

(2016) 05 RAJ CK 0021

In the Rajasthan High Court

Case No : Criminal Writ Petition No. 9 of 2015

Bhanwar Lal Naga

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 12(2), 13(1)(d)

Citation : (2016) 3 WLN 444

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. Rajesh Kumar, Mr. V.R. Choudhary and Mr. Pritam Solanki, Advocates, for the Appellant; Mr. K.L. Thakur, AAG a/w Mr. AS Rathore, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties.

2. Criminal Writ Petition No.9/2015 has been preferred by accused Bhanwar Lal Naga whereas criminal misc. petition nos.1661/2015 (Kailash Chandra), 2669/2015 (Pawan Kumar) and 2670/2015 (Damodar Prasad Harit, Motilal Harit, Jugal Kishore Harit and Om Prakash Harit) have been filed seeking to assail the entire proceedings and further investigation of FIR No.43/2001 registered at C.P.S., A.C.B., Jaipur (O.P. A.C.B. Churu) for the offences under Sections 13(1) (d) and 12(2) of the Prevention of Corruption Act and Sections 467, 468, 471, 420 and 120B IPC.

3. Succinctly stated the facts relevant and essential for disposal of these petitions are noted herein below.

4. The Chief Conservator cum Director of Forest, Jodhpur submitted a written complaint to the Anti Corruption Bureau in the year 1999. It was alleged inter

alia in complaint that land measuring 39 bighas 8 biswas situated in khasra no.923 had been allotted to the forest department by the Collector, Churu vide order dated 21.11.1972. The mutation of the land was entered in the name of the forest department on 18.3.1985. The forest department spent a sum of Rs. 1.79 lakhs for developing the land between the years 1978-79 to 1985-86. One Kesardev s/o Shri Nathuram Brahmin, with the oblique intention of usurping the said property, filed a suit no.136/1983 in the Court of A.C.M., Churu. The forest department was not impleaded as party in the matter nor did the concerned Tehsildar inform the forest department of the proceedings in the revenue Court. The suit was decreed in favour of Kesardev and others on 30.9.1985 and the revenue Court directed that the land be transferred in the name of the plaintiffs therein. Thereafter, in the year 1997, a Trust in the name & style of Mangleshwar Bada Mahadev Mandir Trust filed a case no.78/1997 in the Court of A.C.M., Churu praying that the said land may be transferred to its name. In that case also, the forest department was not impleaded as a party respondent. The Tehsildar, Churu who was a respondent also did not intimate the forest department and did not protect its rights despite being aware that the land had been allotted to the forest department long back. The said suit was also decreed in favour of the plaintiff concerned and the land vesting in the forest department was managed to be fraudulently and clandestinely transferred to the plaintiff's name. The land was then sold to one Mehtab Singh. The registration of the documents was carried out on Sunday so as to evade detection. On the basis of this complaint, a preliminary inquiry no.158/99 was instituted in the Anti Corruption Bureau. The District Collector, Churu also lodged a complaint against the Sub-Registrar Bhanwar Lal Naga regarding registration of the documents in a clandestine fashion on Sunday. Both the complaints were clubbed together and inquired into.

5. During the course of the inquiry, physical verification was carried out and it came to light that the disputed land bearing khasra no.923 measured 39 bighas 8 biswas and was located near police line, Churu. The land was allotted to the forest department vide order dated 21.11.1972 passed by the Collector, Churu. Two revenue suits were instituted as stated above claiming title of the forest department's land. The forest department was not impleaded as party in both the cases. The Tehsildar, Churu was a party in the proceedings. Shri Hanuman Singh, who was posted as Tehsildar at the relevant time filed reply on behalf of the Government. Thereafter, the matter was pleaded by Shri Mustak Ahmed, Naib Tehsildar. Ms. Bina Jain the then ACM decreed the suit in favour of Kesardev and others. The Tehsildars concerned did not plead the matter properly before the A.C.M. and did not apprise the Court of the fact that the land had been allotted to the forest department. A group of people led by one Sita Ram and the family members of Kesardev filed an execution petition with fraudulent intention under the name and style of Mangleshwar Bada Mahadev Mandir Trust on 30.9.1986. Shri Sardar Singh, Naib Tehsildar pleaded the matter on behalf of the Government In the said execution proceedings. He neither submitted a reply to the execution proceedings nor did he plead the same properly. Therefore, Shri

Rajendra Verma A.C.M. concerned accepted the execution proceedings by order dated 31.3.1998 and directed that the title of the property be entered in the name of Mangleshwar Bada Mahadev Mandir Trust. After the land was formally transferred in the name of the Trust, the members of the trust authorised one Damodar Prasad for selling off the same. Damodar Prasad was as a matter of fact not authorised to undertake any sale as per the information received from the Devasthan Vibhag. Despite that, he, in connivance with the Sub-Registrar Shri Bhanwar Lal Naga sold the land to various persons vide sale deeds no.98, 99 and 100. The registration was done on Sunday. It was further concluded during inquiry that the seller as well as the purchasers of land connived with Bhanwar Lal Naga and with the intention of getting the land registered at a lower value, its location was fraudulently shown at a distance of 5 kms. from the municipal limits of Churu. By adopting this deceitful means, the land was registered at a rate of Rs. 31,500/- per bigha whereas if the location of the land had been correctly reflected in the documents, then the sale deeds would have been registered at a much higher rate. Thereby, the accused caused revenue loss to the tune of Rs. 3,55,214/- to the State Government towards registration charges.

