
(2008) 02 AHC CK 0204
In the Allahabad High Court

Dr. Rita Bahuguna Joshi

APPELLANT

Vs

State of U.P. and Shiv Babu Gupta

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Criminal Procedure Code, 1973 (CrPC) — Section 173
Evidence Act, 1872 — Section 44
Penal Code, 1860 (IPC) — Section 120B, 218, 419, 420, 466
Prevention of Corruption Act, 1988 — Section 13, 14

Citation : (2008) 02 AHC CK 0204

Hon'ble Judges : Vinod Prasad, J;Ajai Kumar Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Vinod Prasad, J.—A valid compromise decree in a first appeal passed by a competent court of Additional District Judge nearly about decade before, still in vogue, can not be nullified by insalubrious malevolence to eliminate political rivals and implicate them in false cases through a ploy to gain political mileage, in the sixth round of legal proceedings are some of the vehemently rued contentions by the petitioner Dr.Rita Bahuguna Joshi, an Ex-Mayor of Nagar Mahapalika, (now Nagar Nigam) district Allahabad, who has rushed to this court, through the instant writ petition, seeking relief that the FIR of Crime Number 4235080015 of 2008, under Sections 120B, 218, 420, 467, 468 and 471. I.P.C. and Section 13/14 Prevention Of Corruption Act 1988, Police Station Civil Lines, Allahabad be quashed by issuance of a writ of certiorari coupled with a writ of mandamus to the respondents not to arrest the petitioner in the aforesaid crime number.

2. The adumbrated prelude, which has generated this petition lies in the claim of title over a piece of land plot No. 180 situated in Fatehpur Bichchawa, Tehsil Chayal (now Tehsil Sadar) district Allahabad having an area of 9 Bighas 8 Biswas. It transpires that a suit u/s 171 U.P. Tenancy Act 1939 was initiated by the State

for ejectment of one Kandhai In the said suit State was the plaintiff. The said ejectment suit was decreed by Sri J.P. Singhal, Judicial Officer, Chayal, Allahabad vide his Judgment and decree dated 31.10.1960. Aggrieved by the said Judgment and decree dated 31.10.1960, Appeal No. 73 (Allahabad) of 1960 was preferred before Commissioner, Allahabad Division, Allahabad u/s 271 of the Tenancy Act by Kandhai against State of U.P. and others. The aforesaid appeal by Kandhai was allowed by Additional Commissioner, Allahabad vide his order dated 13.11.1961 (Annexure No. 5) who set aside the impugned Judgment and decree passed by the Judicial Officer, Chayal, dated 31.10.1960 and dismissed the suit filed by the State plaintiff with cost of both the courts along with and the pleaders fees by recording a finding that the land in question belong to His Highness Maharaja of Jaipur. Relevant portion of the recorded findings by the Additional Commissioner are reproduced below:

There is no nazul Register or record to above that this was nazul land and that the State Government had anything to do with this land. Besides, realization of rent by Allahabad corporation will not go establish that the State Government had anything to do with it as proprietor of the path. Under the circumstances I am of the view that the plaintiff was not entitled to sue.

Besides above finding it was also decided by the Additional Commissioner that in 1367 fasli village Fatehpur Bichua was bifurcated in 5 patti and on the disputed patti 1/1 Maharaja of Jaipur was the proprietor and therefore the suit for ejectment could have been filed by the Maharaja only.

3. On the basis of possession over the property in question, it seems that, the names of ten persons Jai Narain Singh, Krishna Dev Singh, Narendra Singh, Mahesh Ram, Akhilesh, Nagendra Kumar, Ram Pratap, Shiv Bhushan, Dhara Singh and Raja Ram were mutated and hence second inning of legal battle was generated by one Sri Shiv Mangal resident of 591 Colonel Ganj, Allahabad by applying to the District Magistrate, Allahabad against the said mutation dated 7.4.1979. Under directions of the District Magistrate an inquiry was conducted to verify levelled allegations and the inquiry officer Tehsildar Chayal submitted his report on 26.4.79 before Sub Divisional Magistrate, Chayal. In the said report it was mentioned that the disputed land is recorded under category 15 ie: pond of jamindar and it falls under Khewat Patti No. 1/1 over which the name of Maharaja Jaipur as Mafidaran is recorded and in 1979 Fasil, on the basis of water chestnut crop shown by the above ten persons that their names were mutated by the concerned Lekhapal. It was also mentioned in the report that in contemporary time no water chestnut crop is shown and city sewage water is being drained in the said plot and moss has grown in it. Sub Divisional Magistrate, Chayal, on the basis of the said report, initiated a proceeding against above ten persons and after completion of the same, vide his order dated 25.9.80, recorded the findings, that the land in question is a pond of which Maharaja of Jaipur is the zamindar and on that basis he ordered for scoring out the names of those ten persons and directed that the land be recorded as a

pond. The order by Sub Divisional Magistrate was questioned unsuccessfully in a Revision by those ten persons as Additional Commissioner, Allahabad vide his order dated 30.9.81 dismissed their revision.

4. Thereafter, a third litigation in the form of original suit being O.S. No. 403 of 1980 was started by Jai Narain Singh and others, above ten persons, as plaintiffs against Nagar Mahapalika, Allahabad (herein after referred to as NMP) and Allahabad Development Authority (herein after referred to as ADA) through their Administrators as first and second defendants for the relief of permanent injunction seeking relief to injunct the defendants from dumping garbage over plot No. 408/2 having an area of 5 Bighas and 10 Biswas and not to make any obstruction in collection of water over it nor to change the nature of the plot and not to interfere into plaintiffs peaceful possession and usufruct of the said land in any manner.

