



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

MISC. CRIMINAL CASE No. 6969 of 2023

MUKESH RANKA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ajay Bagadia, learned Senior Advocate along with Shri Shashank Sharma, learned counsel for the applicant.

Shri Vaibhav Jain, learned counsel for the respondent / SPE.

Shri Mangesh Bhachawat, learned counsel for respondent No.2.

WITH

MISC. CRIMINAL CASE No. 42380 of 2023

ARUN JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Madhur Sharma, learned counsel for the applicant.

Shri Vaibhav Jain, learned counsel for the respondent / SPE.

MISC. CRIMINAL CASE No. 49108 of 2023

DIVYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:



2

Shri Mangesh Bhachawat, learned counsel for the applicant.

Shri Ajay Bagadia, learned Senior Advocate along with Shri hank Sharma, learned counsel for respondent No.3.

Shri Vaibhav Jain, learned counsel for the respondent / SPE.

Shri Amol Shrivastava, learned counsel for respondent No.2.

MISC. CRIMINAL CASE No. 57759 of 2023

MEENAKSHI SHARMA (MISHRA)

Versus

***SPECIAL POLICE ESTABLISHMENT LOKAYUKTA
ORGANISATION AND OTHERS***

Appearance:

Shri Amol Shrivastava, learned counsel for the applicant.

Shri Vaibhav Jain, learned counsel for the respondent / SPE.

Shri Mangesh Bhachawat, learned counsel for respondent No.2.

CRIMINAL REVISION No. 93 of 2024

MEENAKSHI SHARMA (MISHRA)

Versus

SPECIAL POLICE ESTABLISHMENT AND OTHERS

Appearance:

Shri Amol Shrivastava, learned counsel for the applicant.

Shri Vaibhav Jain, learned counsel for the respondent / SPE.

Shri Mangesh Bhachawat, learned counsel for respondent No.2.

Reserved on : 03.10.2024

Delivered on : 22.10.2024

ORDER

Per: Justice Vivek Rusia

All the Applicants have filed all these M.Cr.Cs and Criminal Revision for quashment of FIR No.43/2021 registered under Sections 13(1)(a), 13(1)(b) and 13(2) of Prevention of Corruption Act, 1988 (in



short “PC Act”) and Section 120-B of Indian Penal Code, 1860 (in short “IPC”) at Special Police Establishment Lokayukt, Ujjain (M.P.) and the subsequent proceedings taken place after registration of the aforesaid FIR.

I. Facts of M.Cr.C. No.6969 of 2023 [Mukesh Ranka Versus The State of M.P.] are as follows:

02. R.M. Vino Estate Developers is a private limited company registered under provisions of the Companies Act engaged in the construction and development of land (hereinafter referred to as “the company”). Late Shri Sushil Jain and present applicant Mukesh Ranka were the directors of the company. The company purchased land situated at 40, Vishwavidyalaya Marg, Ujjain vide registered sale deed dated 16.09.2010 from 27 co-owners of the land. After registration of the sale deed, the possession was handed over thereafter, the company applied for mutation of its name and started paying the municipal taxes. The name of the company was mutated in the record of Ujjain Municipal Corporation (in short “UMC”) in the year 2011.

03. After the expiry of 3 years, respondent No.2, namely Divya Singh Jadon daughter of Prayag Singh Jadon claimed herself to be a co-owner of the land in question being a member of the family of 27 co-owners has filed a Civil Suit No.58-A/2013 claiming a share of 600 Sq.ft. Land out of the total 30,000 sq. ft. of the land. Along with the suit, an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short “CPC”) was also filed. Initially, vide order dated 27.09.2013, the learned civil Court directed to preserve 600 Sq.ft. of the land by way of interim injunction. The interim protection was granted only for one year which has never been extended thereafter. Vide order dated 27.09.2013, the company was directed to produce the



sanctioned map and the building permission and till then restrained from raising any construction on the land claimed by the plaintiff. Respondent No.2 also filed an application under Section 151 of the CPC for making the previous injunction order absolute, but vide order dated 30.07.2014, the same was rejected.

04. Late Sushil Jain being a director of the company applied for building permission for the construction of a building on the land in question from Ujjain Municipal Corporation (hereinafter referred to as the UMC). The UMC vide order dated 14.05.2019 approved the map and granted building permission for commercial and residential comprising the basement, ground floor, first floor, second floor and third floor. According to the applicant, Late Sushil Jain filed an affidavit as well as an indemnity bond on behalf of the company before the UMC.