6. On the basis of these findings of the preliminary inquiry, an FIR No.43/2001 came to be registered at the C.P.S. A.C.B. Outpost Churu for the offences set out above. Investigation continued for an inordinately long period without any conclusion. At one point of time, in the year 2008, the investigating agency submitted a negative F.R. in the concerned Court. The Court, by order dated 4.11.2008 rejected the negative F.R. and returned the matter to the investigating agency for further investigation. During the course of further investigation, the investigating agency has concluded that total 16 accused including the petitioners herein are liable to be prosecuted in this case for the above mentioned offences. The accused persons have, therefore, approached this Court by way of the above mentioned petitions seeking quashing of the FIR No.43/2001 and all subsequent proceeding sought to be taken thereunder.

7. Shri Rajesh Kumar, learned counsel for the petitioner Bhanwar Lal Naga, and Shri Pritam Solanki, learned counsel for the petitioners Kailash Chandra, Pawan Kumar, Damodar Prasad Harit, Motilal Harit, Jugal Kishore Harit and Om Prakash Harit vehemently contended that even if the allegations set out in the FIR and the entire investigation conducted till date are accepted as true, then also, no prima-facie case whatsoever is made out against the petitioners. Drawing the Court's attention to the findings of the investigating agency as per the factual report submitted along with the reply, they submitted that the investigating agency could not collect any evidence documentary or oral to establish that the disputed land was ever allotted to the forest department. They further drew the Court's attention to the detailed interim order dated 4.9.2015 passed by the Hon'ble Single Bench of this Court while considering these matters, wherein it was observed as below :-

"When the matter was argued on 12.8.2015, the counsel for the petitioners have

contended that the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was never allotted by the District Collector, Churu to the forest department. The counsel for the petitioners have produced copies of two letters dated 7.4.2003 and 29.4.2003 in support of their claim. The letter dated 7.4.2003 was written by the then Tehsildar, Churu to District Collector, Churu informing that the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was not allotted to the forest department by District Collector vide order dated 21.11.1972. The District Collector, Churu vide letter dated 29.4.2003 has sent the said information to the Deputy Registrar, Board of Revenue, Ajmer.

The Investigating Officer Mr. Liladhar Swami, who was present before this Court on 12.8.2015 has submitted that he needs some time to verify the fact that whether the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was allotted to the Forest Department on 21.11.1972 by the District Collector or not.

Today, the Investigating Officer has informed this Court that the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was not allotted by the District Collector to the Forest Department vide order dated 21.11.1972. However, in the mutation entry, the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu has inadvertently been mentioned as Forest land.

It is very strange that when the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was never allotted to the Forest Department by the District Collector, Churu, then how the petitioners and other persons were involved in the commission of any offence as alleged in the impugned FIR. The sole basis of filing of the FIR was that the land of the Forest Department was illegally transferred to the Trust and, thereafter, to other persons. It is very sorry state of affairs that since the year 2001, as many as fourteen officials of the Anti Corruption Bureau have investigated the case, but, none of the officers has bothered to verify whether the land of Khasra No.923 measuring 39 bighas 8 biswas of Churu was ever actually allotted to the Forest Department or not. This fact itself is sufficient to presume that the Officials of the Anti Corruption Bureau have conducted the investigation in an irresponsible manner."

8. Learned counsel thus submitted that as the Investigating Agency has failed to collect any evidence that the land was ever allotted to the Forest Department, there cannot be any reason to doubt or berate the veracity of subsequent revenue proceedings whereby, the land was directed to be transferred to Mangleshwar Bada Mahadev Mandir Trust as well as the sale deeds of the property executed by Damodar Prasad. They further urged that if the allegations pertaining to the alleged fraudulent alienation of the forest land are eschewed from the bundle of facts, then the only so-called illegality/irregularity which remains in the transactions would be regarding the land being registered at a lower than the prevalent market rate and the alleged revenue loss caused to the State thereby. Drawing this Court's attention to the notification dated 15.7.1976 whereby, the municipal limits of Churu town were defined, learned counsel submitted that if such notification is considered in reference to the sale deed, it is

evident that the disputed property does not fall within the municipal limits of the Churu town. As such, there was nothing wrong in the action of the Sub-Registrar Bhanwar Lal Naga in registering the property at the rate of Rs. 31,500/- per bigha. Even in the site inspection plan prepared by the officials of Anti Corruption Bureau, it is mentioned that the disputed land is located at a distance of 1 km. from the municipal limits of Churu. They further urged that for identical allegations of registering the land at lower than the market rate, the petitioner Bhanwar Lal Naga was subjected to a disciplinary proceeding and was exonerated therein. It was thus urged that for the very same allegations, the accused cannot be prosecuted under the Penal Laws. The learned counsel thus prayed that the writ petition as well as misc. petitions deserve acceptance and the impugned FIR and all subsequent proceedings sought to be taken thereunder should be quashed.