5. The plaintiffs in the suite set UP the case that the land in question was a pond and plaintiffs were in possession over the said ponds since last 19-20 years in accordance with the orders of the earlier landlord H.H. Maharaja of Jaipur and they grow water chestnut (Singhara) in it. They further pleaded that they have obtained a Izazutnama dated 31.6.1962 from Maharaja Jaipur. They further claimed that because of scanty rain the aforesaid pond dried in the month of January, February 1980 and the defendants stated dumping garbage in the said pond. To stop the said unwanted activity of the defendants that the suit was filed by the plaintiffs in the court of 1st Additional Civil Judge, Allahabad. The two defendants NMP and ADA, in the said suit filed a joint written statement denying the claim of the plaintiffs and further they claimed that the suit property, plot No. 408/2, Fatehpur Bichua is a nazul land of the State Government and neither the plaintiffs are owners nor the lease holders thereof. They further set up the case that the plot in question, as of now, was a dried pond and was in possession of the State Government. They further set up the case that long time ago the said plot was a pond and last time in the year 1945 it was given on an yearly lease of Rs. 435/- to one Kanahiya Lal for growing water chestnut (Singhara). Subsequent thereto it was given to the Fisheries Department for Sericulture but the Fisheries Department stopped using it since 1970. Their further case was that NMP endeavoured in vain to give the suit land on lease to Sukhnandan Trust vide its resolution dated 5.9.1976, as the said attempt by NMP was thwarted by the State Government. It was further pleaded in W.S. that Sri Lai Shukla, Administrator, wanted to construct a Public Park on the said plot but the tender of Gopal Tiwari for the said purpose was rejected. Defendants also pleaded that the plaintiffs have filed the suit for lying their claim of title over the suit property by committing forgery. They also pleaded that plaintiffs Izazatnama dated 31.1.62, is a forged, manufactured and sham document. Through an additional W.S. defendants further pleaded that the plaintiffs are trespassers over the suit land and in conspiracy with the Patwari they have got their possession recorded by committing forgery in the revenue records in 319 fasli.

6. 1st list Additional Civil Judge, Allahabad on pleadings of both the parties framed 13 issues. Issue nos.3 and 4 related with the questions as to whether the plaintiffs were trespassers or not and whether the documents produced by them were forged and manufactured or not? Issue No. 9 was whether the disputed land is a nazul land owned by the State and is managed by NMP? Besides other issues. The above suit filed by the plaintiffs was decreed by the 1st Additional Civil Judge, Allahabad vide his Judgment and order dated 29.8.1992 (Annexure No. 2). Issue No. 3 was decided in favour of the plaintiffs against the defendants by holding that the plaintiffs were not trespassers.

7. Deciding Issue No. 4 Additional Civil Judge held that Izazatnama (Ext-7) filed and proved by the plaintiffs was executed by Chiman Singh, administrator of Maharaja's Property, and hence it is not a forged and sham document and by holding thus he decided the said issue in favour of the plaintiffs against the defendants. For Issue No. 9 dealing with title of the suit land, Additional Civil Judge held that the suit land is not a nazul land nor the State is the owner of it nor it is under management of NMP. He recorded a finding that the suit land is the property of Maharaja of Jaipur and by holding thus he decided the said issue conferring title of the suit property (plot No 408/2, Fatehpur Bichua) on the said Maharaja against the defendants. The Judgment and decree dated 25.8.1992 passed by Additional Civil Judge, Allahabad was challenged in First Appeal No. 781 of 1992, Nagar Maha Palika v. Jai Narain Singh and Ors. initially the said appeal was preferred before this Court which was admitted and a stay of the decree was granted but subsequently, due to the change of pecuniary jurisdiction, the said appeal was reverted back to the Court of District Judge, Allahabad and thereafter the same was assigned to XII Additional District Judge, Allahabad for disposal.

8. It was during the pendency of the said appeal that the appeal lees plaintiffs, who were decree holders, offered to entered into a compromise with the appellants defendants NMP and ADA by offering half portion of the land in favour of NMP by renouncing their claim on the said half portion. This offer by the decree holders was examined by the members of the Administrative Committee of NMP and out of twelve, 11 members of the said committee, vide annexure No. 3, dated 6.9.97, wrote a letter to the petitioner that keeping the interest of NMP the compromise offer should be accepted and half of the land be taken by Nagar Mahapalika from the decree holders plaintiffs respondents, which will be very beneficial for the Nagar Nigam (erstwhile Nagar Mahapalika). On the said letter the petitioner vide her noting dated 7.9.97 contained on the said letter, directed the legal advisor that it be placed before the Administrative Committee along with a resolution. It is important to record here that Sri S.L. Yadav, Legal Advisor, NMP on receipt of the said letter by eleven members of the administrative committee had also written a letter, on 12.0.1997 (appendaged with Annexure No. 3) to Mukhya Nagar Adhikari NMP Allahabad detailing the necessary facts and requesting him that if he (Mukhya Nagar Adhikari) countenance the said proposal then it be placed before the Administrative Committee of NMP. On the

said letter by Legal Advisor Mukliyu Nagar Adliikari vide his noting dated 28.6.97 forwarded it and thereafter on 30.6.97, the petitioner directed it to be placed before the Administrative committee of Nagar Nigam. In the meeting of the administrative committee of Nagar Nigam the proposal for compromising the First Appeal was accepted and resuntlantly a compromise dated 24.1.1998 was filed in the Court of XII Additional District Judge, Allahabad in the aforesaid First Appeal No. 781 of 1992 under the signature of Sri S.L. Yadav, Legal Advisor and Sri S.N. Pandey, Mukhya Nagar Adliikari, Nagar Nigam, Allahabad. XII Additional District Judge, Allahabad vide his order dated 5.3.1998 decided the appeal in terms of the said compromise vide Annexure No. 20 (Civil Miscellaneous Writ Petition No. 46841 of 2006, The Collector Allahabad and Anr v. Nagar Nigam Allahabad and Ors).

9. After a gap of four years, thereafter, forth round of litigation started through a FIR of crime No. 361 of 2002, under Sections 419, 420, 466, 467,468, 470 IPC police station Colonel Ganj, district Allahabad by the informant Vijay Shanker Mishra, Naib Tehsildar (North) Tehsil Sadar, Allahabad against Radhya Mohan Srivastava, Ex Lekhpal, Kamal Narain Mishra, Ex-Revenue Inspector, Awadh Narain Singh, Registrar Kanoongo and others with the allegations that the entries recorded in category 10A were found to be false and forged after 27.8.2002 and on inquiry it was detected and hence, the FIR be registered against the guilty persons.

