

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

CRIMINAL PETITION No.6731 OF 2014

c/w

CRIMINAL PETITION No.5688 OF 2014

DATED: 19-02-2019

SRI. JAGADISH SHIVAPPA SHETTAR VS. SRI. S. SUNDARESH

ORDER

These two Criminal Petitions are filed by accused Nos.1 and 2 challenging FIR No.63/2014 registered by Bengaluru Metropolitan Task Force ('BMTF' for short) Police Station. They are disposed of by this common order as common questions of facts and law are involved.

2. Heard Shri C.V.Nagesh, learned Senior Advocate for the petitioners in both the petitions and Ms.Namitha Mahesh B.G., learned HCGP for the State. None appears for the complainant-respondent No.1.

3. Shri C.V.Nagesh, learned Senior Advocate made following submissions:

- that State Government by a Notification No.RD 431 LBD 66 dated 16.03.1967 sanctioned certain areas of land in Survey No.76 in Sadaramangala Village,

Bangalore South Taluk in favour of thirteen beneficiaries;

- that one Shri Suryanarayana Rao, a freedom fighter, was one of the beneficiaries. He was allotted 4 acres of land but possession of land was not given to him. His legal representatives filed writ petition No.3664/1983. This Court by order dated 18.06.1990, allowed the said writ petition and directed the respondents therein to consider petitioners' request for grant of 4 acres of land within three months therefrom and further directed to issue Saguvali Chit in the name of legal representatives. However, the said order was not complied with;
- that one of the heirs of late Shri Suryanarayana Rao by name Shri S.Sundaresha filed another writ petition registered as W.P.No.17665/2006. By order dated 11.01.2007, this Court directed respondent No.1 therein to comply with the directions of this Court issued in W.P.No.3664/2018 within eight weeks therefrom;
- that in the meanwhile, land was transferred in favour of KIADB and said Shri. Sundaresha filed

another writ petition No.5888/2010 seeking a direction to the State Government to take back possession of the land in question. The said writ petition was rejected. Feeling aggrieved, Shri Sundaresha filed W.A.No.3038/2010. By order dated 06.08.2010, this Court granted him permission to approach the State Government for grant of any other alternative land. The State Government was directed to consider the representation, if any, made in accordance with law within three months therefrom. The said order was also not complied with;

- that the appellant moved this Court with a contempt petition in C.C.C.No.605/2012. This Court disposed of the said contempt petition with following order:

"The Government Advocate has filed a memo along with the order dated 5.9.2012, wherein it is submitted that the Government would consider the request of the complainant by making an alternative land and he shall not insist any particular land. In view of the submission, the petition is closed.

The complainant is at liberty to approach the Government afresh"

- that the matter was considered by the Cabinet and a decision was taken to allot 4 acres of land in Survey No.129(old survey number 51) at Srigandha

Kavalu, Yashwanthpur Hobli, Bangalore North Taluk. Accordingly, by order No.RD 363 LGX 2012 dated 22.04.2013, State Government granted 4 acres of land in the said survey number.

- thereafter, first respondent has filed a complaint with BMTF Police Station on 31.07.2014 alleging commission of offences punishable under Sections 192(A) and 192(B) of Karnataka Land Revenue Act, 1964 and Sections 218, 166, 420 read with 34 of IPC. Accordingly, FIR No.63/2014 was registered against the former Chief Minister of the State, grantee of the land and certain other Government officials. Hence these petitions.

4. Assailing the FIR, Shri C.V.Nagesh contended that keeping in view the checkered history and directions issued by this Court from time to time, the Cabinet resolved to grant the land to the allottee. The said decision of the cabinet has culminated in the Government order referred to above. Therefore, complaint alleging commission of offences under Section 192(A) of the Karnataka Land Revenue Act, 1964 ('the KLR Act' for short) amounts to absolute abuse of process of law inasmuch as no ingredients of Section

192(A) are forthcoming in the complaint. Further, provisions of Section 192(B) and other provisions of IPC are also not applicable to the facts of these cases.

5. He further contended that BMTF Police Station has no jurisdiction to register the complaint inasmuch as establishment of BMTF by Government Order dated 12.09.2012 came to end on 18.03.2013 and thereafter, it was not extended. In support of this contention, he placed reliance on the decision of this Court dated 26.09.2018 in W.P.No.26160/2013 and connected petitions.

