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CRR-650-649-2021 (O&M)
BHUPINDER SINGH HOODA VS CENTRAL BUREAU OF
INVESTIGATION

Present:- Mr. Kapil Sibal, Sr. Advocate
with Mr. Pradeep Poonia, Advocate
Mr. Adit Pujari, Advocate
and Mr. A.S. Cheema, Advocate
for the petitioner (in CRR-650-2021)

Mr. R.S. Cheema, Sr. Advocate
with Ms. Tarannum Cheema, Advocate
and Ms. Sumanjit Kaur, Advocate
for the petitioner (in CRR-649-2021)

Prayer in these revision petitions is for setting-aside the impugned order dated 16.04.2021 passed by the Judge, Special Court, CBI, Panchkula, in FIR No.RC CHG 2017 A0008 dated 05.04.2017 registered under Sections 120-B and 420 of the Indian Penal Code, 1860 (in short 'IPC'), Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, at Police Station ACB, CBI, Chandigarh (Annexure P-1) vide which while dismissing the application for discharge, charges have been framed against both the petitioners and with a further prayer to acquit them of the charges. It is also prayed that during the pendency of the present revision petitions, proceedings before the Judge, Special Court, CBI, Panchkula, be stayed.

Since the facts are common in both the cases and some of the arguments have been jointly addressed, the arguments of both the learned senior counsels as submitted by them, are recorded jointly.

Brief facts of the case are that the petitioner – M/s.

Associate Journals Limited (hereinafter to be referred to as 'A.J.L.' through its Managing Director sent a request letter dated 22.06.1981 to Sh. Bhajan Lal, the then Chief Minister of Haryana for allotting land to the company for establishment of an office of National Herald and Publication of Hindi Newspaper Navjivan. A plot measuring 3360 sq. mts. was allotted to AJL, Panchkula on the basis of 'No Profit No Loss' @ Rs.91 per sq. mts. The plot was allotted by Haryana Urban Development Authority (in short 'HUDA') and its possession was delivered to AJL on 30.08.1982. Later, on 30.10.1992, the plot was resumed by the Estate Officer, HUDA, in exercise of powers under Section 17(4) of the Haryana Urban Development Authority Act, 1977 on the ground that AJL has failed to carry out the construction within the stipulated time as per the terms and conditions of the letter of allotment and an amount of Rs.27300/- was forfeited whereas the balance amount of Rs.1,55,662/- was refunded to AJL through a cheque, which was never encashed by the petitioner – AJL and therefore, the entire allotment amount of the plot remain deposited with HUDA.

The petitioner – AJL, thereafter, preferred an appeal before the Chief Administrator, HUDA under Section 17(6) of the HUDA Act, which was dismissed by the Chief Administrator vide order dated 26.07.1995 under Section 17(7) of the HUDA Act. Thereafter, AJL filed a revision. Since, there was no provision of filing a revision under the HUDA Act, the same was treated as an appeal by the Commissioner and Secretary to Government of Haryana, Town and Country Planning

Department and was decided as an appeal on 10.10.1996. The operative part of the said order, reads as under:-

“I have head both the parties and gone through the facts of the case and the record as well. It is admitted fact that the plot in question was allotted to the appellant longback in the year 1982. The appellant could not construct the plot in question due to financial crisis. Even in the appeal it has not been mentioned that in how much time and as to when the financial crisis of the Firm will be over. Moreover, the Firm has accepted the refunded amount of Rs.155,662/- made by HUDA. The Firm could not establish any ground for non-construction of the plot so I am satisfied that the order of the Administrator, HUDA, Panchkula, does not suffer from any illegality and the same is hereby confirmed. The 'appeal' is dismissed.

The order is announced on 10.10.96.”

Later on, the Chairman of AJL made few representations to Sh. Bansi Lal, the then Chief Minister for restoration of the plot and vide 02 D.O. letters dated 15.04.1998 and 16.04.1999, AJL was informed the circumstances under which the allotment was cancelled by the Estate Officer and even the appeals were dismissed. These letters were in nature of communication to the petitioner – AJL.

In the meantime, the HUDA Act, 1977, was amended on 17.03.2004 vide Act No.11 of 2004 and Sub-section (8) to Section 17 was inserted, which provided that an aggrieved person can prefer a revision to the Secretary to Government of Haryana, Town and Country Planning Department. Proviso to Sub-section (8) empowered the Revisional Authority to entertain the revision petition even after expiry

of period of limitation if the Revisional Authority would satisfy that aggrieved person was prevented by sufficient cause from filing the revision petition in time.

