

IN THE COURT OF THE ADDL. SESSIONS JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,
Addl. Sessions Judge, Bhubaneswar.

Crl. Revision No. 3/20 of 2014

(Arising out of order dtd. 3.5.14 in Crl. Rev. No. 3/20 of 14
passed by this Court)

1. Tirupati Panigrahi, S/o: Purusottam Panigrahi
Main Road, Paralakhemundi, Dist: Gajapati, Odisha
A/p: Block No.2, No.1A, 1st Floor, Bhavani Enclave
Near Maharsi College, Sahid Nagar, Bhubaneswar
2. Tirupati Choudhury, S/o: Kunja Bihari Choudhury
resident of : Chinabaratam Street, Srikakulam
Andhra Pradesh, A/p: Shree Niloy, Plot No. 116
Sahid Nagar, Bhubaneswar
3. Madhusudan Panigrahi, S/o: Late Souri Panigrahi
of Sriram Nagar, Pandara Street, Berhampur
Dist: Ganjam, A/p: Shree Niloy, Plot No. A/116
Sahid Nagar, Bhubaneswar

... Petitioners

Vrs.

State of Odisha, represented through Superintendent of Police
(CID & CB), Economic Offence Wing, At: D/128,
Museum Area, Behind Kalpana Square, Bhubaneswar
Dist: Khurda

... Opp. Party

Advocate for the petitioners:- Sri M.K. Mohapatra & Associates
Advocate for the Opp. Party- Sri C.R. Kanungo & Associates

Date of argument- Dt.09.07.14

Date of Order- Dt.16.07.14

ORDER

This order arises on the strength of the order of Hon'ble High Court of Orissa in CRLMC No. 2598/14 vide order dtd. 24.6.14 in connection to this Criminal Revision arising out of Crl. Misc. Case No. 76/14 disposed of by learned SDJM, Bhubaneswar corresponding to EOW PS case No. 2/13 which has been

disposed of by this Court by rejecting the prayer of the petitioners vide order dtd. 3.5.14.

2. Being aggrieved with the order passed by this Court rejecting the prayer of the petitioners permitting them to sale or transfer any flat/apartment vide order Dtd. 3.5.14, the petitioners moved Hon'ble High Court of Orissa, Cuttack in CRLMC 2598/14 u/s 482 Cr.P.C and Hon'ble Court vide order dtd. 24.6.14 while disposing of the case held as follows:

“Considering the limited nature of grievance, the petitioners are permitted to file fresh application for sale/transfer of the flats in question, accompanied by the requisites title deeds and other necessary documents, in support of their claim of right, title and interest over the said flats, which shall be considering by the learned Court below on its own merit and in accordance with law.

If the petitioners file such an application before the learned Court below within one week hence, the same shall be considered and disposed of as expeditiously as possible, preferably within a period of three weeks thereafter.”

In compliance to the order of Hon'ble Court, the petitioners filed a separate petition on 30.6.14 alongwith bunch of papers regarding title of petitioners over the land in question whereupon the flats, apartments have been constructed and proposed to be transferred in favour of the customers who have paid part consideration for occupation of the flats. The Record of Right published in the name of the petitioner disclose that the land purchased have been conversed to the category of “homestead”, approved lay out plan of the flats by the competent authority, tripartite agreement between the petitioners, customers and the financier are also filed alongwith list of customers who are to be provided with the flats. Previously, Hon'ble Supreme Court of India in the petition for Special Leave to Appeal (Crl.) Nos. 6749-6751, 6961-6963, 6942-6944, 6983-6985 and 6986-6988 of 2013 and Crl. Misc. Petition Nos. 17148-17150, 17687-17689, 17645-17647, 17728-17730 and 17738-17740 of 2013, while hearing the petitioners directed

this Court to consider regarding permission to effect sale of flats in projects of Hi-Tech Plaza, Kalyan Plaza Annex, Hi-Tech Plaza Annex and Hi-Tech Heaven regarding transfer of flats to the customers. The previous petition was rejected by this Court on the ground that papers relating to the title of the land and the flats standing thereupon were not filed before this Court for perusal. That apart, it was also objected by EOW, the prosecuting agency that taking into consideration the nature of the offences alleged against the petitioner. Hon'ble High Court of Orissa directed to fridge the bank account of the petitioners and furthermore, Sub-Registrar, Jatni had been restrained by the Government to execute any registered sale or transfer deed by the petitioner's company. The matter is sub judice before the Hon'ble Court vide WP (C) No. 17556/13. The Hon'ble Court in CRLMC No. 2598/14 directed this Court to consider the petition and to dispose of within a period of three weeks.