10. Ram Pratap Singh one of the accused in the said FIR of crime number 36 S of 2002 preferred Criminal Miscellaneous Writ Petition No. 5969 of 2002 Ram Pratap Singh v. State and Ors. challenging the impugned FIR in this court. The aforesaid writ petition was dismissed on 11.10.2002 by a Division Bench of this Court but it directed C.B.I. to conduct an investigation into those offences. It is not disputed before us that C.B.I. has completed the investigation and has submitted a charge sheet, on 10.2.2006, against 9 accused persons,namely, Kamal Narain Mishra, Radhya Shyam Dubey, Ram Pratap Singh, Kishan Dev Singh, Shiv Bhushan Singh, Amar Singh, Akhilesh, Dhara Singh and Narendra Singh. C.B.I. in its said report also recommended a regular departmental action for major penalties against S.L. Yadav, Legal Advisor, Nagar Mahapalika and Sri S.N. Pandey, the then Mukhya Nagar Adhikari, Nagar Mahapalika. C.B.I. also recommended Government to challenge the afore mentioned judgement, order and decree passed in the first Appeal No. 781 of 1992 arising out of Original Suit No. 403 of 1980 in an appropriate forum. It also advised the State Government to undertake a survey of plot 408/2 to evicted illegal occupiers as their sale deeds were void. C.B.I. however, did not propose any action against 11 other accused persons. It is important to note that C.B.I. did not indict or made any recommendations against the petitioner. It is inform to us that the case of the charge sheeted accused is pending before the appropriate court. Fifth round of litigation was engineered by filing a PIL No. 42082 of 2002 by one Shiv Kumar against 19 respondents. State of U.P. through Ministry of Home affairs, Lucknow is the first respondent and Collector/District Magistrate, Allahabad, Nagar Nigam,

Allahabad through its Mukhya Nagar Adhikari, and Allahabad Development Authority through its Secretary are respondents Nos. 2 to 4. Rest of the respondents from Serial No. 5 to 19 are the private individuals. The prayer sought in the said PIL was to issue a writ order or direction in the nature of mandamus commanding respondent No. 1 to 4 to initiate proceeding against opposite parties to recover the possession under Act 22 of 1972 over the plots in dispute that is plot No. 408 situated in Mohalla Fatehpur Bichhawa (revenue record).

11. Further relief sought was to issue a mandamus commanding respondents not to make any construction on the basis of the alleged sale deed executed by the opposite party No. 5 Ram Pratap Singh one of the plaintiffs in Suit No. 403 of 1980 on the basis of the compromise dated 5.3.1998 (Annexure No. 10) in First Appeal No. 781 of 1992. In the aforesaid PIL a counter affidavit was called for by a Division Bench of this Court vide its order dated 30.9.2002. A counter affidavit has been also been filed only by respondent No. 18 in the aforesaid PIL, which is still pending before this Court for admission. For completing half a dozen litigations, ostensibly, on the recommendations made by C.B.I. that the Collector, Allahabad and the State of U.P. through Secretary Housing and Urban Planning Development, as petitioners, filed Civil Miscellaneous Writ Petition No. 46841 of 2006 in this Court titled as The Collector Allahabad and Anr v. Nagar Nigam, Allahabad and Ors. In the aforesaid writ petition only notices to respondents 3/1 to 3/3 and 4 to 29 were ordered to be issued returnable within four weeks. Steps were allowed to be taken within two weeks. Nature of the pond situated on plot No. 408/2 Fatehpur Bichua, Allahabad was directed to be maintained as was existing on 29.8.2006, the date on which the aforesaid writ petition(PIL) was entertained by this Court. The order sheet of the aforesaid writ petition (PIL) indicates that some of the respondents have appeared and filed the power of their respective advocates and a counter affidavit on behalf of the respondent No. 9 and 14 have been filed by their counsels. No further action has been taken in the aforesaid PIL by any of the contesting sides as yet.

12. It was after the above mentioned half a dozen series of litigations that the impugned FIR (Annexure No. 1), was lodged by present respondent No. 4 Shiv Babu Gupta, totally an alien to the whole controversy, as crime No. 4235080015 of 2008, under Sections 120B, 218, 420, 467, 468 and 471 IPC and Sections 13/14 of Prevention of Corruption Act 1988 at police station Civil Lines, district Allahabad against the petitioner, the quashing of which has been desired and prayed for by the petitioner in the instant writ petition. Before we under take the exercise to critically appreciate the contentions raised by the rival contesting sides we would like to narrate the allegations levelled in the impugned FIR (Annexure No. 1).

13. According to the Shiv Babu Gupta, informant he is a social worker and president of Bhrastachar Unmulan Samiti and is a resident of plot No. 403 Fatehjnir Bichua, Allahabad, an adjacent plot of the disputed nazul land whose

guessed estimated price is Rs. 50 crores managed by Nagar Nigam, Allahabad. Petitioner Dr. Rita Bahuguna Joshi, Mayor of Allahabad City in criminal conspiracy with S.N. Pandey, Mukhya Nagar Adhikari, Shiv Lakhan Yadav, Legal Advisor and Raghvendra Pratap Singh and others caused wrongful loss to the State of the aforesaid amount by alienating the aforesaid plot No. 408 by passing a resolution in the executive committee of Nagar Nigam and compromising with Jai Narain Singh, Shiv Bhushan Singh and others. It is further alleged that Legal Advisor clearly states that the petitioner desired the compromise resolution to be prepared and the same be placed before the NMP executive committee. Further allegations are that this Court had passed an order staying the order of Civil Judge in Civil Suit No. 403 of 1980. It is alleged that the resolution of the executive committee approving the proposal on 26.9.1997 colluded with the petitioner and flouted Clause 5 of U.P. Mahapalika Surcharge Rules 1966 and this Act of the accused constitute offence under the Prevention of Corruption Act, 1988 as well as under the Indian Penal Code. Further it is alleged in the impugned FIR is that by the order of this Court the matter was investigated by CBI, who has submitted a charge sheet for cheating and falsification of revenue record but the criminal act of the petitioner of misusing of her office and indulging into corrupt illegal means in performance of her official act and showing favour dishonestly and fraudulently by surrendering the property entrusted to Nagar Nigam was a corrupt and illegal act causing wrongful loss to the Government exchequer. The said act of the petitioner amounts to misconduct punishable under The Prevention of Corruption Act 1988. It is alleged that the petitioner by entering into the compromise has not only abated the offences but has also committed the same for her illegal gains in conspiracy with S.N. Pandey, Mukhya Nagar Adhikari, Shiv Lakhan Yadav, Legal Advisor. Raghuvendra Singh, Jai Narain Singh, Shiv Bhushan Singh and friends and by alienating nazul property. Along with the written FIR the proposed note of the then Legal Advisor and a copy of the resolution moved by the Raghvendra Pratap Singh were also appended. It was therefore alleged that the petitioner and her co-conspirators are liable to be punished under the Prevention of Corruption Act as well as under the Penal Code and hence, the informant, requested that a case be registered under Sections 420, 467, 471, 120B, 218 IPC and 13/14 Prevention of Corruption Act 1988 and investigation be done to prosecute them.

