

Court No. - 27

Case :- BAIL No. - 14190 of 2021

Applicant :- Devi Shankar Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanandan Kumar Misra, Anubhav Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Supplementary affidavit filed by the applicant as well as the counter affidavit filed on behalf of the informant by Ms. Shreya Chaudhary, Advocate and the instructions of the State handed over in Court today are taken on record.
2. Heard learned Counsel for the applicant as well as Sri Rajesh Kumar Singh and Sri Alok Saran, learned Counsel appearing on behalf of the State and Ms. Shreya Chaudhary, learned Counsel appearing on behalf of the informant and Sri Ratnesh Chandra, learned Counsel appearing on behalf of the U.P. Awas Vikas Parishad.
3. The FIR in question was lodged in Case Crime No.296 of 2018 alleging that a society registered in the name and style of Rishi Vasishth Shakari Awas Samiti Limited was restrained by means of an order passed by the U.P. Awas Vikas Parishad, Lucknow through its letter dated 23.07.2015 written by the Additional Commissioner to the effect that the Society shall not take any steps for selling the property owned by the Society in view of a complaint received against the said Society, it was alleged in the FIR, that despite there being a restraint, by playing a fraud, on the basis of allegedly fraudulent document, a resolution came to be passed on 02.12.2016 by the Society signed by as many as six persons wherein a decision was taken for execution of lease

deed in respect of a land which was shown in the map of the Society as Park.

4. In terms of the said proposal, it is alleged that a lease deed was executed in favour of two persons, namely, Subodh Chandani and Satish Chandani for a term of 33 years extendable upto 99 years on a paltry lease rent of Rs.30,000/- per year. The area which was leased out admeasuring around 30,000 sq.feet., the purpose for which the lease was granted was shown as open marriage lawn.
5. The Counsel for the applicant argues that in terms of the said decision taken by the Society, a lease deed was actually executed by the Secretary of the Society, namely, Nikhil Maurya. He further argues that the said Nikhil Maurya named in the FIR has been enlarged on bail by this court vide order dated 03.05.2019 passed in Bail No.7088 of 2018.
6. As regards the other co-accused including the accused nos.4 and 5, no charge-sheet was filed against the said accused persons, it is stated that the co-accused Ajay Pandey has been granted an interim protection by this court, thus on the ground of parity with Nikhil Maurya, the counsel for the applicant argues that the applicant is entitled to be enlarged on bail.
7. The Counsel for the applicant in the bail application states that one another case being Case Crime No.854 of 2020 relating to a civil dispute is pending against the applicant in which the arrest of the applicant was stayed. In the light of the said, the Counsel for the applicant argues that once the executor of the sale deed has been enlarged on bail, the applicant should also be enlarged on bail on the ground of parity.

8. Ms. Shreya Chaudhary, learned Counsel appearing on behalf of the informant draws the attention of this Court to the specific letter dated 23.07.2015 issued by the U.P. Awas Vikas Parishad restraining the Society from taking any steps from selling the property in view of the complaints received. It also appears from the counter affidavit that the said restrained order dated 23.07.2015, it is said, was withdrawn by a subsequent order dated 06.01.2018 written allegedly by the Additional Commissioner/ Additional Registrar.
9. The Counsel for the respondent argued that the said letter dated 06.01.2018 was a forged and fabricated letter which stood fortified by the subsequent letter of the U.P. Awas Vikas Parishad dated 09.02.2018 wherein it was specifically mentioned that the letter dated 06.01.2018 was a forged letter. The counsel for the respondent argues that despite the restraint order, the resolution dated 02.12.2016 came to be passed solely on the strength of a forged and fabricated letter dated. The said resolution was also signed by the applicant as is evident from the perusal of SCA-5.
10. She argues that these facts were not brought to the notice of the court when the Bail was granted to Nikhil Maurya as such the claim of Bail on grounds of parity merits rejection.
11. This Court vide order dated 06.12.2021, had observed that huge scandals are going on in the Co-operative Housing Societies across the State of U.P. and despite there being ample powers under the U.P. Co-operative Housing Societies Act, no adequate steps are being taken and instructions were called from the Commissioner to indicate what steps are being taken to remedy the malaise.

12. In terms of the said order, the Joint Registrar/ Joint Housing Commissioner, Sri Vinod Kumar Patel is present in Court, a pointed query was raised to the Counsel for the Awas Vikas Parishad as to what steps were taken in respect of the alleged forgery committed in the letter of the Awas Vikas Parishad as appears from the Letter No.5802 dated 09.02.2018, the Counsel informs that steps were taken by writing a letter the Senior Superintendent of Police for registering of an FIR on two occasions, however as subsequently the FIR in question was registered, no further steps were taken.
13. It is further on record that on 23.01.2018 in respect of the society in question, an Interim Committee of Management was created by virtue of the powers exercised under Section 29(4-B) of the U.P. Co-operative Societies Act, 1965, no elections have been held thereafter.
14. It is also brought on record that a dispute with regard to the election is going on before this Court in Writ Petition No.17088 (MB) of 2017 wherein an interim order has been passed restraining the holding of elections vide order dated 21.07.2017 and in pursuance of the said order, the elections have not been held.
15. From the facts that emerge are that admittedly the property which has been leased out was earmarked and used for Park in the Society. Admittedly on record a restraint order was passed by the U.P. Avas Vikas Parishad on 23.07.2015 restraining to sell, no order modifying the order dated 23.07.2015 had been passed. An interim committee of management was constituted on 23.01.2018.

