

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15520-2023 (O&M)

Decided on 14.11.2023

Mukesh Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Dutt, Advocate for
Mr. Jitender Nara, Advocate for the petitioner

Sandeep Moudgil, J.

(1). The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari for quashing the inquiry report dated 18.10.2022 (Annexure P17) in Inquiry No.13 dated 25.11.2019 on the basis of which recommendation has been made for registration of criminal case against the petitioner, by the Anti Corruption Bureau and in contravention of Section 17-A of Prevention of Corruption Act, 1988. A further direction is sought directing the respondents not to register any criminal case against the petitioner.

(2). Learned counsel for the petitioner submits that the petitioner was an ex-HCS (Executive Branch) Officer and has now superannuated on 31.03.2023. He contended that the subject inquiry initiated against the petitioner was pertaining to allotment of an alternative plot in lieu of original plot allotted to one allottee, namely, Shakuntla Devi during draw of lots conducted by HUDA (now Haryana Shehri Vikas Pradhikaran), however, the plot originally allotted to Shakuntla Devi i.e. Plot No.138, Sector 21, measuring 14 marlas was under litigation as is evident from the letter dated

19.05.1986 by the then Estate Officer, Gurugram, HUDA (Annexure P1) and in lieu of the original plot, the HUDA allotted Plot No.902, Sector 5, Gurgaon to Shakuntla Devi.

(3). The argument raised on behalf of the petitioner is that despite specific directions issued to Estate Officer-II, Gurgaon, the possession of the alternative plot was never handed over to the allottee Shakuntla Devi for the reason that the Officer deputed as Estate Officer-II had relinquished his charge as such and the additional charge of Estate Officer-II was assigned to the petitioner who was deputed as Estate Officer-I, HUDA during the period from 08.05.2018 to 15.01.2020 and thus, the possession of the plot could not be handed over to the said allottee. It is urged by counsel for the petitioner that there is no illegal action committed or ill intention or criminality on the part of the petitioner while implementing specific directions and orders conveyed to him by higher authorities i.e. Chief Administrator and as such any inquiry by Anti Corruption Bureau without prior approval of competent authority is illegal and arbitrary.

(4). Heard learned counsel for the petitioner and gone through the record.

(5). The inquiry was registered on the basis of report of ADGP, SVB, Gurugram and as per the inquiry report dated 8.10.2022 (Annexure P17), the allegation leveled against the petitioner is that the petitioner was involved in allotment of one Plot in Sector 21 but that plot was not free from encumbrances due to which another plot No.902, Sector-5, Gurugram was allotted in lieu of the said plot. The price of the plot in Sector 5 was not very attractive, so the Estate Officer-1 (the petitioner) in connivance with the

office of Chief Administrator, Panchkula prepared a false fabricated report and allotted plot No.535 in Sector 27 in lieu of plot No.902 of sector 5 whereas against the said plot, the litigation was pending before this Court.

(6). Secondly, the enquiry report further reveals that the modus operandi of the land mafia is such that they obtain list of properties rejected/abandoned by HSVP from the corrupt employees of HSVP posted at the same post for a long time after which they contact the allottee, get GPA prepared in order to get the major share by engaging their membership in connivance with the HSVP/Government officials and get the property transferred in their name and after the expiry of the period of representation, they tend to file writ petitions in connivance with the officers of HSVP by distorting the facts and seek directions after that the legal officers will not challenge the orders in time as they are also in collusion which in turn cause huge loss of dues to the exchequer.

(7). During enquiry it has also come on record that respondent No.3 vide letter No.A-6-UB/2013/7958-93 dated 18.02.2013 had conveyed the policy relating to exchange of plots in HUDA to all the Zonal Administrators and Estate Officers in which it was clearly mentioned that in case of allotment of alternate plots in other sectors, apart from the original sector approval of Chairman, HUDA was mandatory, whereas no such permission of Chairman, HSVP for allotting a plot in different sector has come on record. Thus, the decision taken by the Departmental Litigation Committee (DLC) to recommend plot in alternate sector was beyond their competence, for which all the three members of DLC have been held liable. In such a scenario, the enquiry report (Annexure P17) recommending registration of criminal case

against the petitioner and various other higher echelons of HUDA including the then Chief Administrator, HSVP, Panchkula cannot be term as illegal and arbitrary and that a thorough investigation would be necessitated.

(8). Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the petitioner occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department/Bureau, entrusted with enquiries of this kind, no exception can taken to an enquiry by officers of this Department but any such enquiry must proceed in a fair and reasonable manner.

(9). Recently, in the case of **Charansingh vs. State of Maharashtra and others, (2021) 5 SCC 469**, the Supreme Court, after taking note of the *ratio* laid down by it in **Lalita Kumari v. Govt. of UP &Ors., (2014) 2 SCC 1**, has dealt with the scope of a preliminary enquiry. The Court, after taking note of the provisions contained in Maharashtra State Anticorruption Manual and the *ratio* laid down by it in **P. Sirajuddin vs. State of Madras, (1970) 1 SCC 595**, which laid down that conducting of enquiry prior to registration of FIR is permissible in law, observed as under:-

"9.1 Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in

cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure...”.

(10). From the aforesaid material assembled during enquiry proceedings, it cannot be stated that it is a case where no offence is disclosed from the allegations made in the enquiry report and the material collected. Thus, in the face of finding returned by the enquiry officer, the prosecution recommended against the petitioner does not deserve to be quashed.

(11). For the forgoing reasons, I do not find any merit in this petition and the same is dismissed.

14.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No