

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.985 OF 2016

Jairam S/o Nathu Salunke

....Appellant

Versus

State of Maharashtra & Anr.

.... Respondents

J U D G M E N T

Uday U. Lalit, J.

1. This appeal arising from S.L.P (Crl.) No.8553 of 2015 challenges the Judgment and Order dated 30.03.2015 passed by the High Court of Bombay at Aurangabad in Criminal Application No.1358 of 2012. Said Criminal Application was filed for quashing of FIR of Crime No.264 of 2011 and the consequential charge-sheet leading to the registration of RCC No.1100 of 2012 in the Court of Judicial Magistrate, First Class, Aurangabad.

2. Crime No.264 of 2011 was registered with City Chowk Police Station, Aurangabad pursuant to FIR registered on 20.09.2011 at the instance of Purushottam Kulkarni, Assistant Director, Town Planning, Municipal Corporation, Aurangabad. It was alleged that four accused namely Jairam Salunke- the appellant, Sitaram Shankar Gaikwad, Suresh C. Kapale, the then Special Land Acquisition Officer, Aurangabad and A.F. Ansari, the then Director Planning, Office of Land Acquisition, Aurangabad had entered into a conspiracy, pursuant to which fabricated documents were created and in land acquisition proceedings concerning land bearing City Survey No. 20722, situated within the limits of Aurangabad Corporation, compensation to the tune of Rs.23.48 lacs was received by the appellant without there being any entitlement. After due investigation, charge-sheet was filed on 29.06.2012 against aforementioned four accused for the offences punishable under Sections 406, 409 read with Section 120(B) of IPC.

The basic allegations in the charge sheet were:-

“ It was found in investigation that the accused did not properly verify the documents pertaining to land bearing No. 20722, during the land acquisition proceedings and without calling for search report and relying upon the fabricated documents submitted by accused No. 1 and in conspiracy with each other caused loss to the Corporation

to the tune of Rs. 2348993/- by taking compensation of the said amount and thereby cheated the corporation.”

3. Soon thereafter Criminal Application Nos.1358 of 2012 and 1361 of 2012 were filed by the appellant and said Suresh C. Kapale, the then Special Land Acquisition Officer respectively. It was principally submitted that :-

a. Regular Civil Suit No.81 of 1993 was filed by Shanti Gunwani and six others against Vishwanath Nikalje for injunction, contending that the plaintiffs had purchased eight residential plots from one Onkargiri Gosavi, admeasuring about 6249 sq.m which land was part of CTS No.20722, Aurangabad.

b. In June 1995, there was a compromise between the parties whereunder the defendant accepted the ownership of the plaintiffs. The compromise deed also made reference to the fact that from and out of land purchased by said Shanti Gunwani and six others, a portion admeasuring 50000 sq. feet was made over by them in

favour of Karbhari Gaikwad, Prakash Nannaware and Dilip Bhalerao ('three persons', for short).

- c. The appellant had taken on lease for a period of 99 years that plot of land from said three persons.
- d. In the circumstances, the appellant was entitled to and was rightly granted compensation in respect of the land by accused Suresh C. Kapale, the then Special Land Acquisition Officer.

With these assertions, it was contended that the transaction in question was purely of civil nature; that the appellant was entitled to and rightly granted compensation and as such case for quashing under Section 482 Cr. P.C. was made out.

- 4. Both these applications were heard together by the High Court and dismissed by its judgment and Order dated 30.03.2015. The contentions were considered in the light of the record by the High Court as under:-

“The aforesaid record shows that Onkargiri Gosavi, predecessor of the plaintiffs of RCS No.81/1993 was not title holder and so there was no question of passing of the tile to the plaintiff, Gunwani and others. No sale-deed was executed by Gunwani

and other plaintiffs in favour of the three persons like Karbhari, Prakash Nannaware and Dilip Bhalerao. On the basis of some mention in the settlement document filed in the aforesaid suit, the title could not have been passed in favour of these three persons. Thus no weight could have been given to the so called lease document executed by these three persons in favour of Salunke. Further in the lease document also it was not mentioned that rent of 99 years was given by Salunke to these three persons. All these circumstances can be used to draw inference against Salunke. The old CTS record shows that initially Nawab of Hyderabad was shown as owner and thereafter name of Onkargiri Gosavi was entered. There is no document of title with Onkargiri Gosavi and there is nothing to hold that, title was passed to Onkargiri Gosavi. These circumstances cannot be ignored but the Land Acquisition Officer has ignored these circumstances. The revenue record or the CTS record can never confer title and there was no document of title with Salunke. In spite of these circumstances, the final award was made in his favour.

5. The appellant as well as said Suresh C. Kapale filed a joint petition namely S.L.P. (Crl.) Nos.8553-8554 of 2015 challenging the aforesaid judgment and order of the High Court, in which notice was issued by this Court on 01.10.2015. During the pendency of the matter, said Suresh C. Kapale died, as a result of which the petition qua him namely S.L.P. (Crl.) No.8554 of 2015 was dismissed as abated vide Order dated 09.09.2016.
6. Mr. Manish Pitale, learned Advocate appearing for the appellant submitted that at the initial stage the matter was looked into by the Assistant Commissioner of Police who had opined that the dispute

was purely of civil nature and yet the crime was registered. It was further submitted that the allegations that the land in the question did not belong to the appellant could only be resolved by the Civil Court and as such the case was fit for exercise of jurisdiction under Section 482 Cr. P.C.

7. We have gone through the record and considered rival submissions.

The High Court found three infirmities namely that Onkargiri, predecessor of the plaintiffs in Regular Civil Suit No.81 of 1993 did not have any title; that no sale deed was executed by the plaintiffs in favour of said three persons; and that the document of lease stated to be in favour of the appellant did not mention any rent at all. In the face of these observations it cannot be said that the dispute in question was purely of civil nature. If on the basis of false and fraudulent documents a claim is made which leads to award of compensation in land acquisition matter, the interest of the State is certainly compromised or adversely affected. The matter cannot then be termed as a civil dispute simpliciter. The crime was therefore rightly registered.

8. Affirming the view taken by the High Court, we do not find any reason to quash the criminal proceedings. The appellant is certainly

entitled to present his view on merits which will be gone into and considered by the concerned Court at the appropriate stage. We thus find no merit in the matter and dismiss the present appeal.

.....J.
(Dipak Misra)

.....J.
(Uday Umesh Lalit)

New Delhi
January 3, 2017



JUDGMENT