05. Respondent No.2 Divya Singh Jadon submitted a complaint on 01.06.2022 to the Commissioner UMC which was rejected on 26.06.2020, meanwhile she also submitted a complaint to the Lokayukta of the State of M.P. that the building permission has illegally been granted by the Commissioner UMC. The company also applied online application for issuance of revised building permission along with the revised plan and the same was accepted by the Corporation vide letter dated 14.07.2020.

06. The UMC issued a show-cause notice dated 24.10.2020 under Section 299 of the Municipal Corporation Act for revocation of the building permission. The company submitted a reply and thereafter filed a Civil Suit No.8-A/2021. Vide order dated 25.01.2021, the learned civil Court granted an interim injunction in favour of the company. Against the said temporary injunction, the UMC as well as respondent No.2 both preferred Miscellaneous Appeal Nos.20/2021 and 21/2021 respectively.



The learned appellate Court vide order dated 08.07.2021 dismissed both the appeals which has resulted in confirmation of the order of temporary injunction.

07. The complaint of respondent No. 2 was handed over to the Legal Adviser (who is a member of the Higher Judicial Service i.e. District Judge on deputation), by the Lokayukta. After conducting an enquiry Lokayukta directed Special Police Establishment (the ESP) to register an FIR under Section 7, 13(1)(a) and 13(1)(b) of the PC Act and Section 120-B of IPC against (i) Manoj Pathak, City Planner, UMC, (ii) Rambabu Sharma, Building Officer, UMC, (iii) Arun Jain, Building Officer, (iv) Meenakshi Sharma, Building Inspector and (v) Late Sushil Jain, Director of the company only under Section 120-B of IPC. The then UMC Commissioner, Kshitij Singhal has been exonerated in the report as he had issued a show-cause notice to the company. During the pendency of the investigation, Sushil Jain expired on 02.06.2022 hence, in place of him, the present applicant Mukesh Ranka has been impleaded as co-accused being a surviving director of the company.

II. Facts of M.Cr.C. No.42380 of 2023 [Arun Jain Versus the The State of M.P. and others] are as follows:

08. This applicant Arun Jain was appointed as Assistant Engineer on 05.11.1985 in UMC. The Director, T & CP approved his appointment as a Building Officer vide order dated 29.12.1989. Vide order dated 19.07.2018, this applicant was appointed to the post of Building Officer in charge of Ujjain Zone 1, 2 & 3. According to the applicant, on 23.04.2019, the company applied through online application to obtain building permission for construction on plot No.40. The building permission dated 15.01.2020 was granted for basement + ground floor + 3 floors by the then Building Inspector Meenakshi Sharma and Mr.



6

Rambabu Sharma, Building Officer. Vide order dated 15.01.2020, the Commissioner, UMC authorized the applicant building Officer to grant of building permission under Sections 73, 196 to 212 and 293 to 314, 317, 322 to the applicant with respect to Zone Nos.4 and 6. The applicant was authorized to grant building permission for a plot up to 400 sq. mt. area. For the plot of more than 400 sq.mt., approval of the city planner was required. In March 2020, the company again applied online to revise the building plan. The said application was examined by Mr Santosh Sharma and Astha Tare. Divya Singh Jadon submitted an objection on 15.06.2020. On 14.07.2020, the then Additional Commissioner, UMC and the officiating City Planner Manoj Pathak approved and granted the revised building permission. On 24.10.2020, the Commissioner UMC issued a show-cause notice to the company for revocation of the building permission. Thereafter, on 05.03.2021, an FIR was registered at crime No.43/2021 against the applicant.

09. Initially, the applicant challenged the FIR before this High Court by way of Writ Petition No.7735 of 2022 only on the grounds of non-compliance with statutory provisions of Section 17-A of the PC Act. After filing the aforesaid petition, the Mayor-in-Council passed a resolution No.75 on 07.06.2023 resolving that in light of the opinion given by the Deputy Advocate General, the administrative shortcoming for the grant of building permission can be removed. On the basis of such resolution, the applicant filed an application seeking withdrawal of this writ petition. Since the proposal for prosecution sanction was declined by the Mayor in Council, the writ petition was permitted to be withdrawn without expressing any opinion on merit. Later on, the applicant came to know that vide resolution dated 15.09.2023, the



sanction has been granted for the prosecution hence, the applicant filed the present petition under Section 482 of Cr.P.C. seeking quashment of the FIR and all the proceedings emanating therefrom.