Emphasis is made to note that under Section 30 of the HUDA Act, the State Government has control over the authority which shall carry out the directions issued to it from time to time and under Section 30(2) it is provided that the State Government may at any time either on its own motion or on application made to it, can call for the record of any case disposed of or order passed by the authority for the purpose of satisfying itself as to legality or propriety or correctness of any order passed or direction issued and may pass any order or direction as it think fits.

After the 2004 amendment, vide which Sub-Section (8) to Section 17 of the HUDA Act was incorporated, the Chairman of AJL again wrote a letter dated 07.04.2005 to the petitioner – Bhupinder Singh Hooda, who was the then Chief Minister of Haryana with a request to restore the plot and thereafter, gave another reminder on 29.06.2005.

A recommendation was made by the petitioner – Bhupinder Singh Hooda that the plot be restored to AJL at original price along with interest due upto the date of restoration of allotment and a condition was put that the same should be subject to the condition that the AJL will start the construction in 06 months and complete the same within 02 years, thereafter. The recommendation of the petitioner – Bhupinder Singh Hooda, dated 28.08.2005 was placed before the

HUDA Authority i.e. the competent authority in its 97th meeting.

The meeting was attended by the following persons:-

- “1. *Sh. Prem Prashant, IAS,* *Vice Chairman*
Chief Secretary to Govt. Haryana.
2. *Sh. M.L. Tayal, IAS,* *Member*
Principal Secretary to Chief Minister,
Haryana.
3. *Sh. Bhaskar Chatterjee, IAS,* *Member*
Financial Commissioner & Principal Secretary
to Govt. Haryana, Finance Department.
4. *Sh. R.N. Prasher, IAS,* *Member*
Financial Commissioner & Principal Secretary
to Govt. Haryana, Power Department.
5. *Sh. N. Bala Bhaskar, IAS,* *Member*
Financial Commissioner & Principal Secretary
to Govt. Haryana, Urban Development Department.
6. *Smt. Shakuntla Jakhu, IAS,* *Member*
Financial Commissioner & Principal Secretary
to Govt. Haryana, Town & Country Planning Department.
7. *Sh. S.S. Dhillon, IAS,* *Member*
Chief Administrator, HUDA
and
Director, Town & Country Planning and
Urban Estates Departments, Haryana.
8. *Sh. R.R. Sheoran,* *Member*
Engineer-in-Chief,
PWD B&R Department, Haryana
9. *Sh. S.K. Khanna,* *Member*
Engineer-in-Chief,
PWD, Public Health Department, Haryana.”

The petitioner – Bhupinder Singh Hooda in the capacity of Chief Minister/Chairman and being the Minister of Town and Country Planning Department also attended the meeting.

It is argued that after recommendation in favour of the

petitioner – AJL till the time, the same was placed before the meeting of HUDA Authority, there were certain objections which were raised by some of the functionaries including the LR, Financial Commissioner & Principal Secretary to Government of Haryana, Town & Country Planning Department as well as the Chief Administrator, HUDA. The objections were to the effect that the plot may be re-allotted either on the market price or by way of advertising and allowing AJL to participate in the same. However, when the meeting took place, both the Financial Commissioner & Principal Secretary to Government of Haryana, Town & Country Planning Department as well as the Chief Administrator, HUDA, did not place any such objection on Item No.5 regarding restoration of the plot to the petitioner – AJL.

Before the case of the petitioner – AJL was put up before the authority, an office note was recorded in which it was noticed that the L.R., Haryana and Financial Commissioner & Principal Secretary to Government of Haryana, Town & Country Planning Department have raised an objection that since the revision petition was dismissed on 10.10.1996, there is no occasion for restoration of plot as per the recommendation of the petitioner – Bhupinder Singh Hooda.

However, in the proceedings, the request of AJL for restoration of the allotment of institution plot C-17, Sector 6 of Urban Estate, Panchkula, was approved by the 'Authority' without there being any objection raised by any of the member as noticed above.

The petitioner – AJL remained in continuous possession of this plot since 1981 and at no point of time, even during the period of

10 years when the plot was cancelled by the Estate Officer/appeal dismissed, no action was taken by HUDA for re-possessing the plot and as such, till 2016, the possession was 35 years old.

