



Crl.O.P.No.337 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.337 of 2024

and

Crl.M.P.Nos.215 & 217 of 2024

M.Arunachalam

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Vigilance and Anti-Corruption,
Salem.

(V & AC Crime No.11/AC/2020)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining to Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Salem and quash the same as illegal and incompetent.



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For Petitioner : Mr.M.Vetri Vel
For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

The Criminal Original Petition has been filed by the petitioner herein (A1) seeking to quash the criminal proceedings in Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Salem.

2. The case of the prosecution as per the charge sheet is as follows :

The petitioner (A1) herein, Arunachalam, is a private individual, who had purchased a vacant plot in Plot Nos. 29, 31 of Jayam Nagar Layout, Valapady.

2.2. One V.Ganesh (A2), who is now working as a Selection Grade Executive Officer, Madambakkam Selection Grade Town Panchayat, Chennai, was formerly employed as Executive Officer, Valapady Selection Grade Town Panchayat, Salem District during the relevant period from 08.09.2016 to 28.02.2019. The second accused is a public servant as defined under Section 2 (c) of the Prevention of Corruption Act, 1988.



2.3. On the outcome of the Preliminary Enquiry in

PE.17/2019/REGN/SL dated 29.03.2019, a regular case in Crime No.11/AC/2020 was came to be registered for the offence under Sections 7, 13 (2) r/w 13 (1) (d) and Section 7 (a) of the Prevention of Corruption 1988 and Prevention of Corruption (Amendment) Act 2018 r/w 120 (B), 420, 109 IPC against the accused and 4 others with the permission of the Vigilance Commissioner vide Letter No.233/VC- 1/2020-1, dated 03.03 2020.

2.4. The allegation against the accused is that the first accused hatched a criminal conspiracy and gave false information to the second accused, who is the competent person under the District Municipalities Act and Rule to approve the building or give license for the construction of the building, and A2 had also abetted him, as if the building was not constructed and applied for the building approval. The second accused, in violation of the G.O.78. Housing Urban Development (UD4(3) Department. Chennai dated 04.05.2017 by dishonestly performing public duty in anticipation accepting an undue advantage and committed official misconduct and approved the already existing building.

2.5. According to the same, during the period between 10.10.2018 and 29.10.2018, A1 and A2, had entered into an illegal agreement



with dishonest intention to get regularization of the existing two buildings located in Plot No. 29 and 31 in Jayam Nagar, Valapady, Salem District and by dishonestly and improperly exercising his official function with an anticipation of taking undue advantage, improperly approved the existing buildings, by abetting each other. Therefore, A1 furnished false information to A2 by presenting an application with connected records seeking a building license knowing it was false, and abetted A2 to issue building license illegally to A1, and A2 knowing fully well that already two buildings existed on the said plots, issued two building license for construction of houses to A1.

2.6. Thereby, A2 improperly performed his official duty in consequences of accepting undue advantage from A1 in order to derive undue advantage, granted building license to A1 for two separate houses (two storied buildings each). Thereby, A1 (petitioner herein) had committed the offences under Sections 120B, 177, 109 r/w 167 IPC and 12 r/w 7 (c) of the Prevention of Corruption Act 1988 as amended in 2018 whereas, A2 had committed the offence under sections 120B, 167 of IPC and 7 (c) of the Prevention of Corruption Act 1988 as amended in 2018 and 109 r/w 177 IPC.



3. The submissions of the learned counsel appearing for the petitioner is as follows :-

3.1. The petitioner, who is a private individual, is arrayed as A1 in Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem. He further submitted that the petitioner had purchased the property with Plot No.29 & 31 of Jayam Nagar, Valapadi in the year 2017 vide Sale Deed No.3843/2017 dated 30.11.2017, registered at the office of the Sub-Registrar, Valapadi. The subject property, which included a residential structure, was purchased from an individual named B. Lazer, S/o. Bilavendran.

3.2. During the subsequent scrutiny of the transaction, a discrepancy surfaced, revealing that the property, mentioned as a vacant site in the documentation, was actually with a pre-existing residential building. This oversight resulted in an inadvertent underpayment of the stipulated stamp fee during the registration process. Consequently, the District Registrar has initiated the proceedings to assess the deficit incurred due to this error.