16. At this stage, the Counsel for the applicant informs that although the restraint order dated 23.07.2015 has not been withdrawn as yet but a further a sale deed with regard to one property being Plot No.12-A of the Society was executed by means of a sale deed in favour of accused no.4.
17. The resolution for giving the property on lease was passed despite there being stay order to which the Counsel for the applicant argues that the restraint order was with regard to sale of the property in question whereas only a lease deed has been executed, the Counsel for the respondent argues that huge piece of land admeasuring area 30,000 sq. feet has been given on lease which is situated in the heart of the city, for a paltry sum of Rs.30,000/- per year for a period of 33 years expendable upto 99 years which is as good as a sale and thus is against the spirit of the restraint order dated 23.07.2015. She argues that undisputedly the society has been deprived of its valuable assets in the heart of the city by the execution of the lease deed and subsequent sale deed, she argues that these two instances of misappropriation are known to the informant and there may be many such instances which can come to surface if proper enquiry is directed to be conducted.
18. This Court had observed in the order dated 06.01.2021 that day in and day out cases with regard to the mismanagement /misappropriation and harassment by the Co-operative Housing Society are coming before the Court and prima facie the U.P. Awas Vikas Parishad, which is an apex body looking after the affairs of the societies in the State of U.P., it appears, has not taken adequate steps which are required for management of the Society, as a result whereof, the Societies are running rudderless.

19. Co-operative movement in India had started and got strengthened with advent of time, the whole movement had an underlying laudible objective of cooperative development and freedom at local level but with passage of time and huge rise in real estate prices across the state the whole cooperative movement particularly in respect of the housing societies owning huge chunks of lands have been taken over by unscrupulous and anti social elements for their personal gains. The modus operandi of these persons is also very common and not very hard to decipher, most of the original members of the initially created society have either died or lost interest in the affairs as a result whereof new members, at times who are not even eligible, are added to gain majority stake in the society, the elections are either not held or are rigged and are decided by the majority created by the henchmen of such persons, such societies then work in an opaque manner and there is no accountability or system of checks and balances. The extent of misappropriation can not even be imagined.
20. From the present case also, it is evident that the Committee of Management is continuing without there being any interim management /fresh elections which was required to be done either by the Registrar or by the Avas Vikas Parishad. The plea taken by the Avas Vikas that on account of restraint order restraining the holding of election, no steps have been taken thereafter does not merit acceptance as the court has restrained the election to be held but did not restrain for making of interim arrangements. The result is very clearly evident that despite there being not in power, a lease deed and a sale deed have been executed in favour of the accused no.4 as stated by the counsel for the applicant despite the term coming to an end.

21. The whole story as narrated above is very sorry state of affairs of the State of U.P. the poor plot holders, the society members are being harassed and the State as of now has not developed any mechanism to discharge its duties which are required to protect the small and voiceless members/ plot owners who are at the mercy of the anti social elements who have unscrupulously taken control over the housing societies. This Court in discharge of its constitutional duties cannot turn a blind eye to the huge problems and illegalities of humongous proportions as highlighted above.

22. In the light thereof, while considering the facts and circumstances of the case, the Court deems it appropriate to issue the following directions to the State:

(I) The State shall ensure the audit of account of all the Cooperative Housing Societies of the State of U.P. as required under Section 64 on yearly basis without fail. The State shall separately get the Audit of the lands owned by the Co-operative Societies to decipher whether any lands/ properties owned by the Society have been misappropriated.

(II) The yearly Audit reports as directed above with regard to all the Cooperative Housing Societies shall be furnished in accordance with law to an Apex body at State Level.

(III) Wherever any discrepancies with regard to the unauthorized sales/ unauthorized withdrawal from the account of the Societies are noticed, an FIR in question shall be lodged and steps shall be taken for recovery the loss caused to the Co-operative Housing Societies., if

there is any need, the Investigating Agency/State/Authorised person shall be free to take the help of Enforcement Directorate for recovering the 'proceeds of crime' if found to have been transferred or misappropriated either by any of its office bearers/members of the Co-operative Housing Society throughout the State of U.P.

(IV) The State Government shall issue necessary directions for holding of the elections in accordance with law after giving wide publicity for all the Co-operative Housing Societies except the cases where any restraint orders have been passed by any competent court of law.

(V) If any assets have been misappropriated, needless to say that appropriate steps shall be taken for taking back the said assets.

(VI) The State Government shall also take into consideration while deciding the holding of the election as directed above to ensure that no fictitious members were added to the Co-operative Housing Societies in an unauthorized manner/contrary to bylaws of society or any statute/rules.

(VII) An action taking report as directed above shall be filed before this Court within a period of three months from today positively on or before 28th February, 2022. The report shall be presented before this court in a sealed covered.

(VIII) Any attempt to subvert/disobey the directions as given above shall be viewed very seriously by this Court

and the responsibility of the Officer not obeying the directions of this Court shall be fixed.

23. As regards the bail application, the same shall be considered after a period of three months.
24. List on 28th, February, 2022.
25. At this stage, the Counsel for the applicant argues that the accused is suffering from very serious kidney ailments and requires medical treatment.
26. The Jail Superintendent/ Jail Authorities are directed to provide medical treatment to the applicant as per law from SGPGI, Lucknow.

Order Date :-08.12.2021

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(Pankaj Bhatia,J)