

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 279 OF 2022

MUKUND JAMNADAS VYAS

VS

STATE OF MHA. THR. PSO PS WATHODA NAGPUR

WITH

CRIMINAL APPLICATION (ABA) NO. 296 OF 2022

SHEIKH MAHMOOD S/O SHEIKH MAHBOOB

VS

THE STATE OF MAH. THR. PS WATHODA NAGPUR CITY NAGPUR

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. D.N.Mehta, Advocate for applicant in ABA 279.2022
Mr. Arjun Raoka, Advocate for applicant in ABA 296.2022
Mr. V. A.Thakre, APP for respondent State.

CORAM : ANIL L. PANSARE J.

DATE : 17/01/2023

The applicants are apprehending arrest in
Crime No.20/2022, registered with Police Station,
Wathoda for the offence punishable under Sections
406, 420, 467, 468, 471 read with 34 of the Indian
Penal Code(IPC).

2. While the Court was dictating order,
Mr.Mehta, learned counsel for the applicant in ABA
279/2022, interrupted and stated that he is relying

upon the judgment of the Supreme Court. He was advised to maintain the decorum.

3. The accusation against the applicants is that they have sold plots to various persons. The plots have been carved out of a land bearing Khasra No.157 admeasuring 19.10 acres. The land is situated at Wathoda and is owned by Nagpur Improvement Trust (N.I.T.). One Mahipal Shendre and three others have acquired lease hold rights of the land. The period of lease, initially was from 19/02/1969 to 31/03/1999, was then extended for the period from 01/04/1999 to 31/03/2029. In October 2002, a power of attorney came to be executed in favour of Sheikh Mahmood (the applicant in ABA No.296/2022) for some portion of the land. Similarly, the power of attorney for some other portion of the land was executed in favour of Mukund Vyas, (the applicant in ABA No.279/2022). The owners of the lands as also their power of attorney holders have allegedly sold plots to various persons without converting the user of the land and without taking permission from the N.I.T. The Officer of the N.I.T. came to know of the transactions and therefore, lodged FIR on 13/01/2022.

4. Mr.Mehta, learned counsel for the applicant in ABA No.279/2022, commenced his argument with a statement that his client has not sold a single plot. In support and to show that his client has not sold a single plot, he has invited my attention to FIR. The name of applicant is mentioned in the FIR. In addition there is a categorical statement in the FIR that the applicant has sold some plots in the capacity of power of attorney holder. Thus, the argument made by the learned counsel for the applicant is incorrect. The role of the said applicant has been disclosed in the FIR itself.

5. Learned counsel for the applicant however, continued his stand by contending that except for the FIR, there is not a single document to show that the applicant Mukund Vyas has sold any plot.

6. Learned APP, however, has shown across the bar, the documents executed by Mr.Mukund Vyas. There are four documents titled as 'document of possession'. All the documents are notarized. The first document indicates that the applicant has handed over possession of plot No.5 admeasuring 700 sq.ft. to one Sunilkumar Govardhan Nandeshwar out of the land in question. The document also

indicates that the applicant claimed himself to be holder of the plot on the basis of power of attorney. The argument addressed by the learned counsel for the applicant is then contrary to the facts and documents in the case.

7. So far as applicant Sheikh Mahmood is concerned the allegations against this applicant is that the power of attorney holder of the original owner has executed lease deed in favour of the applicant with regard to part of the Khasra No.157. One of the legal heirs of the other owners has also executed lease deed in his favour for some other part of Khasra No. 157. The applicant has developed the above land and executed possession letters and/or sale deeds to different persons. He represented himself as owner of the said property.

8. The learned Sessions Court observed that the entire land under Khasra No.157, the lease hold rights of which were acquired by the original owner, was for the agricultural purpose only.

9. Mr. Raoka, learned counsel, however, submits that the finding of the trial Court that the land in issue is an agricultural land is incorrect. I have gone through the lease deed. Schedule-A of the

lease deed indicates that the land in issue was agricultural land admeasuring 19.10 acres. The user of the plot is said to be 'agricultural only'. Thus, there is absolutely no substance in the contention of the applicant – Sheikh Mahmood that though lease was granted, it was not for agricultural purpose.

10. Learned counsel for the applicant then referred to notification dated 10/09/2001, to contend that the Government has converted the user of the land for residential purpose. The notification, however, refers to draft development plan and suggested certain modifications in the development plan. This by itself cannot be said to be an order permitting change of user of land under the Maharashtra Regional and Town Planning Act, 1966.

11. He has then referred to another notification dated 10/09/2001. This notification indicates that certain portion of development plan requires modification and therefore, the action to seek objections for the modified notification was proposed. This notification is also of no relevance.

12. In fact there is absolutely no substance in the submissions of applicant Sheikh Mahmood that the user of the land in issue was converted from

agricultural purpose to non-agricultural purpose. He could not produce a single document to even show that the application for change of use of land was submitted to the Competent Authority.

13. Another debate is that the offence under question is of the year 2002. The FIR does indicate so, but then it appears from the record that some portion of land was sold in the year 2002. The activity continued till 2021. Some of the documents shown to the Court have been executed on 01/04/2021. Thus, the activity continues. The allegations against the applicants are serious in nature. They have without converting user of the land and without seeking permission from the N.I.T. have sold the land by dividing it into plots and collected huge amount. They have duped around 400 persons and have unlawfully collected around Rs.71 Crores. In such circumstances, it will not be appropriate to grant relief to the applicants as prayed for. Application therefore, stands rejected.

14. At this stage, both the learned counsel for the applicants submit that interim relief was granted and same may be continued for three weeks.

15. The allegations and the material against the applicants has been discussed in the body of the order. It will not be proper, in the aforesaid circumstances, to continue interim relief. The request is accordingly rejected.

JUDGE