

SUPREME COURT OF INDIA

Vinod Chandra Semwal

Vs.

Special Police Establishment, Ujjain

CrI.A.No.2129 of 2011

(Sudhansu Jyoti Mukhopadhaya and N.V.Ramana JJ.)

24.02.2015

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal has been preferred by the appellant against the order dated 13.7.2011 passed by the Principal Bench of High Court of Madhya Pradesh at Jabalpur, in Criminal Revision No. 1821 of 2009. By the impugned order, the High Court allowed the criminal revision preferred by the investigating agency-State and set-aside the order dated 30.3.2007 passed by the Special Judge (Prevention of Corruption Act), Ratlam (hereinafter to be referred to as "Special Judge").

2. The appellant Vinod Chandra Semwal is a member of the Indian Administrative Service of Madhya Pradesh cadre. Since 4.7.1991, he was posted as Collector, Ratlam. On 21.12.1992, in exercise of the power conferred under Section 31 of the Madhya Pradesh Town Improvement Trusts Act, 1961 (for short "the Act"), the State Government appointed him as Chairman of the Town Improvement Trust, Ratlam (for short "the Trust"), a statutory body constituted under Section 4 of the Act. The allegation against the appellant is that while holding the post of the Chairman of the Trust, he abused his position as a public servant and transferred 30,000 square feet of government land to an ineligible and unauthorised person Vinod Bhai Parekh without any consideration and thereby caused loss of Rs. 1,34,33,381/- to State exchequer. The allegation was made after eight years of the alleged incident. On receipt of the complaint, Shri Deepak Tiwari, Lokayukta, Bhopal conducted a preliminary inquiry and found prima face case of commission of offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "P.C. Act") and Section 120B of the

Indian Penal Code (IPC). A case as Crime No. 57/2001 was registered by Special Police Establishment, Lokayukta. Despite repeated requests by the prosecution, sanction under Section 19 of the P.C. Act to prosecute the appellant under Section 13(1)(d) read with Section 13(2) of the P.C. Act was not granted and by order dated 23.1.2007, sanction under Section 197 of the Code of Criminal Procedure to prosecute the appellant under Section 120B IPC was refused by the Madhya Pradesh Government. It is informed that the Central Government even refused to grant sanction to prosecute the appellant. However, on 24.1.2007, the prosecution filed charge-sheet against the appellant and co-accused Vinod Bhai under Section 120B of the Indian Penal Code and under Sections 13(1)(d) read with 13(2) of the P.C. Act without any sanction.

3. The Special Judge in Special Case No.1 of 2007, vide order dated 30.3.2007, declined to take cognizance against the appellant of the offences punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act for want of sanction of prosecution under Section 19 of the P.C. Act and refusal of sanction under Section 197 of the Cr.P.C. for prosecution under Section 120B IPC.

4. On the order being challenged by the prosecution, the Division Bench, by impugned order, referred the case of Prakash Singh Badal and another vs. State of Punjab and others (2007)1 SCC 1 and held that the same ratio was applicable as the appellant had not executed the exchange deed in the capacity of Collector but in the capacity of Chairman, Town Improvement Trust, Ratlam.

5. It was contended on behalf of the appellant that as the appellant was posted as Collector of Ratlam on 4.7.1991, he was ex-officio Chairman of the Town Improvement Trust, Ratlam, a statutory body under the Act. In that view of the matter, the sanction was mandatory under Section 19 of the P.C. Act for prosecution of the appellant for the offences punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act and sanction under Section 197 Cr.P.C. was required for prosecuting the appellant under Section 120B of the IPC.

6. During the course of arguments, learned senior counsel for the appellant, referring to the documents on record, submitted that in fact exchange deed was executed by one K.K. Singh Chauhan as Chairman of the Trust. On the other hand, learned senior counsel for the State submitted that the aforesaid plea cannot be taken at this stage as it is a matter of investigation and can be taken only during the trial. He placed reliance on Office Order dated 22.12.1992 to suggest that the appellant had delegated the powers to said K.K. Singh Chauhan.