14. As stated above, this FIR was scribed on 16.1.1988 and was translated into English by Sobha Tripathi, Advocate, resident of 55 MIG Govindpur Colony, Allahabad and was registered in the dead hour of the wintry night on 16.1.2008 at 11.35 p.m. at police station Civil Lines, district Allahabad. On the above, briefly stated facts, that we have heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri S.D. Kautilya on behalf of the petitioner, Sri V.P. Srivastava, learned Counsel for the informant, Sri Satish Trivedi, Special Counsel, Sri K.N. Vajpayee: Learned AGA representing the State in opposition at a great length and have perused the petition and the appended annexures.

15. In agreement with both the sides we have also perused the record of Writ

Petition No. 5969 of 2002, Ram Pratap Singh v. State of U.P. Writ Petition No. 42052 of 2002, Shiv Kumar v. State of U.P. (PIL) Writ Petition No. 46841 of 2006, The Collector Allahabad and Anr v. Nagar Nigam, Allahabad and Ors., and the charge sheet filed by the C.B.I. We also looked into Extraordinary Government Gazette dated 1.5.2002 for notification issued by the State in respect of bone of contention changing the use of land.

16. Harbingering his arguments Sri Chaturvedi Sr. advocate contended that a compromise decree passed by a competent Additional District Judge in a regular First Appeal can not be set at nought by a malafide FIR nor the Judgment and recorded findings by a competent Civil Judge in an original suit, where both the parties were allowed full opportunity to lead evidence, be nullified by reporting to dexterity of lodging of a FIR contrary to such findings which findings still holds good. Thrice on the earlier occasions the attempt by the State to get the disputed land declared as nazul land owned by it have been thwarted judgements by passing judicial orders retorted learned Counsel. Elaborating his this contention learned Counsel submitted that at the earliest occasion more than four decades ago, in 1961, Additional Commissioner Allahabad had recorded the findings in a revision u/s 272 of U.P. Tenancy Act that the disputed land does not belong to State nor it is a nazul property. This order has become final and was never challenged further and hence the property in question can not be treated to be a nazul land. Thereafter Sub Divisional Magistrate, Chayal also recorded that the disputed property is not a nazul land and is owned by Maharaja of Jaipur as his pond. The said order has also become final canvassed learned Counsel. He further contended that in Original Suit No. 403 of 80 three specific issues being Issue Nos. 3, 4 and 9 were framed regarding the title of the disputed property which all were decided against the State by holding that the plaintiffs are not trespassers and their Izazatnama, Axt-7, in that suit is not a forged but is a genuine document and that the land in dispute is not a nazul land and is the property of Maharaja of Jaipur and the same is not managed by the defendant Nagar Mahapalika or Allahabad Development Authority. Bringing home his point it was stated with vehemence that in view of these findings, vide annexures No. 2, 5, 9, of the instant writ petition, the very basis of lodging of the impugned FIR vanishes into the oblivion and indicate that the impugned FIR is politically motivated vexatious and vindictive exercise to implicate the petitioner who is the State President of Congress Party, the main rival political party of the ruling government in the State.

17. Learned Counsel further contended that on the earlier occasion C.B.I. had investigated the alleged offences thread bare and has submitted a charge sheet against nine accused persons, only recently in 2006, but has not said any thing against the petitioner and therefore permitting second generation of investigation through impugned FIR will be a malafide exercise as on the earlier occasion all documents were scanned by the C.B.I. alongwith the resolution of compromise and the role played by the petitioner in reaching the same.

18. He further submitted after Nagar Mahapalika had lost in the civil suit and had become a Judgment debtor then, if the petitioner abided by the resolution of administrative committee of Mahapalika and allowed the compromise to be entered into in accordance with the offer given by appealees decree holders themselves, that too after obtaining legal advises, her act is a damnum and no exception can be carved out from her such act for making out any offence against her, contended learned Counsel. She acted under the colour of her office in accordance with statue he rued. Detailing his contentions learned Sr. Counsel further submitted that a Government notification was also issued under Urban Planning And Development Act 1973 changing the use of the land from Bus terminal to commercial Petrol Pump on 1.5.2002 by notification No. 1441/9-AA-3-2002-48 L.U.C-2001 published in the Extra Ordinary Gazette dated 1.5.2002 and further the State has sanctioned the sale of land to the Indian Oil Corporation vide annexure No. 9, 10 and 14 of this petition, as the character of the land has changed and it no longer remained a pond, which fact has also been admitted by Nagar Mahapalika as well as by the Allahabad Development Authority in their written Statement filed in O.S. No. 403 of 80, in which the compromise was filed at the appellate stage, clearly indicates that the land does belong to the State as State itself had written a letter that the land belongs to NMP and the sale proceeds obtained from sale to Oil Corporation be utilized by NMP itself and thus the petitioner can not be alleged to have committed any offence and no criminal intent can be attributed to her and now the State can not raise any grievance to canvass that the compromise entered into in the first Appeal was a corrupt practice as the notification by it succeeded the compromise and the very basis of issuing such a notification was the compromise decree by which half of the land in the suit was relinquished in favour of Nagar Mahapalika, Allahabad by the decree holders. The State government itself had sanctioned sale of disputed land to oil corporation and had itself changed the use of land clearly indicates that no offence was committed by the petitioner and therefore the impugned FIR by, a bait, is motivated for petty political gains contended learned Counsel.