After the revival of the allotment, the petitioner – AJL completed the construction and started its business. It is the case of the petitioner – AJL that since 1981, neither any proceedings for taking the possession were initiated by HUDA nor at any subsequent stage, the order of restoration was challenged by HUDA before the competent Court of law and therefore, the liability, if any, was purely of civil nature as it is a case of allotment/cancellation of allotment and then restoration of allotment, which was done by the HUDA Authority in exercise of its powers.

The State of Haryana registered an FIR No.3 dated 05.05.2016 under Sections 409, 420, 120-B IPC and Section 13 of the Prevention of Corruption Act, 1988, at Police Station Vigilance Bureau, Panchkula, alleging illegality and irregularity in the re-allotment of the institutional plot to AJL. Later on, the Government transferred the investigation to CBI and the present FIR No.RC CHG 2017 A0008 was registered. Initially, the case was registered against the then Chief Administrator, HUDA as well as Administrator and Chairman, HUDA, the then Financial Commissioner, Town and Country Planning Department and M/s. Associate Journals Limited.

The facts as noticed in the CBI's FIR are identical, however regarding commission of offence, it is stated in the FIR that in view of the opinion of the L.R. that the plot cannot be re-allotted as the

appellate/revisonal order has attained finality and it should be allotted at the current market rates as well as in view of the fact that the Chief Administrator, HUDA and the Financial Commissioner, Town and Country Planning Department, had proposed that an advertisement be floated for re-allotment of the plot by inviting applications wherein the petitioner – AJL can also apply, the action of the Chairman, HUDA in re-allotting the plot to AJL at old rates applicable in the year 1982 was in conspiracy with each other as the period of construction as per the terms and conditions of the letter of allotment has already lapsed. It is also concluded in the investigation that the accused i.e. the petitioner – Bhupinder Singh Hooda, Sh. Moti Lal Vohra (since deceased) and the petitioner – AJL, in conspiracy with each other have misused the official position in re-allotment of the plot and thereby causing wrongful loss to State Exchequer and wrongful gain to the petitioner – AJL. The CBI in its charge-sheet submitted under Section 173 Cr.P.C. has relied upon the voluminous documents in support of its case, reference on some of the documents is also made by the petitioner, when the arguments were made at the stage of discharge/framing of charge before the Judge, Special Court, CBI, Panchkula.

Learned senior counsels for the petitioners have further submitted that the trial Court though, noticed the various arguments raised on behalf of both the petitioners, however, has brushed aside all the arguments on the ground that at the stage of framing of charges, only *prima facie* allegation is to be seen and not the documentary evidence. The common argument made by learned senior counsels for

the petitioner(s) is that the trial Court has not even looked into the documents which are part of the challan submitted by the CBI and relied upon by the petitioners to prove their innocence and therefore, the impugned order is based on non-application of judicial mind.

Learned senior counsels for the petitioner(s) have submitted that in nutshell, the following grounds of discharge, were made before the trial Court:-

i) The recommendation for restoration dated 28.08.2005 was made in an open and transparent manner as the comments of all the concerned department were sought on the representation made by the petitioner – AJL dated 07.04.2005/29.06.2005; and the recommendation dated 28.08.2005 were placed before a high statutory authority i.e. the HUDA authority for approval and consideration of the recommendation. It is undisputed that the HUDA Authority has power to take action with regard to disposal of the land or building as per Section 15 of the HUDA Act, 1977, which empowers the Authority as defined under the Act can dispose of the land; the authority by a full majority as per Section 7 of the Act has taken a decision in its meeting to approve the recommendation dated 28.08.2005.

ii) The objection raised by the Chief Administrator, HUDA or the Financial Commissioner, Town and Country Planning Department, who were also signatory to this meeting stood over-ruled.

iii) That even during the investigation, when the investigating agency recorded the statement of Smt. Shakuntla Jakhu, the then, Financial Commissioner & Principal Secretary to Govt.

