions Judge, Coimbatore and set aside the same.

For Petitioner : Mr.ARL.Sundaresan

Senior Counsel

For Mrs.AL.Ganthimathi

For Respondents: Mr.C.E.Pratap R1

Government Advocate (Crl. side)

M/s.G.R.Lakshmanan R2

ORDER

The Petitioners, who are the father, mother and son, have filed this petition invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C. to set aside the order dated 18.01.2018 in Crl.Rev.Case No.41 of 2015 on the file of the learned Principal District and Sessions Judge, Coimbatore.



2. The facts leading to filing of this case are as follows:

The first petitioner was owning a land to an extent of 25.07 cents in S.No.26/2B land situated at Thudiyalur Village and the petitioners 2 & 3 were jointly holding an extent of 50 cents of land comprised in Survey No.26/3 of Thudiyalur Village, Coimbatore.

3. Whiles, the Government issued a Notification dated 14.07.1987 proposing to acquire lands in connection with Master Plan for Coimbatore Local Planning Area. After a long delay of 1189 days, the Government has issued a Government Order in G.O.Ms.No.661, Housing and Urban Development Department, dated 12.10.1994. Even after issuance of such Government Order, no steps were taken by the Government for acquisition of the land. This act of inaction on the part of the Government, according to the petitioners, is in violation of Section 38 of the Tamil Nadu Town and Country Planning Act, rendering the acquisition process a nullity.

4. The petitioners sold the property vide document dated 23.04.2007 which was registered on the file of the SRO, Periyanaicken Palayam. While the matter stood thus, on 07.09.2009, nearly 2 1/2 years later, the second respondent lodged a complaint with the Central Crime Branch, Coimbatore complaining that the petitioners have sold the lands suppressing all the facts that the lands were acquired by the Government for formation of the inner ring road project. The first respondent police received the complaint and registered a case in crime No.94/2009 for the offences punishable under Sections 120(b) and 420 of IPC.

5. It is the case of the petitioners that they applied for anticipatory bail and this Court was pleased to grant such prayer. The petitioners, thereafter, filed original petition under Section 482 of Cr.P.C. for quashing the complaint in Cr.No.94 of 2009. However, this Court was pleased to dispose of the said petition. The police went ahead with the investigation and filed charge sheet which was taken on file in CC.No.284 of 2011. The petitioners approached the learned Judicial Magistrate-III, Coimbatore with a prayer to discharge them from the case. But, the learned Judicial Magistrate negatived the said prayer. Challenging the said order, the petitioners have filed a petition before the learned Principal District and Sessions Judge, Coimbatore in Criminal Revision Case No.41 of 2015. In the meanwhile, the Enforcement Directorate registered a case in ECIR. No.13 of 2010 against the petitioners for alleged offence under Section 3 of the Prevention of Money Laundering Act. The said complaint was taken on file in CC.No.36 of 2015 by the learned Principal Judge, City Civil Court, Chennai.



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6. The Criminal Revision Case which has been filed against the orders of the learned Judicial Magistrate, was dismissed. As against the said order, the present petition has been filed by the petitioners seeking to quash the said order.

7. The learned Senior Counsel vehemently argued that this is a fit case where this Court can exercise its inherent jurisdiction power under section 482 of Cr.P.C. and set aside the order passed by the court below and save the petitioners from undergoing the rigor of trial.

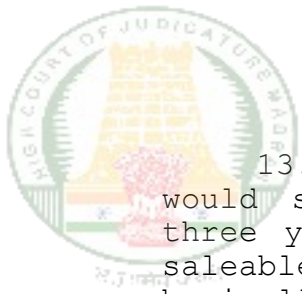
8. The learned counsel has narrated the facts of the case in detail, the numerous delay on the part of the Government from the date of issuance of notification, subsequent Government order and the inaction thereafter. The learned Senior Counsel placed heavy reliance on Section 38 of the Tamil Nadu Town and Country Planning Act and contended that if steps are not taken to acquire the land within a period of three years, then the Government order is deemed to have lapsed and the land is deemed to be released from such reservation allotment.