19. Expanding his last submission of the preceding paragraph learned senior Counsel canvassed with vehemence that the informant is a ploy set up by the ruling party of the State to eliminate political rivals and that is why informant, who has nothing to do with the land in question, has lodged the impugned FIR woefully belatedly more than four decades after, without any interest in it, at the dead hour of wintry night on 16.1.2008 at 11.35 p.m. and this speaks volumes of vindictive exercise. He contended that many houses were constructed and the oil corporation had erected it's disposal out let (the pump), for nearly a decade by now and, interregnum, conspicuous dumbness and deafness of the informant, who claims neighbourhood, clearly projects his ulterior motives for petty gains by the ruling party.

20. Learned Counsel further contended that the compromise offer was generated from the decree holders and not from the petitioner. It was the collective

unanimous decision of a statutory body, administrative committee of Nagar Mahapalika, after obtaining legal advices, for the solemn purpose to eschew legal battle for enhancing Mahapalika's assets and it's revenue, as at the time when the said decision was taken and entered into, the suit property was judgements to be of the ownership of Maharaja of Jaipur to the exclusion of State and Nagar Mahapalika both by holding that both had no right over it. Therefore Learned Counsel pleaded that, at the time of the resolution was passed neither State nor NMP were the owners of the disputed land. There was a decree operating against them denying their title over it. Learned Sr. Counsel invited our attention to various provisions under Nagar Mahapalika Adhiniyam to canvass that Mahapalika possess legal power to enter into any compromise and settle any legal dispute which is best suited to it's interest and if, administrative committee of Nagar Mahapalika, a judgement, debtor, decided to compromise a already lost suit to save lengthy, arduous and decade consuming litigation then no ulterior motive can be imputed to such a statutory body specially when the out come of the litigation was unknown retorted learned Counsel. If a lost defendant compromised and gained half of what it had no right at all then it can not be dubbed as an offence contended learned Sr. Counsel who further argued that unless findings on possession and title recorded by the Civil Judge on issues No. 3, 4 and 9, of the disputed property, which in fact were an appealable decree, are not set aside, neither the State nor Nagar Mahapalika, Allahabad nor the Allahabad Development Authority will have any right, whatsoever, over the disputed piece of land as title dispute can be resolved only by a competent civil court.

21. Learned Counsel contended that no charge sheet or subsequently lodged motivated FIR by a alien can diminish the legal character of ownership conferred by a competent civil court in a suit after a full fledged trial where both the parties were afforded fullest opportunities to lead evidence and wherein, the question of fraud and falsification of the document were pleaded, considered and decided. According to the contentions of learned Counsel a decision on a framed issue by a civil court can not be transformed into an offence and therefore the whole exercise undertaken by the informant in the present FIR, at the behest of the ruling party in the State, is tainted with malafides and is per se vexatious.

22. Drawing the curtain of his strenuous exercise Learned Sr. Counsel submitted that this second round of FIR and investigation as desired by a set up informant, ostensibly by the ruling party in the State, to eliminate political rivals, against the decision of a Civil Judge in a civil suit and also contrary to the conduct of the state Government, opinion of the Commissioner of Allahabad and Judgment and order passed by Additional Commissioner way back in 1961, is a politically motivated FIR lodged after more that four decades and alter half a dozen litigations, with out any reason offered for the same, and also, which FIR does not disclose any offence nor any misuse of power by the petitioner is nothing but malafide, vindictive and vexatious attempt to harass and humiliate the petitioner. This is a temerity and a faux pas and therefore it be quashed and the ensued

investigation be also stopped and this petition be allowed concluded learned Sr. Counsel.

23. Contrarily learned Sr. Counsels as well as learned AGA for the respondents submitted that Nagar Mahapalika took the defence of land belonging to the State Government as nazul land and plaintiff's having no right over the same, yet NMP compromised the appeal which was done at the behest of the petitioner, specially when in the First Appeal there was a stay order operating, staying the decree of the trial court which was for ulterior motive. They further contended that the land was recorded in the name of Sarkar Daulai Madar Khasar Kishtawar in 1275 fasli (corresponding to the year 1868) and by fraud and manipulations by forging the said entry that the name of Maharaja of Jaipur was recorded and the matter was, earlier, investigated by C.B.I., threadbare, who detected the said fraud and has submitted a charges sheet against the nine accused persons. They contended that the suit No. 403 of 1980 was a collusive suit in which State was not a party and therefore any decree passed in the suit will not bind the State. They harangued that the disputed land is a State property as nazul land and Nagar Mahapalika was only allowed to manage it. They contended that since Nagar Mahapalika was never the owner of the disputed land they had no right to enter into a compromise in the suit. They argued that the State was not in the knowledge of filing of the suit and hence it could not take any action and now Collector Allahabad has filed a writ petition in this Court challenging the decree filed in the suit.

24. Learned Counsels further contended that since investigation by C.B.I. on the earlier occasion has detected fraud therefore investigation in the present impugned FIR be allowed to proceed and the FIR can not be quashed. They further contended that the noting by the petitioner on the letter written by eleven members of the administrative committee indicates that the petitioner has directed for a resolution to be made and therefore according to her wish that the compromise was accorded. They further submitted that the suit of 1980 was only for injunction and therefore civil court had no right to decide the title. They further contended that on 4.11.1911 Nagarpalika Board had declared the said land to be a nazul land vide Board's order No. 2125-M/xi-868 and that nature of the said land never changed thereafter. They further contended that the plot was in fact bifurcated in the year 1971 in sub plots and therefore Izazatnama of 1961, prior to such bifurcation is a sham document. They further contended the case of defendants in the suit was that the disputed property is recorded as pond in the official documents and therefore the compromise in the suit was for illegal motives and gains. They further contended that the FIR can be lodged by any body and when the petitioner gained the facts from the charge sheet submitted by C.B.I. that he lodged the impugned FIR and since limitation Act does not apply on the said FIR it can not be quashed. They submitted that the FIR with allegations of corruption and malpractice can not be quashed at it's very inception more so when there is absence of pleading of malafide and vendetta. They further contended that a PIL is pending in this Court and therefore quashing

of the FIR will be contrary to the order passed in PIL. They further contended that the order passed by Additional commissioner u/s 272 of U.P. Tenancy Act was in a summary proceeding for ejectment of illegal occupants and hence that order can not help the petitioner. They Further relied upon Section 44 of the Evidence Act to raise submission that fraud makes the decree void and attour the Judgment by the Civil Judge has to be seen in the trial. They further contended that nature of the pond can not be altered as has been directed by the apex court in it's decision reported in 2001 (6) JT 88 in Hindi Lai's case. They further argued that the FIR be not quashed and the investigation be allowed to proceed to decipher as to whether, compromise was entered into because of illegal gains by misusing the power or not? Concludingly they contended that the instant writ petition lacks merit and be dismissed.

