

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1742 OF 2021**

Muazzam Maqsood Bhaiji and Anr. ... Applicants

Versus

The State of Maharashtra and Anr. ... Respondents

Mr. Rizwan Merchant a/w Faisal F. Shaikh i/b Ms. Sanjana Pardeshi, for the Applicants.

Smt. Anamika Malhotra, APP, for the State-Respondent No.1

Mr. Sandeep R. Karnik, for Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 10th December, 2021.

PRONOUNCED ON : 20th January, 2022.

PC:

The applicants are seeking Anticipatory Bail in connection with C.R. No. 60 of 2021 registered with Kharghar Police Station, Navi Mumbai, for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 474, 120B, 34 of the Indian Penal Code.

2 The prosecution case in short is that, informant purchased 48.9 gunthas land in the name of Chinmay Associates from Survey

No. 122 from the applicants vide agreement dated 20th July, 2015. There were two agreements, one of 32 gunthas and another of 16.9 gunthas. According to prosecution, total amount of Rs. 18 crore was paid to the applicants towards consideration.

3 The prosecution next contends that in the month of July, 2017 when informant was to raise bank loan for his oil business he demanded all the original documents of the land in question from the applicants. After going through the 7/12 extract he noticed the name of applicants and not his company. Accordingly on being felt cheated the informant lodged the report.

4 Mr. Merchant, learned Counsel for the applicants, has filed a synopsis of arguments. Perused. Similarly learned APP has also filed notes of submissions along with compilation. Perused. I have also gone through the Affidavit-in-Reply of Respondent No.2-Intervenor and his synopsis of arguments. Besides, learned Counsel for the parties and learned APP have also briefly advanced submissions which is more or less in line with their synopsis.

5 There is no dispute that the original owner of Survey No. 122 was Abdul Majid Mohd. Yusuf i.e. maternal uncle of the applicants. The total area of Survey No. 122 was 6 acres 57 gunthas. According to prosecution, 2 acres 24 gunthas i.e. 104 gunthas of land was used in Mumbai-Pune Express Highway while 3 acres was earmarked as *gaothan* land vide Government Order dated 12th January, 2010. The remaining 1 acre i.e. about 43 gunthas land was given to CIDCO. In lieu of 43 gunthas of land, CIDCO gave the original owner another land as compensation situated at Kharghar bearing Survey No. 57. According to prosecution, nothing had remained in Survey No. 122 in view of above bifurcations. The applicants allegedly secured NOC dated 1st March, 2007 purportedly issued by CIDCO and annexed the same along with agreement entered into by them with the informant. Only on the basis of that fabricated NOC an entry into 7/12 extract was also taken.

6 According to learned Counsel for the applicant, prior to the execution of conveyance deed in 2015, the applicants through the Taluka Inspector of Land Record, Panvel carried out Survey of

entire land bearing No. 122 after issuance of notice to CIDCO and in presence of the Assistant Survey Officer, CIDCO, who did not raise any written objection with the Surveying Officer. Thereafter, applicants were approached by Vidhyabharati Enterprises, Property Dealer/Advisor, who had taken upon himself the responsibility to procure the NOC from CIDCO for facilitating the applicants to sell the land Survey No. 122/1.

7 According to applicants, the NOC dated 1st March, 2007 was got issued from CIDCO by Vidhyabharati Enterprises, Property Dealer/Advisor and the applicants has no role to play in the issuance there of. Even issuance of the said certificate from CIDCO attributes doubtful reasons with regard to the originality of the said NOC of CIDCO. Even till date the CIDCO had not been able to identify the land purportedly acquired by them. Even otherwise, the whole case of prosecution is based on documentary evidence. There is no necessity of custodial interrogation. Hence, ad-interim protection operating in favour of the applicants needs to be confirmed, argued learned Counsel.

8 I have gone through the compilations filed on record by the parties. The main controversy revolves around NOC purportedly issued by CIDCO and subsequent entry in the 7/12 extract based on the said NOC issued by CIDCO. The NOC is document No. 10 of the compilation of the learned APP and is dated 1st March, 2007. It is addressed to applicants and shows that as land of 0.38 hector R with 0.1 R Po.Kha. could not be acquired till 23/09/1086, the Notification regarding acquisition of the said stood elapsed and the same has been excluded from the acquisition proceedings. It further states that the original land owner is free to deal with the said land as per his wish.

9 It is pertinent to note here that as per this NOC as the land in question had not been acquired till 23/09/1986, the acquisition had automatically elapsed. But the prosecution has also filed on record possession receipt (कब्जे पावती) which shows that 0.43 hector R was duly handed over by the predecessor-in-title of the applicants through the Circle Inspector, Metro No.3, Panvel in the presence of Special Land Acquisition Officer, Metro Centre No.3 Panvel on 16/09/1986. This possession receipt prima-facie falsifies

the contents of NOC dated 1st March, 2007 wherein it has been mentioned about elapement of the notification as land was not acquired till 23/09/1986.

10 There is one more reason. A letter written by अप्पर जिल्हाधिकारी तथा, मुख्य भूमी व भूमापन अधिकारी (भूसंपादन), सिडको informing Assistant Police Inspector, EOW, CBD Belapur, that their record doesn't show of having issued any NOC to applicants in respect of Survey No. 122/1A. It is also pertinent to note here that only on the basis of NOC, necessary entry came to be recorded in the record of 7/12 extract.

11 The applicants have also filed on record the 7/12 extract which shows that the land admeasuring 1.61.10 hector R standing in the name of CIDCO has been excluded from the acquisition proceedings.

12 During the course of argument, learned Counsel for the applicants vehemently submitted that 7/12 extract pertaining to the lands have been taken from the website of the concerned

department which shows the date as 22/08/2020 and therefore, it can not be said that these documents are forged by none other than the applicants themselves. However, I have already pointed out letter written by Additional Collector on 05/03/2021 i.e. much after the issuance of 7/12 extract that no such NOC was ever given to the applicants. However, it still remains a mystery as to how despite there being categorical stand of prosecution that no NOC filed on record by the applicants came to be issued, the 7/12 extract, although issued online, shows otherwise. Something appears to be amiss while maintaining the records.

13 However, the fact remains that as on the date of entering into agreement with informant by the applicants they had no land for transaction inasmuch as everything had gone in acquisition. Almost there was transaction of Rs. 14 crores. The applicants cannot shirk their responsibility by saying that NOC was got issued from CIDCO by Vidhyabharati Enterprises, Property Dealer/ Advisor inasmuch as they were knowing that the land in question was well acquired during the life time of their predecessor-in-title. There appears to be serious ramifications monetarily and also

otherwise, having regard to the facts and circumstances which needs to be thoroughly investigated.

14 It seems from the record that Vice President and Managing Director of CIDCO vide letter dated 27/04/2012 addressed to Collector, Raigad raised serious concern about the transaction being carried out on the basis of false NOCs and pointed out that the authorities from the CIDCO has not given any right to any officer, a right of Government, to exclude the land already acquired to any officers from the CIDCO. Even if any NOC is given the same is absolutely illegal and beyond the purview of the powers of the officers. Even it is requested by the Collector to take necessary steps in that direction and review all the matters pertaining to the so called NOCs and shall not effect any change in the revenue record on the basis of any such NOCs.

15 For the aforesaid reasons, I hold that the applicants have not been able to make out a case for anticipatory bail. Hence, the following order.

ORDER

- i) Anticipatory Bail Application is rejected.**
- ii) Ad-interim relief granted earlier to stand vacated.**
- iii) Application stands disposed of accordingly.**

(V. G. BISHT, J.)

**REKHA
PRAKASH
PATIL**

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