3.3. In response to this discrepancy, the petitioner promptly acknowledged and rectified the situation by cooperating with the proceedings of



the District Registrar and expeditiously remitting the deficient stamp fee with Receipt No. 4774/2021, dated 23.08.2021, exemplifying the petitioner's commitment to the addressing oversights and ensuring compliance with mandated stamp duty obligations.

3.4. While these proceedings were going on, an additional layer of complexity emerged when the petitioner discovered that neither the building on the property nor the Plot itself had received approval or regularization from the respective authority. The petitioner, without suppressing anything by displaying transparency and diligence, applied for the regularization of Plot No. 29 and 31 on 27.09.2018 to the Executive Officer, Valapadi, Director of Town and Country Planning, who is the authorized person to approve the plot as per District Municipalities Act and Rule. These applications were made online with the registration No. DTCP/P/0452961/2017 and DTCP/P/0452966/2017. Based on the applications filed, the petitioner's Plots were regularized through proceedings in Mu.Mu.597/2018/A2 and Mu.Mu.598/A/2, dated 12.10.2018.

3.5. Subsequently, recognizing the need for approval of the building plan for the already-constructed structure, the petitioner also applied for both regularization and building plan approval. The authorized person (A2), who



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is responsible for approving the building plan, conducted a field inspection on 12.10.2018 and based on the inspection, approval for building plan was granted by A2 vide his proceedings in Mu.Mu.609/18 dated 17.10.2018 and Mu.Mu.622/18 dated 29.10.2018 for buildings in Plot No. 29 & 31 of Jayam Nagar, Valapadi.

3.6. Meanwhile, the respondent has filed a charge sheet in Spl.C.C. 03 of 2022 in FIR No. 11/AC/2020. The accusations put forth suggest that the petitioner conspired with A2 and thereby, A2, improperly executed his official duties and unethically accepted undue advantage in exchange for granting licenses for two distinct houses of the petitioner in Plot No. 29 & 31 of Jayam Nagar, Valapadi.

3.7. While so, the second accused, against whom the charges are for accepting a bribe and for misconduct, had approached this Court in CrI.O.P.No.22871 of 2022 and this Court, by an order dated 18.07.2023, finding that as per G.O.(Ms).No.78 as well as the Panchayat Act and District Municipalities Act, there is no bar for granting approval of existing building which has been constructed on a plot which has been regularized, had quashed the proceedings in Spl.C.C.No.03 of 2022 in respect of the second accused.



3.8. This Court had given a categoric finding that the

regularization of the plot and existing building were granted only in pursuant to the rules and finding that the ingredients of Sections 120B r/w 177, 109 r/w 167 IPC and 12 r/w 7 (c) of the Prevention of Corruption Act 1988 will not get attracted, had quashed the proceedings. The petitioner is the only accused facing charges and in such circumstances, the proceedings pending against the petitioner is nothing but an abuse of process of law. Hence, he prayed to quash the proceedings in Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Sale.

4. The respondent Police has filed a detailed counter and the relevant paragraphs 18 and 19 are extracted hereunder :-

"18) It is respectfully submitted that Electricity service connection No.5260031432 in DOM/113/16-17, dated 24.9.2016 and SC No. 5260031433 in DOM/120/16-17, dated 14.10.2016 had been effected to the buildings of A1/Petitioner Tr.M.Arunachalam located in plot No. 29 and 31 of Jayam Nagar Layout, Valapadi, Salem District respectively. Both the service connections were falls under the category of Tariff IA and it shows that the above connections are domestic service



connections, which is normally given only after completion of the construction of buildings. Therefore, it is clear that constructions work of the above buildings were completed prior to the date of effecting of the above service connections and therefore it is clearly established that A2 Tr.V.Ganesh issued proceedings of building approval in respect of the above two buildings on 17.10.2018 and 29.10.2018 respectively, knowing fully well that the buildings were already constructed. Thus it is clearly proved the A1 Tr.M.Arunachalam willfully suppressed the facts of existing buildings to the authority concerned with view to getting approval in violation of the rule.

19) It is submitted that there is no grounds for granting interim stay in proceeding with the trial of the case in Special CC No. 3/2022 pending on the file of the Special Court for Trial of case under the Prevention of Corruption Act, Salem. Regarding the service, he has to prove the same. There is no valid ground for seeking personal dispenses appearing before the trial Court."