25. We have considered the arguments of both the rival sides and have given our anxious considerations on the same. Most of the facts regarding legal proceedings and the orders passed therein are undisputed. The controversy is in respect of plot No. 408 Fatehpur Bichua, Tehsil Sadar, district Allahabad. It is also not disputed that the petitioner was a Mayor Nagar Nigam, Allahabad in between 1995 to 2000. It is also not in dispute that a proceeding u/s 171 U.P. Tenancy Act was taken in respect of disputed land by the State for ejectment of Kanahai more than four decades ago in 1960 for removing his illegal encroachment from the said land. The said proceeding was decreed by the Judicial Officer, Clayal, on 31.10.1960, in favour of the State which decree was challenged in Appeal No. 73 (Allahabad) of 1960 wherein Additional Commissioner Allahabad Division by his judgment and order dated 13.11.1961 allowed the appeal, set aside the decree and dismissed the suit filed by the State holding that the property does not belong to the State. It was mentioned in the aforesaid Judgment by the Additional Commissioner that according to the record in 1320 fasli the proprietor of the disputed land was Government of U.P., Pandit Moti Lal Maharaja Jaipur, Maharaja Darbhanga who were recorded but in 1367 fasli this village was bifurcated in six Sub- Divisions (Pattis) of which the disputed land fell in bifurcation, Patti 1/1 of which Maharaja Jaipur was the sole proprietor and State of U.P. was not the proprietor of the said division Patti 1/1 and therefore, State had got no right to file the suit for ejectment against Kanahai which could have been field by Maharaja Jaipur. Holding thus the appeal by Kanahai was allowed by the Additional Commissioner. This was the first denial of title of the State over the plot in question as a nazul land.

26. It further transpires that on the basis of possession the names of Jai Narain Singh and Krishna Dev Singh and others were recorded over the disputed plot, which gave cause to one Shiv Mangal to make a compliant to the District Magistrate, Allahabad, that the disputed plot is a pond and in connivance with Lekhpal that the names of aforesaid Jai Narain Singh and others have been wrongly mutated. An inquiry was conducted by Tehsildar Chayal who submitted his report on 26.4.1979 before S.D.M. It was mentioned in the report of the Tahsildar that the disputed land is recorded under category 15 as pond of

Zamindar. It was further mentioned that the disputed land which falls under patti No. 1/1, the name of Maharaja Jaipur is recorded as Mafidaran. In 1979 fasli Lekhpal recorded the names of Jai Narain Singh and Krishna Dev Singh on the basis of sown crop of water chestnut (Singhara) by them. It was further mentioned in the report that presently no crop is sown in the said pond in which the sewage water was being collected and moss (Jalkumbhi) had grown. Nagar Nigam was dumping garbage on the eastern side for the purposes of filling the pond and making it a plain land report mentioned. On the basis of the report of the Tehsildar notices were issued to Jai Narain Singh and others and for scoring out their names proceedings was started by Sub Divisional Magistrate, Chayal who, vide his order dated 25.9.1980, ordered for scoring out the names of the aforesaid persons and for recording the plot as the pond of Maharaja of Jaipur as it's Zamindar. Jai Narain Singh, Krishna Dev Singh challenged the said order passed by Sub Divisional Magistrate, Chayal, unsuccessfully and their revision was dismissed by the Additional Commissioner, Allahabad vide his order dated 13.9.1981.

27. It is also conspicuously clear that in the Original Suit No. 403 of 1980 Jai Narain Singh and Ors. v. Nagar Mahapalika, Allahabad through it's Administrator and Anr, thirteen issues were framed of which issues No. 3, 4 and 9 are of great significance in the present writ petition. Issue No. 3 related with the controversy whether the plaintiffs in the said suit were trespasser or not? The said issue was decided in favour of the plaintiffs by the 1st Additional Civil Judge, Allahabad vide his Judgment and order dated 25.8.1992 by recording a finding that the plaintiffs are not the trespassers over the said land and they are in lawful possession over it. In respect of the issue No. 4 regarding validity and genuineness of Izazatnama, Ext-7 in the suit, as to whether it was forged and fictitious or not? Additional Civil Judge recorded a finding that the said Izazatnama, exhibit 7 in the suit, is neither forged nor fictitious and therefore, decided the said issue in favour of the plaintiffs against the defendants.

28. Pivotal of the suit and what is of great significance in the present writ petition were the findings, Judgment and order in respect to issue no. transliteration of the said issue is as follows:

(9) whether disputed land is a nazul land of which Government of U.P. is the owner and Nagar Maha Palika is managing it?

This issue was decided by the Additional Civil Judge by looking into the oral and documentary evidences on record in favour of the plaintiffs against the defendants by recording a finding that from the entries made it is perceptibly clear that the disputed land is not a nazul land of the State of U.P. nor is being managed by Nagar Mahapalika. For reaching the above conclusion Additional Civil Judge had relied upon various oral and documentary evidences produced by the plaintiffs and the defendants and the earlier orders passed by the Additional Commissioner in 1961 referred to above and also by the Sub Divisional Magistrate, Chayal, mentioned herein before. The Additional Civil Judge has

further taken note of the fact that the Nagar Mahapalika had endeavoured to give the land in dispute to Sukhdev Ntindan Trust but the State Government had rejected the said proposal. He had further noted the fact that the District Magistrate in the capacity of Administrator Nagar Mahapalika had passed the tender in favour of Gopal Tiwari on 5.7.1988 for erecting a park on the property in question which could not materialise. Additional Civil Judge also recorded a finding that since the land does not belong to the State, NMP had got no right of its management. He had also recorded a finding that the entry made in the register of nazul property of the Nagar Mahapalika Allahabad in 1911 was a sham document and the said entry is a forged entry which was recorded by committing forgery. These findings were recorded after due consideration of oral and documentary evidences and after affording fullest opportunities to both the sides to lead evidences, completely interdicts and negates the levelled allegations in the impugned FIR.