9. The learned counsel also placed reliance on the judgment reported in (2017) 1 MLJ 60 (S.Anand Vs.Secretary, Housing and Urban Development Department, Fort St. George, Chennai-15 and others).

10. Heard, Mr.C.E.Pratap, learned Government Advocate (Crl. side) for the first respondent police and Mr.G.R.Lakshmanan for the second respondent. The second respondent has filed a detailed counter assailing the contention advanced by the petitioners and the second respondent has specifically taken the stand that the petitioners had the intention to cheat the defacto complainant and they have made false promises at the time of sale of the subject lands by stating that the petitioners have a saleable title over the property and that the lands are free of encumbrance. But on the date of sale, the lands were already earmarked by the Government for acquisition and, therefore, mens rea of the petitioners is well established.

11. The learned counsel for the respondents submitted that these are issues which require letting in of evidence and marking of documents. This Court cannot exercise its power merely based on the affidavit evidence and interfere with the order passed by the learned Sessions Judge and discharge the petitioners from the case.

12. Heard, the learned counsel for both the sides and perused the documents available on records.



13. The issue involved in this case is whether the lands would stand released from acquisition nearly after lapse of three years, thereby, enabling the petitioners to enter into a saleable transaction with the second respondent. The issue basically boils down to the question also whether the petitioners have conspired together and cheated the defacto complainant. The case filed against the petitioners is not pertaining to the notification issued by the Government, the acquisition proceedings, or the lapse of time and technicalities attached thereto, but it pertains to sale of the lands which are covered under the acquisition proceedings issued by the Government.

14. As rightly contended by the learned counsel for the second respondent, as on the date of sale of lands to the defacto complainant, there was an encumbrance on the lands and hiding the said fact, the petitioners have sold the lands to the defacto complainant. The judgment relied on by the learned Senior Counsel is only with respect to the release of properties from the reservation on the basis that no notification as contemplated under Section 37(2) has been issued within the period prescribed based on the individual claim and this Court was pleased to hold that such lands should be released from the scheme itself. The case of the petitioners is not covered by the said judgment. Even extending the scope of the argument of the learned Senior Counsel that the notification would lapse after a period of three years, there are plenty of judgments to that effect that even after the Government would entitle to acquire a land for specific purpose, the Government would still acquire the lands and use it for a different purpose. The judicial pronouncement with respect to acquisition of lands has developed to an extent that once a notification has been issued and lands are acquired, the same could be put to use by the Government as and when it deems it necessary and even for other purposes. Therefore, the attempt of the petitioners to take shelter under Section 38 of the Tamil Nadu Town and Country Planning Act cannot be allowed to stand.

15. The evidence alleged against the petitioners are serious in nature and guilt or innocence of the petitioners could be decided only after trial, which includes marking of documents and adducing oral evidence. As mentioned earlier, the issue involved is whether the petitioners are guilty or conspired together and cheated the defacto complainant. In order to prove the same, necessarily the petitioners have to face the trial. As rightly pointed out by the learned counsel for the second respondent, the issue of this nature cannot be decided solely on the basis of affidavit.

16. For the foregoing reasons, this Court is of the view that the order passed by the learned District and Sessions



Judge, Coimbatore in CRP.No.41 of 2015 dated 18.01.2018 does not suffer from any infirmity and does not warrant any interference of this Court. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
City Crime Branch
Coimbatore.

2.The Principal District and Sessions Judge,
Coimbatore

3.The Public Prosecutor,
Madras High Court.

+1CC to M/s.A.L.Ganthimathi, Advocate, Sr.No.39546

+1CC to M/s.G.R.Lakshmanan, Advocate, Sr.No.39907

Cr1.O.P.No.9763 of 2018
and Cr1.M.P.Nos.5011 & 5012 of 2018

RLD(CO)
SB(17/11/2021)