5. Learned Government Advocate (Crl.Side) submitted that the petitioner had obtained electricity service connection as early as 24.09.2016 and 14.10.2016 for the buildings put up on two individual plots and suppressing the same, he had approached the authorities and applied for plot approval. However,



the proceedings against the co-accused (A2) has been quashed and this Court had rendered a finding that as per G.O.(Ms).No.78, there is no bar for granting approval of existing building that has been constructed on a plot which has been regularized. He further submitted that this Court had also found that even assuming that the allegations against the accused as found in the final report be considered as true, there is no prohibition for the granting of approval subsequently.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondents and perused the materials available on record.

7. It is seen that the petitioner, who is arrayed as A1 in this case, along with another accused (A2) has been charged for the offence under Sections 7, 13 (2) r/w 13 (1) (d) and Section 7 (a) of the Prevention of Corruption 1988 and Prevention of Corruption (Amendment) Act 2018 r/w 120 (B), 420, 109 IPC in Crime No.11/AC/2020. Further, the case has also been taken up for trial in Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases



under the Prevention of Corruption Act, Salem. This Court, finding that the ingredient of Sections 120B r/w 177 and 109 r/w 167 IPC and 12 r/w 7(c) of the Prevention of Corruption Act will not get attracted, had quashed the proceedings in Spl.C.C.No.03 of 2022 in respect of the co-accused (A2) vide order dated 18.07.2023 in Crl.O.P.No.22871 of 2022. The relevant portions of the order are extracted hereunder:-

“ 5. This Court on perusing the proceedings of the Sub Registrar, Valapadi dated 07.06.2021 find that the proceedings initiated under Sections 27 and 67 of the Stamp Act dated 07.06.2021 is pursuant to the field inspection conducted on 10.08.2019. This is passed two years after regularization order passed by the petitioner herein. As pointed out earlier, the approval of unauthorized plots was made by the petitioner herein, pursuant to the direction of Additional Director of Town and Country Planning. The order of regularizing the unapproval plot is dated 12.10.2018. Thereafter the order for building plan issued on 29.10.2018.

6. On perusing the G.O.(Ms).No.78 as well as the Municipality Act, Panchayat Act and District Municipalities Act, there is no bar for granting approval of a existing building which has been constructed on plot which has been regularized,



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subsequently, by virtue of G.O.(Ms).No.78. Even assuming that the allegation against the petitioner as found in the final report to be considered as true and he has granted approval for a building already constructed, no where, under the Act or Rule such post ratification approval been prescribed. As far as regularization of plots as pointed out by the petitioner, the petitioner has issued regularization order pursuant to the proceedings of Deputy Director of Town and Country Planning, Salem Zone. While the prosecution has thought fit that the Sub Registrar whom they claim that he has registered the property with building, suppressing the existence of the building and the Deputy Director of Town and Country Planning issued proceedings to regularize the plot are not made as accused, this petitioner has not done any thing other than relying upon the content of the document and the proceedings of Deputy Director of Town and Country Planning had granted permission for which, the ingredient of Section 120B read with 177 and 109 r/w 167 IPC and 12 r/w 7(c) of Prevention of Corruption Act will not get attracted.

7. In the result, this Criminal Original Petition is allowed. The final report pending on the file of the Special Court for trial of cases under Prevention of Corruption, Salem in Spl.CC.No.03 of 2022 is quashed. Consequently, connected Miscellaneous Petitions are also closed.”



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8. In view of the above, this Court finds that since the proceedings regarding the second accused has been quashed, the proceedings against the petitioner herein (A1) is nothing but an abuse of process of law. Hence, the proceedings in Spl.C.C.No.03 of 2022 pending on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem, against the petitioner is quashed.

9. Accordingly, the Criminal Original Petition stands ordered. Consequently, connected Miscellaneous Petitions are also closed.

23.01.2024

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Speaking / Non-speaking
Neutral Citation : Yes / No
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A.D.JAGADISH CHANDIRA, J.

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To

1. The Special Court for Trial of Cases under Prevention of Corruption Act,
Salem.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Salem.
3. The Public Prosecutor,
High Court of Madras.

***Crl.O.P.No.337 of 2024
and
Crl.M.P.Nos.215 & 217 of 2024***