Haryana, Town & Country Planning Department and Sh. S.S. Dhillon, the then, Chief Administrator, HUDA and Director, Town & Country Planning and Urban Estates Departments, Haryana, under Section 161 Cr.P.C., they made a contrary statement to the documentary record relied upon by the CBI itself in the charge-sheet wherein both of them have given in writing by way of a communication to the Chief Secretary to Government of Haryana on 12.08.2016 and 11.08.2016, respectively, that the decision of restoration of allotment was taken in the 97th meeting by ratifying the recommendation of the Chief Minister dated 29.08.2005, to restore the plot and therefore, the contradictory pleas taken by these 02 officials, are not admissible as per Section 91 and 92 of the Indian Evidence Act.

iv) That when a representation was made by the petitioner – AJL, in the office of the Chief Minister on 06.12.1995, a noting was recorded to seek opinion of L.R., HUDA on 11.12.1995 and as the Chief Administrator, HUDA, could entertain a statutory revision under Section 17(7) of the Act, the same was wrongly sent/forwarded to the concerned authority under Section 13(2) of the Act, who was not having jurisdiction and therefore, the order dated 10.10.1996 passed by the Secretary, Town and Country Planning Department, treating the representation as an appeal was not binding on the Government as per the provisions of Section 13(2) of the Act.

v) That the initial allotment was made on the basis of 'No Profit No Loss' and the entire price of the plot was deposited by AJL and despite the fact that while the allotment was cancelled by the Estate

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Officer, HUDA, the cheque of Rs.1,55,662/- was never encashed by AJL and therefore, the total price of the plot throughout remained with HUDA and thus, no loss was caused to HUDA.

Learned senior counsels for the petitioner(s), while challenging the impugned order, have submitted that the offence under Section 13(1)(d) stands deleted in view of the amendment in the Prevention of Corruption Act, 1998 through the Prevention of Corruption (Amendment) Act, 2018, which came into force in the year 2018 and therefore, the charge-sheet prepared on 30.11.2018, could not be filed under Section 13(1)(d) of the Act in view of the amendment.

It is further argued that no offence under Section 13(1)(d) (ii) is made out as there is nothing on record to show that the petitioner – Bhupinder Singh Hooda has abused his position being a public servant. Learned senior counsels for the petitioner(s) have further submitted that in support of their arguments, some judgments of the Hon'ble Supreme Court were also referred to wherein it is held that the word 'abuse' indicated that the accused is harbouring a dishonest intention and mere an error of judgment or erroneous exercise of jurisdiction do not automatically constitute an offence under the Prevention of Corruption Act.

It is further argued by learned senior counsels that the charge under Section 420 of IPC is not sustainable as there is nothing on record to show that the petitioners have caused wrongful loss to the State Exchequer or wrongful gain to AJL. It is further argued that in order to show *prima facie* offence of cheating, it must fall within the

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mischief of cheating as defined in Section 415 of IPC and from the bare perusal of the charge-sheet, neither the first nor the second part of Section 415 IPC is attracted. It is also submitted that one of the allegation in the CBI charge-sheet is that the restoration of the plot was subject to publication in a newspaper, however, the same was not done. Since the recommendation dated 28.08.2005, was duly approved in the meeting of HUDA authority, there was no occasion to follow the objections raised either by Smt. Shakuntla Jakhu, the then, Financial Commissioner & Principal Secretary to Govt. Haryana, Town & Country Planning Department and Sh. S.S. Dhillon, the then, Chief Administrator, HUDA, who themselves being the members of the meeting had approved the recommendation and therefore, their objections stood over-ruled.

It is also argued that the trial Court has wrongly relied upon the statement of Sh. S.S. Dhillon, the then, Chief Administrator, HUDA and Smt. Shakuntla Jakhu, the then, Financial Commissioner & Principal Secretary to Govt. Haryana, Town & Country Planning Department, who have made a self-contradictory statement under Section 161 Cr.P.C. as well as the explanation given to the Chief Secretary, after registration of the FIR by the State Government.

It is further submitted that another objection that the restoration of the allotment of plot was made by not adhering to the market price do not prove any '*mens rea*' on the petitioner as the market price as assessed at the time of allotment of plot throughout remained with HUDA and was never returned back in pursuance to the

cancellation of allotment. It is also argued that since AJL throughout remained in possession of the plot for 35 years till registration of FIR and no effort was made by HUDA at any level either to seek the possession of the plot back or subsequent to restoration of allotment, this order was ever challenged for a considerable period of 10 years before any competent Court of law, reflects that the HUDA had accepted the proceedings of the meeting of HUDA Authority approving the restoration of the plot.

It is also argued that the AJL in compliance of the restoration of the allotment of plot has also paid interest to the HUDA and the same was accepted without raising any objection much less challenging this restoration order before any Court.