7. From the record the following fact emerges:

The appellant was not appointed on the post of Chairman of the Trust by name but was appointed for being posted as Collector, Ratlam. This is evident apparent from the order No. F-178/32/92 dated 21.12.1992, relevant portion of which reads as follows:

"MADHYA PRADESH GOVERNMENT HOUSING & ENVIRONMENT DEPARTMENT ORDER Bhopal, dt. 21.12.92 No. F-178/32/92 Exercising the powers conferred under Section 31 of the Madhya Pradesh Town Improvement Act, 1960 (Act No. 14 of 1961), the State Government hereby appoint the followings as mentioned in Schedule-I on the posts of Chairman of the Improvement Trusts of the State

1. Town Improvement Trust (sic): Collector Raigarh
2. Town Improvement Trust Jhansi Collector Hoshangabad xxx xxx xxx xxx
14. Town Improvement Trust Collector Chhindwara
15. Town Improvement Trust, Ratlam Collector Ratlam
16. Town Improvement Trust Collector Mandsaur by the order of H.E. the Governor sd/-

(Rajendra Singh) Deputy Secretary Madhya Pradesh Government (Housing & Environment Dept.)"

8. It appears that as the appellant was the Collector, by order No. 5218/Ratlam dated 22.12.1992, he delegated all his powers, duties and functions except those conferred or vested in Chairman under Section 25(1) and (2) of the Act except those conferred or imposed upon or vested under Sections 16,19,29 and 56 of the Act subject to control and revision by Chairman, if necessary. The order has been placed by the learned senior counsel for the State and reads as follows:

OFFICE OF THE TOWN IMPROVMENT TRUST, RATLAM
NO.....RATLAM DATED THE.....

OFFICE ORDER I, V.Semval, Chairman Town Improvement Trust, Ratlam hereby delegate to Shri K.K. Singh Chauhan, Chief Executive Officer, Town Improvement Trust, Ratlam under Section 25(1) and (2) of the Town

Improvement Trust Act, 1960 (14 of 1961) all the powers, duties or functions except those conferred or imposed upon or vested in Chairman u/s 16,19,29 and 56 subject to control and revision by Chairman, if necessary.

In addition to above powers the Chief Executive Officer Shri K.K.Singh Chauhan will also perform the duties of secretary to the Chairman and draw and disburse the pay, leave salary, T.A./D.A. etc. of the Trust Officials. He will also sanction earned leave, half pay leave, commuted w.e.f. to the subordinate staff.

He will also pay and sign the constructors bill regarding constructions works being executed by the trust and other routine payments. He will invite tenders for the works and take necessary follow up actions. He will sign all the cheques for the payments of bills etc. sd/ Chairman Town Improvement Trust Ratlam (M.P.) No. 5218/Ratlam dated 22.12.1992 Copy forwarded to Shri K.K. Singh Chauhan, Chief Executive Officer and the Secretary, Town Improvement Trust, Ratlam for compliance.

sd/ Chairman Town Improvement Trust Ratlam (M.P.)

9. The photocopy of the original exchange-deed dated 23.12.1993 in Hindi has been produced by the learned senior counsel for the appellant. The English version of which has been produced by the learned senior counsel for the State and relevant portion of which reads as follows:

Exchange Deed The Chairman, Ratlam Reformation Trust, hereinafter called the party No. 1 and legal heir Shri Vinod Bhai s/o Jai Singh Bhai M/s. Jai Singh Bhai Purushottam Das, R/o Ahmedabad, presently residing at Office Road, Ratlam and Jitender Bhai S/o Rasik Lal Sah through power of attorney holder, Shri Vinod Bhai s/o Jai Singh Bhai r/o Ahmedabad, presently residing at Office Road, Ratlam, who are valid legal heirs of the trustee of M/s. Purushottam Das Hari Ballav Das Jeevan Das, Ahmedabad, according to the deed dated 11.2.1992, are called the party NO. 2.

