

12.12.2022
S/L No.40
KS

C.R.R.1006 of 2021
LGW Limited & Ors.
-Vs.-
The State of West Bengal & Anr.

Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharyya
Mr. Pawan Kumar Gupta
Mr. Sharequl Haque
..... For the Petitioners
Mr. Madhusudan Sur
Mr. Dipankar Paramanick
.....For the State
Mr. Navanil De
Mr. P. Basu
Mr. R. Mukherjee
Mr. S. Ghosh
.....For the O.P. No.2

The present revisional application has been preferred challenging the proceedings arising out of Bidhannagar (South) Police Station Case No.1 of 2021 dated January 2, 2021 under Sections 420/ 406 of the Indian Penal Code.

The petitioners are LGW Limited, Anurag Gupta and Sanjay Kumar Gupta being the Director and the Managing Director respectively of the said company. They have approached before this Court challenging the continuance of the proceedings. According to the petitioners they are the owners of the land who entered into an agreement with the developers who are responsible for construction and selling of the properties in a particular ratio.

Learned advocate appearing for the petitioners draws the attention of this Court to the relevant clauses of the agreement. Learned advocate emphasizes that the clauses in the agreement itself would reflect participation or the complicity of the petitioners in the alleged offence. Learned advocate further submits that it is an admitted position that the petitioner company or its Directors did not receive any money and payment was made to the developers who were responsible for representations and the agreements which have been entered into and the commitments made therein. According to him, the petitioners have suffered pursuant to the act of the developers as they have not received their entitlements even after parting with the land. In order to substantiate his arguments learned advocate relied upon authorities of the Hon'ble Supreme Court wherein interference was made, relying upon *Murari Lal Gupta Vs. Gopi Singh* reported in (2005) 13 SCC 699, Learned advocate drew the attention of this Court to paragraphs 1 and 6 and submitted that in a case where out of three and half lakhs were paid and the agreement was not complied. The Hon'ble Supreme Court was pleased to quash the proceedings holding that a civil liability between the parties have been converted into a criminal case and the complainant has evaded a civil suit for specific performance of the agreement and opted to file a criminal case. Learned advocate also relied upon *Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and Anr.* reported in (1998) 5 SCC 694 and drew the attention of this Court to the illustration (g) of Section 415 pointed out by the Hon'ble

Supreme Court and the conclusion arrived at paragraph 3 of the judgment which is set out as follows:-

“3. The later part thereof illustrates that at the time when agreement for sale was executed, it could have in no event been termed dishonest so as to hold that the complainants were cheated of the earnest money, which they passed to the appellant as part-consideration, when possession of the total land involved in the bargain was passed over to the complainant-respondents, and which remains in their possession. Now, it is left to imagine who would be interested in delaying the matter in completing the bargain when admittedly the complainants have not performed their part in making full payment. The matter is therefore before the civil court in this respect. The liability, if any, arising by the breach thereof is civil in nature and not criminal. We therefore allow this appeal, and set aside not only the impugned orders of the High Court, but quash the proceedings too which are pending before the Magistrate. The complainant-respondents shall pay compensatory costs to the appellant for these vexatious proceedings which we assess at Rs.10,000 which the respondents are directed to pay to the appellant within six weeks from today.”

Mr. Sur, learned advocate appearing for the State produces the Case Diary and points out that the petitioners company was also signatory to the agreement which was entered into between the developer and the complainant. Mr. Sur, learned advocate appearing for the State submits that the investigation of the case is proceeding and the documents are being collected and the process of collection of documents are still in progress. However, as the investigation was stalled pursuant to the order passed by this Court the investigation could not proceed.

Mr. De, learned advocate appearing on behalf of the complainant submits that in spite of payment of Rs.34 lacs till date the alleged flat is

not ready or there is any scope for the flat to be ready in the near future. There are also allegations by the complainant that the construction is without any sanction plan.

Be that as it may, the investigation of the case is in progress. The judgments so relied upon by the learned advocate appearing for the petitioners are firstly at the stages when cognizance was already taken by the Criminal Courts and the subject-matter of challenge was whether criminal prosecution should continue. In the present case, the investigation of the case is in progress. The Investigating Agency is in the process of collection of materials. In these type of cases it may not be that a person who has been named as an accused by the complainant may be named as accused, at the stage when the charge-sheet is submitted but to scrutinize all the documents/agreements, at this stage, is not the duty of the Court. Secondly, one must remember that a judgment is an authority on what it decides and not what logically flows from it. The aforesaid two judgments were pressed by the learned advocate appearing for the petitioners to draw a logical conclusion that if an agreement in respect of a property is made and substantial amount is paid in that case, the only option available if the agreement do not materialize to the aggrieved party is to approach the Civil Court for specific performance of the said agreement. This may not be justifiable in the facts of the present case where a new township is being developed in the area where large number of cases are accruing on similar set of facts wherein after entering into agreement substantial

amount of money is received, the intending flat owners are deprived of their property. The background is completely different.

Having regard to the same, I do not intend to interfere with the investigation at this stage.

Petitioners would be at liberty to hand over any document in their custody for aiding the investigation of the case. The investigating authority at the time of submission of their report under Section 173 of the Code of Criminal Procedure would assess the involvement, culpability of the present petitioners and, thereafter submit their report.

With the aforesaid observations, C.R.R.1006 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

As there was an interim order of stay for about one and half years, I direct that the investigating authority will not arrest the petitioners till 31st December, 2022.

Petitioners would be at liberty to exhaust remedies in law in the meantime.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)