Learned senior counsels for the petitioner(s) have also submitted that no offence under Section 120-B IPC is made out as there is no allegation of conspiracy even *prima facie* as per the FIR or the charge-sheet. It is further submitted that while framing the charge, there is not even a reference to any document as to how the conspiracy between the accused persons is made out.

Learned senior counsels for the petitioner(s) have further argued that even the charge under Section 13(1)(d)(ii) read with Section 13(1)(2)(iii) of the Prevention of Corruption Act, is not made out as it is held by the Hon'ble Supreme Court "***C.K. Jaffar Sharief vs State (through CBI)***", 2013(1) SCC 2, that mere error of judgment or transgression of departmental norms, would not '*ipso facto*' establish dishonest intention. It is also submitted that the Judge, Special Court,

CBI, Panchkula, has not dealt with this aspect of the case.

Learned senior counsels for the petitioner(s) have further submitted that in order to frame the charge under Sections 13(1)(d)(ii) and 13(1)(d) of the Prevention of Corruption Act, the Court has to assign specific reason as to how the offence is made out and the same is missing in the order of the trial Court.

Reliance is placed on the judgment of the Hon'ble Supreme Court in "*Neera Yadav vs CBI*", 2017(8) SCC 757, wherein it has been observed as under:-

"16. Section 13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of 'criminal misconduct'. Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of the P.C. Act lays down the essentials and punishment respectively for the offence of 'criminal misconduct' by a public servant. Section 13(1)(d) reads as under:

XXXX XXXX XXXX XXXX

17. A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of 'criminal misconduct' under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal

misconduct. On the same reasoning “obtaining a valuable thing or pecuniary advantage” by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.”

It is submitted that it is not the case of CBI that either bribe or gratification was paid, therefore, in the absence of any *prima facie* evidence that the petitioner – Bhupinder Singh Hooda has acted in a manner that he obtained a valuable thing or pecuniary advantage from AJL, the charge under Section 13(1)(d)(ii) and (iii) is not at all made out.

It is next argued that initially the FIR was registered against the officials, however later on, they were given clean chit and only 03 persons named as an accused without there being any collective responsibility or conspiracy between the petitioners.

Learned senior counsel for the petitioner(s) have further argued that in view of the amendment made in the year 2004 wherein every allottee /aggrieved person is given a right of revision under Section 17(8) of the HUDA Act and thereby providing the remedy of revision to be heard by the Financial Commissioner and Secretary, Town and Country Planning, the right of the AJL was protected as even it is specifically provided in proviso to Section 17(8) that on valid grounds even the delay can be condoned. It is also argued that the prosecution of the petitioner – Bhupinder Singh Hooda, is motivated by political consideration and therefore, the 02 representations made by AJL on 07.04.2005 and 29.06.2005 were in fact, in exercise of legitimate right provided under the HUDA Act.

It is also submitted that in order to prove the *prima facie* charge framed under Section 13(1)(d) of the Prevention of Corruption Act, the Court has to *prima facie* satisfy itself that there was '*mens rea*' on the part of the accused to commit the offence whereas in the instant case, the same is missing.

Both the learned senior counsels for the petitioners have further submitted that in the impugned order, the trial Court has framed the charge of conspiracy specifying a period of 2005 to 2013 whereas the closing date as 2013 has no legal or rational basis in the report under Section 173 Cr.P.C. It is also submitted that while framing the charge, the trial Court has heavily relied upon the valuation of the property as on 01.08.2012 as Rs.17.50 crores whereas the same was including the costs of the building.

Learned senior counsels for the petitioner(s) have lastly submitted that the charges have been framed on the premise that loss has been caused to the State Exchequer whereas the plot was allotted by the HUDA Authority which has not raised any objection as the original price deposited by the AJL in the year 1981-82 always remained with HUDA. It is also submitted that all the arguments raised by AJL though recorded by the trial Court, however, were not dealt with while passing the impugned order.

Notice of motion.

Mr. Sumeet Goel, Sr. Advocate, assisted by Mr. Sameer Rathore, Advocate and Mr. A.K. Ranolia, Advocate while appearing through video conferencing, accepts notice on behalf of the respondent

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– CBI (in both the cases) and seeks some time to file reply/counter-affidavit.

List again on 11.08.2021.

To be shown in the Urgent List.

In the meantime, proceedings before the trial Court shall remain stayed.

Reply/counter-affidavit, if any, be filed in the Registry with advance copy to learned counsels for the petitioner(s).

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

01.07.2021
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