This Exchange Deed of the year 1993 has been made and executed on day of December, 1993 between both the parties:

xxx xxx xxx

10. 2 Copies of this deed will be executed and in every deed complete contents of the registry will be mentioned. Second party will have the typed deed and the second copy will retained by the first party.

For the testimony of this deed, the said parties in the year mentioned hereinabove in the presence of below-signed witnesses have signed herein in Ratlam, which are true and correct and so that this document may be utilized when it is needed. The end date 23.12.1993.

Signature of the witnesses sd/-

Signature of the First Party Sd/-

Signature of the Second Party

10. From the photocopy of the exchange deed (original exchange deed in Hindi), we find that the said exchange deed has been signed by Shri K.K. Singh Chauhan as Chairman, Ratlam Sudhar Nyas, Ratlam (M.P.).

11. In the charge-sheet No. 04/07 dated 23.1.2007, the aforesaid fact has been noticed by the investigating officer and the same appears from the portion quoted below:

"During the course of posting of Sri Semwal, Collector, Ratlam itself the State of Madhya Pradesh on 21.12.1992 appointed him President of the City Development Ratlam (N-No. 1P No. 62). He on 22.12.92 received the charge of the President from Sri Raghunandan Joshi and on that very date according to letter No. 5218/22.12.92 under the City Development Trust Act the powers vested in the President, delegated Shri K.K. Singh Chauhan the Chief Executive Officer of the Trust (N-No. 1 page No. 65). Shri Semwal in the capacity of Collector in Case No. 5A/39/90-91 only after 7 days of the passing of the order dated 12.02.93 on 19.2.93 in the capacity of President City Development Trust, Ratlam on page no. 288 Part 3(1) of M.P. Gazette dated 19th February, 1993 published the acquisition of the said land (survey No. 130 and 131) for Plan No. 71 for City Center Development of the Trust whereas he was knowing that the land is of the Government and this according to the previous proposal of the Trust has to be obtained from the Collector, Ratlam (N. No. 1 page No. 82).

In that on the seal of first party President City Development Trust Ratlam is the signature of Shri K.K. Singh Chauhan and the second party Shri Vinod Bhai Parekh. Transfer-deed is enclosed on (N. No. 1 page No. 150).

12. The above fact is also not disputed by the learned counsel for the State but according to him those are the questions of fact which are to be looked into by the trial court.

13. In the present case what we find is that the delegatee K.K.Singh Chauhan executed the exchange-deed dated 23.12.1993 on behalf of the Chairman. There is nothing on record to suggest that it was executed at the instance of the appellant. By Office Order dated 22.12.1992, the appellant, as Chairman of the Trust, delegated all his powers to Shri K.K.Singh Chauhan, Chief Executive Officer, Town Improvement Trust under Section 25(1)(2) of the Act. All the powers, duties or functions were delegated to him except the powers conferred or imposed upon or vested in Chairman under Sections 16,19,29 and 56 of the Act. If the delegatee has not acted in terms of the delegated powers, we are of the view that the delegator cannot be held to be guilty for such execution of the exchange deed. Though for some other reasons, we are of the view that it was not a fit case for grant of sanction either under Section 19 of the P.C. Act for prosecuting the appellant under Sections 13(1)(d) read with 13(2) of the P.C. Act or under Section 197 Cr.P.C. for prosecuting the appellant under Section 120B IPC. If the State Government and the Central Government refused to grant sanction, the Special Judge rightly declined to take cognizance of the offences punishable under Section (1)(d) read with Section 13(2) of the P.C. Act and for want of prosecution of sanction under Section 19 of the P.C. Act and Section 120B IPC for want of sanction under Section 197 Cr.P.C.

14. For the reasons aforesaid, we set-aside the impugned order passed by the Division Bench of the High Court. However, this order will not come in the way of prosecution to make investigation with regard to other accused persons.

15. Appeal is allowed with aforesaid observations.