9. Per contra, learned AAG Mr. K.L. Thakur assisted by learned P.P. Mr. A.S. Rathore vehemently opposed the submissions advanced by the learned counsel for the petitioners and urged that the Investigating Agency, after detailed investigation, has arrived to a conclusion that the petitioner Bhanwar Lal Naga deliberately registered the land at lower than the prevalent market rate and thereby caused wrongful gain to the accused and consequential wrongful loss to the Government. The registration was carried out on a Government holiday without any justification. They thus submitted that it is not a case wherein this Court should exercise its inherent powers for interfering in the impugned FIR at this stage. However, as regards the undue delay of almost 15 years in concluding the investigation, they were unable to offer any satisfactory explanation.

10. Heard and considered the arguments advanced by the learned counsel for the parties and perused the material available on record.

11. The FIR was registered on two fold allegations. The first and foremost being that the disputed land had been allotted to the forest department and that the accused managed to get the same fraudulently alienated in their own favour. The said allegation was not found to be substantiated after thorough investigation because the investigating officer could not collect even a single document/order showing allotment of the disputed land to the forest department. On the other hand, the above quoted portion of this Court's order dated 4.9.2015 makes it clear that the land was at one point of time inadvertently entered in the name of forest department by a wrong mutation entry. The law is well settled that a mutation entry does not give rise to any ownership rights or title over immovable property. It is simply a fiscal entry made for the purpose of collecting revenue. Thus, other than the so-called mutation entry in favour of the forest department, there is no material to show that the title of the disputed property ever vested in the forest department. As the disputed land was never allotted to the forest department, the allegation levelled against the Tehsildars concerned for their so-called failure in pleading the matters properly in the revenue suit is patently unjustified. The land was transferred on the basis of the judgments of the

competent Court in the revenue proceedings and thus, these proceedings cannot be questioned. The principal allegation of the prosecution in the FIR regarding the accused having fraudulently managed to get the property transferred to their name falls flat to its face and is not even remotely substantiated so as to justify any further proceedings in that direction.

12 The other prosecution allegation is regarding the registration of the land at a lower rate by fraudulently showing its location to be out of the municipal limits. In this regard, upon examining the investigating agency's report as well as site inspection plan, it is evident that the investigating agency has itself concluded that the property is located beyond the municipal limits of Churu. The Investigating Officer conducted the spot inspection of the disputed property and prepared a site plan on 5.8.2003 wherein it is observed :-

"dLck iVokjh Jh lyheqn~nhu [kka ds ikl miyC/k uD''kk esa vafdr [kljk dks uxjikfydk lhek js[kk ls Ldsy esa ukik x;k rks mDr nwjh 01 fd0 ehVj gh gksrh gSA"

13. The petitioner Bhanwar Lal Naga being the Sub-Registrar concerned was subjected to the disciplinary proceedings in relation to the very same allegations and was exonerated. Otherwise also, the loss of revenue if any caused to the Government by registration of immovable property at a lower rate can always be recovered. The complaint was filed way back in the year 1999 and more than 16 years have lapsed by now. There is no explanation whatsoever regarding the undue and inordinate delay in concluding the investigation of the matter.

14. The controversy involved in the case at hand is akin to the one considered by the Hon''ble Supreme Court in the case of Lokesh Kumar Jain v. State of Rajasthan reported in (2013) 11 SCC 130 wherein, the Hon''ble Supreme Court held that inordinate delay in investigation as well as exoneration of the accused in the departmental proceedings of the charges similar to those involved in the criminal case, is sufficient for quashing the criminal proceedings.

15. In view of the foregoing discussion, this Court is of the firm opinion that it would be totally unjust, unwarranted and a gross abuse of process of law to allow further investigation of this stale FIR to be continued at this belated stage.

16. Resultantly, the instant Criminal Writ Petition No. 9/2015, Criminal misc. petition nos. 1661/2015, 2669/2015 and 2670/2015 deserve to be and are hereby allowed. The impugned FIR No.43/2001 registered at C.P.S., A.C.B., Jaipur (O.P. A.C.B. Churu) and all subsequent proceedings sought to be taken thereunder are hereby quashed.

17. Stay petitions also stand disposed of.

18. A copy of this order be placed in each file.