29. Further it is clear that FIR was registered on the basis of falsification of revenue record which allegations had already generated Criminal Miscellaneous Writ Petition No. 5969 of 2002 where the earlier Division Bench of this Court dismissed the prayer of the petitioner Ram Prasad Singh for quashing of the said FIR and ordered for a C.B.I. investigation and in pursuance of that order C.B.I. carried out a full fledged investigation and ultimately filed a charge sheet against nine accused persons but did not alleged any misuse of power by the petitioner nor indicted her for any ulterior motives or wrongful gains. It did not find any corrupt practice resorted to by the petitioner. It is further clear that after dismissal of the writ petition filed by Ram Pratap Singh that a PIL was also filed by Shiv Kumar in this Court in which notices were issued, though the said PIL, in our view was a malafidy exercise, as the dispute was between the State and the persons in possessions over the property, and there was no public interest involved in it, specially that of Shiv Kumar the petitioner in PIL. However, that PIL has to be decided by the competent Bench on its own merit and we leave the said matter here. It is also clear that after the charge sheet was submitted by the C.B.I. on it's recommendations that Criminal Misc. Writ Petition No. 46841 of 2006 was preferred by The Collector, Allahabad and the State Government against Nagar Nigam and others in this Court seeking a relief that the comprise decree entered into between the appellants and the appellees in first appeal decided by Additional District Judge, Allahabad and the Judgment and order passed by Additional Civil Judge, Allahabad in Original Suit No. 403 of 1980 be quashed. The said writ petition has not been admitted and there is no stay order passed by this Court nullifying the effect of the compromise decree or staying the operation of the Judgment and order of the Additional Civil Judge and consequently the said decree, Judgment and order still holds good. A Judgment of the civil court passed by a competence Judge can be nullified only in accordance with the procedures established by the law and not other wise and no such order has been passed as yet.

30. In the suit the defendants had pleaded fraud played by the plaintiffs and also

the falsification of Izazatnama Ext -7 filed by them. Both these aspects of the matter were considered by the Additional Civil Judge, who while decreeing the suit, negated both the contentions and upheld the case of the plaintiffs. Looking into the pleadings in the suit it can not be said that the Additional Civil Judge was not made aware of those facts or that he has not considered same. Through out all these years the document was in custody of NMP and it had an ample opportunity to prove manipulations in the documents under it's custody but it miserably failed to cash on that opportunity and lost the suit. The question which now crops up for our consideration is as to whether the said decree passed by competent civil court can be nullified by directing the investigation to be carried on against the said findings, Judgment and decree which is still in vogue? It cannot be argued that before the civil court no pleading of fraud and falsification of document was not taken. In our view, once the civil court, rightly or wrongly, on the basis of oral and documentary evidences produce before it, and after giving fullest opportunities to the plaintiffs and the defendants of leading evidences, has recorded a findings conferring a legal character on the plaintiffs of being rightful owner and dismissing the claim of the State of having no concern with the suit property, which is the bone of contention in the impugned FIR keeping in mind the allegations of fraud and manipulations, then so long as the said findings, Judgment and decree is effective and not set aside there cannot be any offence made out against such findings recorded by a competent civil court. To our mind the order of the Additional Civil Judge deciding issues No. 3, 4 and 9 were appealable decrees or in any case were open to challenge u/s 115 C.P.C. and since that having not being done and also since there is no stay order operating, as of now, against the said judgment, order and decree no mens rea can be attributed to the petitioner for making out any offence against her. The State had got a right to challenge the decree by filing a suit and seeking injunction which they have not done and instead it has filed a writ petition in this Court in 2006 on the advice of C.B.I. the investigating agency. In our view, while submitting it's report C.B.I., knew the difficulty which was its way while submitting the charge sheet against the accused persons and that is why it recommended for challenging the decree, Presently, therefore, now the question which is of utmost importance to be considered by us and to be decided finally is as to whether findings, judgment, order and decree of a civil court can be overridden by lodging a FIR? Another question which arises for a detailed considerations is as to whether any offence can be said to have been committed when their stands a decree completely eroding the allegations of commission of any offence and diminishing the very basis of making out any offence? A third question is as whether an investigation can be permitted to be carried out when the basis of making out the alleged offences is non - existence?

31. Another important aspect of the matter is that during the pendency of the first appeal it were the respondents plaintiffs who have offered to compromise the dispute. When this offer was made NMP and Allahabad Development Authority were Judgment debtors. They had lost in the suit. It was the plaintiffs

appeallees who were decree holders. When the compromise was offered by the plaintiffs decree holders then 11 out of total strength of 12 members of the Administrative Committee of the Nagar Nigam wrote a letter to the petitioner on 6.9.1997, annexure No. 3. A perusal of the said annexure No. 3 indicates that those 11 members were of the opinion that it will be in the interest of Nagar Nigam to enter into a compromise and end the litigation as continuance thereof will be detrimental to the interest of Nagar Nigam. There is no allegation that the letter (Annexure No. 3) was written at the behest of the petitioner. It was the independent exercise of those 11 members signing the said annexure No. 3. As a Mayor NMP, Allahabad, it was the duty of the petitioner to direct the said letter signed by 11 members of the Administrative Committee to be placed before meeting of the Administrative Committee according to the Rules of the business of the house. In that respect if the petitioner has made a noting on 7.9.1997 in discharge of her official duty in consonance with the wishes of it's 11 members no exception can be taken by anybody of her said conduct nor any malice can be imputed to her. The contention of learned Counsel for the petitioner in this respect is of much force. Learned Counsel for the petitioner has also relied upon Section 564(h)(J) of Nagar Mahapalika Adhiniyam. He also invited our attention on the procedures prescribed under Nagar Mahapalika Adhiniyam prescribing procedure of it's meetings and for conduct of the business of the house for the meeting in respect of resolutions, lie further relied upon Section 570 of Nagar Mahapalika Adhiniyam and contended that in fact the date on which the compromise was entered into by Nagar Mahapalika in the first appeal there was a decree of the civil court standing against it and NMP was the Judgment debtor and since the fate of the first appeal was unknown, therefore, entering into a compromise was a bonafide act without any mens rea and certainly was a damnum. We also find great force in the contention of learned Counsel for the petitioner that a resolution by the Administrative Committee "of NMP cannot be dubbed to be an individual Act of the petitioner nor she can be saddled with any responsibility individually. We also find from annexure No. 6 to this writ petition, that Mukhya Nagar Adhikari, Nagar Nigam, Allahabad vide his letter dated 7.7.1998 had informed the District Magistrate, Allahabad that the Administrative Committee of Nagar Nigam took a decision to enter into a compromise and on the basis of the said decision a compromise has already been filed and the first appeal has been decided on 5.3.1998. Me also informed the District Magistrate, Allahabad that the State Government has also been informed regarding the said compromise decree vide letter number 183/vidhi/98. Thus, prima facie, it is also clear that the State Government was also informed, way back in 1998. regarding the compromise decree yet it did not opted for challenging the said decree by resorting to legal remedy available to it and waited for the advice by C.B.I. to act.