6. Opposing the petitions, Ms.Namitha Mahesh B.G., learned HCGP for the State contended that term of BMTF has been extended by a notification dated 06.02.2013 and the issue as to whether BMTF police can entertain a complaint under the Indian Penal Code is pending consideration before the Hon'ble Supreme Court.

7. I have carefully considered rival submissions and perused the records.

8. This Court, by order dated September 12, 2012 in W.P.No.26160/2013 and connected cases, after considering the matter in extenso, has held as follows:

"12. It is the contention of the learned Senior Counsel that the case came to be registered on 18.4.2013 but as per the Government Order No.Na.Aa.E.366 MNU 2011 Bangalore, dated 12.9.2012 the constitution of BMTF and its tenure was from 7.12.2011 to 18.3.2013. Under the said order nine Officers have been authorized to work with BMTF. It is his further contention that the said power which has been given, expired on 18.3.2013 and thereafter there is no extension of the authority or authorization to the said police and Police Station. Under such circumstances, it cannot be called as a 'General Police Station' and it has no authority to register the case either under IPC or even under the special Acts. He also brought to the notice of this Court to(Sic.) the letter dated 29.4.2013 of Public Information Officer and the Assistant Secretary to Government, Urban Development Department, BBMP, Bangalore, stating that under Right to Information Act, information was sought about the extension of the power of BMTF after 18.3.2013 and it is informed that any order/notification is not available with regard to extension of power of BMTF after 18.3.2013.

13. Even the learned HCGP has also not made it clear that the said power of BMTF has been extended. In that light, if the entire material is scrutinized, admittedly the complaint was filed on 18.4.2013 and the power of BMTF was expired on 18.3.2013. Under such circumstances, it clearly goes to show that the complaint which has been registered is without there being any authority. In that light, there appears to be some force in the arguments advanced by the learned Senior Counsel that the complaint filed in this behalf is liable to be quashed.

14. Even as could be seen from the order passed by the Division Bench of this Court in WP.No.12556/2013, disposed of on 3.4.2013, the said writ petition came to be disposed of as it did not survive for consideration upon the statement being made by the learned Additional Advocate General that BMTF is not abolished and there is no proposal to abolish the Force in the near future. The said order passed by the Division Bench of this Court in the aforesaid writ petition reads thus:-

"1. Upon the statement being made by learned Additional Advocate General Sri Sajan Poovayya that the Bangalore Metropolitan Task Force is not abolished and there is no proposal to abolish that Force in the near future, the petition admittedly does not survive for consideration any longer.

Accordingly, it is disposed. However, the above statement recorded herein as made on behalf of the State would not preclude the authorities concerned from changing the composition of the Task Force.”

15. As could be seen from the above order, though on the basis of undertaking of the Government of Karnataka that BMTF is continuing and functioning, without specific notification from the Government, it cannot be presumed that in view of explicit order of the Government, BMTF is having authority to exercise its power and even the submission of the learned HCGP that there is no need for any such notification is not acceptable. It is only through such notification the power is going to be confirmed. In that context, the submission of the learned HCGP is not acceptable.

(emphasis supplied)

9. Thus, it is relevant to note that tenure of BMTF ended on 18.03.2013. No material is placed before this Court in these proceedings to show that the term of BMTF has been indeed extended. However, it is submitted by the learned HCGP that matter with regard to power and jurisdiction of BMTF is pending before the Hon'ble Supreme Court of India.

10. So far as the offences alleged in the complaint are concerned, in substance it is stated in the complaint that complainant had received information that land in question has been granted to the allottees. FIR is registered in the BMTF Police Station for offences punishable under Sections 192(A), 192(B) of KLR Act, 1964 and Sections 218, 166, 420 read with 34 of IPC.