3. Learned counsel appearing on behalf of the petitioners has argued that in view of direction of Hon'ble Apex Court of India, this Court is directed to dispose of the matter on consideration of the documents filed by the petitioners. On perusal of the lay out plan and approval order of competent authority, it appears the apartments namely, Kalyan Plaza Annex, Hi-Tech Heaven and Hi-Tech Plaza are owned by Hi-Tech Estate and Promoters Pvt. Ltd. Petitioner No.1 is the Managing Director of the said company. Hi-Tech Plaza Annex is owned by Rajdhani Systems and Estates Pvt Ltd wherein the petitioner Tirupati Panigrahi is also the Managing Director. On further scrutiny of documents filed by the petitioners, it appears Kalyan Plaza Annex is constructed over an area of Ac.2.757 dec at Mouza Kuha and Kantilo under Jatni block. The Proposed plan has been approved by BDO and Jr. Engineer of Jatni which has been communicated to the petitioners vide letter No. 3255 dtd. 5.12.09 and letter No. 1557 dtd. 15.5.2010. Similarly, Hi-Tech Plaza is constructed at Mouza Madhipur over an area of Ac.9.060 dec and the lay out plan of the flats have been approved by BDO and Jr. Engineer, Jatni. Hi-Tech Heaven is situated at Matiapara and the lay out plan has been approved by BDO, Pipili. Hi-Tech Plaza Annex is situated at Mouza Kantilo over an area of Ac.3.363 dec and BDO, Jatni approved the lay out plan of the flats

with intimation to the petitioners. Learned counsel for the petitioners has argued that the petitioners are dealing with estate business and are supplying residential house constructing flats in the periphery area of Capital city, Bhubaneswar. They have collected funds from the intending purchasers and also borrowed huge amount from the banks to complete the projects. The customers have also paid installment by borrowing the amount from different banks, but the flats having been completed in all respect have not been transferred to the customers for which there is multiplicity of litigations against the petitioners and furthermore, the petitioners and his customers are paying huge interest to the loanee bank. There is also no possibility of any cheating or mischief as the flats in question will be supplied to the customers as per their previous agreement with the company. It is further submitted that there is no misrepresentation of fact regarding genuineness of ownership of the flats in favour of the petitioners as the title of the land has been tested by the banks wherefrom the petitioners collected fund for construction of the building. Again, during tripartite agreement between the company, customer and his bank, the title has been scrutinized by the banker of the customer when advancing loan and the flat in question will be mortgaged in the bank till repayment of the loan by the customer as per their loan agreement. Again, during approval of the lay out plan, the competent authority has also verified the ownership of the petitioners. Therefore, there is no doubt regarding any fraud or cheating by the petitioners to the public. The petitioners during their course of business have purchased the land from different persons and made conversion of the land and mutated it in favour of the company which has been reflected in the ROR filed in the Court. It is submitted that investigation of all the cases have been completed in the meantime and all the original documents seized by the prosecuting agency is likely to be returned to the petitioners very soon.

4. Learned prosecuting lawyer appearing from the side of EOW raised a faint objection that in some cases there is mis-match of plot numbers as per the order of approval in lay out plan and the documents filed by the petitioners. During the course of hearing, the petitioners filed some other RORs to substantiate the objection raised by the prosecution.

5. After going through the documents filed by the petitioners and after hearing from both the sides, it appears that the petitioners have purchased the land in question and constructed flats thereupon with approval of the competent authority. They have also mutated the land in the name of their company and make conversion of the land to the status of "Gharabari". As the plan is approved by the Government, it appears the flats are constructed within the norms of Orissa Apartment Ownership Act, 1982. Taking into consideration the above facts, the petitioners are permitted to effect the sale of flats in projects of Hi-Tech Plaza, Kalyan Plaza Annex, Hi-Tech Plaza Annex and Hi-Tech Heaven. The petitioners are further directed to transfer only the flats approved by the competent authority and any flat if unauthorisedly constructed deviating the approved plan shall not be alienated in any manner to the customers. Accordingly, the petition is disposed of.

Pronounced in the open Court today this the 16th day of July, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, Bhubaneswar

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