32. Another important aspect of the matter which requires detailed considerations is through annexures No. 7, and 10 to this writ petition, which are the letters written by Special Secretary Government of U.P. herein the State Government has agreed to the sale of the disputed land to Indian Oil Corporation

opining that the land belongs to NMP. The genuineness of the said letters, during the course of the argument, have not been disputed at all by the counsels for the respondents as it seems that various correspondences were exchanged in this respect between the State and NMP and the District Magistrate, Allahabad.

33. In this respect, it is also worthy to note that a report was also called for from Commissioner, Allahabad division. The said report of The Commissioner Allahabad division dated 28.6.2001 is annexure No. 9 to this petition. It is addressed to Secretary Government of U.P., Urban Development Section 7 in respect of the disputed land wherein Commissioner, Allahabad detailed all the facts regarding the decisions pronounced in the earlier litigations along with his opinion that it will not be appropriate to consider the disputed land being a nazul land under the ownership of the State. The said report of the Commissioner dated 28.6.2001 (Annexure No. 9) cannot be ignored lightly.

34. Another document of extreme importance is letter written by Special Secretary State of U.P. dated 19.10.2001 (Annexure No. 10) addressed to Mukhya Nagar Adhikari, Allahabad a perusal of which, prima facie, indicates that the State was also of the opinion that the land in dispute is not a nazul land and NMP is the owner of it and the sale proceeds from the oil corporation should be utilized by it. We also cannot ignore the government notification by which it has changed the use of the land from bus terminal to that of petrol pump, dated 1.5.2002 published in extraordinary gazette dated 1.5.2002.

35. Learned Counsel for the petitioner has also invited our attention on Annexure No. 13, a letter dated 31.10.2002, written by Government of Rajasthan addressed to District Magistrate, Allahabad and copy of the notification of revenue department dated 2nd February 1952 issued from Jaipur. We have also perused the resolution of Nagar Nigam, Allahabad dated 26.9.97 (Annexure No. 15).

36. From what we have discussed above we are of the opinion that the impugned FIR In respondent No. 4 is his malicious act full of vindictiveness. He has no interest in the land. He slept over for decades to raise this issue. His so called samiti did not even attempted to look into the fact that the offences alleged have already been investigated earlier by C.B.I. who had not found any thing against thing petitioner. When the State is now taking action to get the decree set aside and when the PIL was also pending in this Court where was the occasion for the informant to lodged the impugned FIR" at such wintry night at such an hour? He claims himself to be a neighbour but he allowed the petrol pump to be erected, houses to be constructed but kept himself with deaf ears and eyes closed for more than a decade. More over if, he can look into the charge sheet of C.B.I. he certainly can look into the Government gazette and the correspondences made by the earlier governments referred to above. His act depicts a contradiction with his post. Registration of FIR in dead hour of night alter the C.B.I. had already investigated the matter threadbare once and had submitted its opinion without indicting the petitioner or even recommending any action against her, the

impugned FIR lodged by an alien informant for the same offence, two years after filing of the writ petition by Collector challenging the compromise decree passed by the Additional District Judge and the findings, Judgment and order passed by the 1st Additional Civil Judge. Allahabad and also during the pendency of a PIL in this Court since 2002 and other surrounding circumstance, prima facie, makes us believe that impugned FIR is politically motivated and has been lodged vexatiously for the purposes of harassment and false implication of the petitioner with ulterior motives and therefore, we are of the opinion that the present case is one of such cases which falls within more than one of the categories laid down by the Apex Court in the Case of State of Haryana v. Bhajan Lal and Ors. 1992 SC C 426. for quashing of the FIRs at its threshold. It seems that the informant wants to gain political mileage resorting to his motivated design. He wants to regenerate another investigation when the matter had already been investigated thread bare by C.B.I. and consequently his this exercise is wholly mala fide, purposive and vexatious.

37. In view of the above documentary evidences and what we have discussed above, it cannot be said that the petitioner does not have a case for admission. We have heard the petition on the question of admission only. Since the respondents' counsels have also argued the petition on the question of admission without filing any counter affidavits therefore, we consider it appropriate to afford them a chance to file counter affidavits and bring their versions also on the record but at the same time we are of the opinion that contentions raised by the petitioner cannot be said to be without force or are such which don't require consideration. In such a view, we admit this writ petition.

Admit.

38. Learned AGA on behalf of respondents Number 1, 2 and 3 and Sri V.P. Srivastava, Sr. advocate, on behalf of informant respondent No. 4, are allowed three weeks time to file counter affidavits. Learned Counsel for the petitioner will have the same time from the service of counter affidavits on them to file rejoinder affidavits.

List this petition after exchange of counter and rejoinder affidavits for final hearing before the appropriate Bench at its turn.

39. In view of what we have stated above, we restrain and direct respondents 1 to 3 not to carry out further investigation into Crime Number 4235080015 of 2008. for offences under Sections 120B, 218, 420, 467, 468 and 471, I.P.C. and Section 13/14 Prevention of Corruption Act 1988, Police Station Civil Lines, Allahabad, Annexure No. 1, to this writ petition and also restrain them from forming any opinion u/s 173(2) Cr.P.C. in the said crime number and submit it to the concerned court. They are further restrained from harassing the petitioner in any manner whatsoever in connection with the aforesaid crime number.