11. Sections 192(A) and 192(B) of the KLR Act reads as follows:

"192-A.- *Offences and Penalties.*- Notwithstanding anything contained in the Act or the rules made thereunder whoever commits any of the offence specified in column (2) of the Table below, shall on conviction by a judicial Magistrate of first class for each of such offence be punishable with the sentence indicated in column (3) thereof,-

TABLE

<i>Sl. No.</i>	<i>Offence</i>	<i>Punishment</i>
(1)	(2)	(3)
(1)	<p><i>Unlawfully enters or occupies on any Government land with the intention of holding that Government land.</i></p> <p><i>Provided that it shall not apply to cases of Jamma, Bane lands in Coorg District or encroached government lands regularised or pending for regularization before the Committee constituted under sections 94A, 94B and 94C of the Act.</i></p>	<i>Imprisonment for one year and fine of rupees five thousand.</i>
(2)	<i>Cheats and thereby dishonestly creates documents for the purpose of selling, mortgaging or transferring by gift or otherwise of any Government land.</i>	<i>Imprisonment for three years and fine of rupees ten thousand.</i>
(3)	<i>Creates a forged document regarding Government lands with an intention to use it for that purpose or to grab such land.</i>	<i>Imprisonment for three years and fine of rupees five thousand</i>
(4)	<p><i>Being a Revenue Officer entrusted with the responsibility of reporting unlawful occupation of Government land or initiating action to remove such unauthorised occupiers fails to report or take action to remove such unlawful occupants.</i></p> <p><i>Provided that it shall not apply to cases of Jamma, Bane lands in Coorg District or encroached government lands regularised or pending for regularization before the Committee constituted under sections 94A, 94B and 94C of the Act:</i></p>	<i>Imprisonment for three years and fine of rupees ten thousand</i>
(5)	<p><i>Sells any agricultural land for non-agricultural purposes without getting such land converted or without obtaining prior approval of the competent authority.</i></p> <p><i>Provided that it shall not apply to cases which are regularized by the government by formulating a special scheme in this behalf.</i></p>	<i>Imprisonment for three years and fine of rupees ten thousand.</i>
(6)	<i>Creates a forged document, regarding conversion of agricultural land for non-agricultural use or authorising the holder of agricultural land to use for non-agricultural purpose.</i>	<i>Imprisonment for one year and fine of rupees five thousand.</i>

(7)	<p><i>Being a public servant entrusted with the responsibility of maintaining records or entrusted with the responsibility of reporting unlawful conversion to the competent authority fails to report to the competent authority or to initiate action against unlawful conversion of revenue lands for non-agricultural purposes.</i></p> <p><i>Provided that it shall not apply to cases which are regularized by the government by formulating a special scheme in this behalf.</i></p>	<p><i>Imprisonment for three years and fine of rupees ten thousand.</i></p>
(8)	<p><i>Contravenes any lawful order passed under this Act.</i></p>	<p><i>With fine which may extend to five thousand rupees for the first offence and five times the fine</i></p>

192-B. Abetment of offences.- Whoever abets any offence punishable by or under this Act or attempts to commit any such offence shall be punished with the penalty provided by or under this Act for committing such offence."

12. The original grantee Shri Suryanarayana Rao was granted land in question by the State Government in the year 1967. Although, he did not reap the benefits of the grant during his life time, his heirs fought a sustained legal battle from the year 1983 to 2012 which included three writ petitions, a writ appeal and a contempt petition. Admittedly, the decision to allot the land was taken by the State Cabinet which is the highest executive body, which fructified into grant order. No malafides are alleged against other members of the Cabinet. Hence, the complaint based on hearsay information by the first respondent is too fragile to be countenanced. In the circumstances, continuation of further proceedings pursuant to said complaint would be nothing but abuse of process of law.

13. A careful perusal of the records and the complaint show that on the face of it, no offence is made out under Section 192(A) of the KLR Act. Section 192(B) is the penal Section for abetting any offence under this Act. BMTF have alleged commission of offences under Section 192(A) of the Act. Since I am of the considered view that offences under Section 192(A) are not made out in the complaint, as a natural corollary, Section 192(B) is not attracted. Similarly as the grant is pursuant to a Cabinet decision, offences under Indian Penal Code also cannot be countenanced.

14. In the circumstances, these petitions merit consideration and they are accordingly *allowed*. All proceedings pursuant to registration of FIR No.63/2014 in Bengaluru Metropolitan Task Force Police Station, now pending on the file of Chief Metropolitan Magistrate, Bangalore City, are quashed.