III & IV. Facts of M.Cr.C. No.57759 of 2023 and Criminal Revision No.93 of 2024 [Meenakshi Sharma (Mishra) Versus Special Police Establishment Lokayukt Organization and others] are as follows:

10. This is a petition filed by Meenakshi Sharma, the then Building Inspector of the UMC. The applicant was appointed to the post of Sub-Engineer in the State Urban Engineering Services under the provisions of the M.P. State Urban Engineering Service (Recruitment and Condition of Service) Rules, 2015. As per the rules, in the case of the Sub-Engineer, the disciplinary authority is the Engineer-In-Chief, Urban Administration and Housing and the appointing authority is the Commissioner, Urban Administration and Housing Department. Commissioner, UAD is authorized to post the Commissioner in any other Municipal Corporation within the State of M.P. Vide order dated 22.09.2018, the applicant was posted as Sub-Engineer at UMC. She was assigned the duties of Building Inspector vide order dated 15.02.2019. According to the applicant, as per the works distribution order, the responsibility of the Building Inspector only relates to the plot inspection and not the scrutiny of the plan and the document which is the work of the Building Officer. The company applied for obtaining building permission to construct a basement + ground floor + 2 commercial + 1 residential, the documents were examined by Shri Santosh Sharma working as a clerk in DCR Cell. The applicant only conducted the site inspection. The applicant rejected the drawing twice due to technical issues that too after visiting the site.



11. According to the applicant, the erst-while Building Officer Rambabu Sharma forwarded the file online on ABPAS-1 Software for a grant of building permission to the city planner. According to the applicant, as per administrative power, on plot area 400 sq. mts. and above with the proposed height above 12 meters of the building, the permission is liable to be granted by Additional Commissioner Mr Manoj Pathak who was also designated as City Planner / Higher Committee. On 09.05.2019 the City Planner Manoj Pathak approved the grant of building permission without examining that the building plan submitted was not in accordance with the building norms in respect of the extent of uses of commercial/residential. According to the applicant, except for her digital signature appended on the building permission order she did not grant any building permission to the company, hence she has unnecessarily been made accused in the FIR.

12. After completing the investigation, the charge sheet was filed only under sections 13(1)(a), 13(1)(b), and 13(2) of the PC Act as no evidence of bribery or illegal gratification or enrichment was found by the prosecution agency. According to the applicant, the main authority who was competent to grant the building permission in the present case was Mr. Manoj Pathak, a City Planner but he has been exonerated. The investigation against Mr Kshitij Singhal, the then Commissioner has been kept open. The applicant also filed a Writ Petition No.17085 of 2022 *inter alia* on the ground that the competent authority has not granted sanctions for prosecution. Thereafter, vide order dated 31.01.2023, the learned Special Judge framed the charges under Section 13(1)(a), 13(2) of the PC Act along with Section 420 and 120-B of IPC against the applicant and others. Vide order dated 26.04.2023, the writ petition was dismissed with a liberty to the applicant to approach the



trial Court to raise all the objections regarding the validity of sanction and non-compliance of Section 17-A of the PC Act. The applicant applied ton before the trial Court raising an objection and vide order dated 05.10.2023, the learned Court rejected the said contention. Hence, this M.Cr.C. before this Court.

13. Ms Meenakshi Sharma has also filed Criminal Revision No.93 of 2024 challenging the order dated 31.01.2023, whereby the learned Sessions Judge framed the charges under the aforesaid sections.

The charges are as under:-

प्रथम:- दिनांक 14.05.2019 को झोन क्रमांक 4. नगर पालिक निगम उज्जेन में भवन निरीक्षक/उपयंत्री(लोकसेवक) के पद पर पदस्थ एवं कार्यरत रहते हुए आपने लोकसेवक के रूप में अपनी स्थिति का दुरुपयोग करके भूमि विकास नियम 2012 के नियम 27 के अधीन भवन निर्माण अनुज्ञा जारी करने की अधिकारिता के बिना आर.एम.विनो इस्टेट डेवलपर्स प्रायवेट लि.कंपनी द्वारा विक्रय विलेख दिनांक 16.09.2010 के पंजीयन दिनांक 27.12.2010 से क्रय की गई अचल संपत्ति क्रमांक 40, विश्वविद्यालय मार्ग उज्जैन स्थित 2811.170 वर्गमीटर भूमि जिसे मास्टर प्लान में आवासीय भूमि दर्शित किया गया था, को आर.एम.विनो इस्टेट डेवलपर्स प्रायवेट लि. कंपनी के संचालक सुशील जैन एवं मुकेश रांका को अवैध लाभ पहुंचाने एवं नगर पालिक निगम उज्जैन के नियंत्राधीन उक्त अचल संपत्ति के उपयोग में शासन को आर्थिक क्षति पहुंचाने के लिए नगर तथा ग्राम निवेश विभाग से ले-आउट(स्थल अनुमोदन) स्वीकृति के बिना, मास्टर प्लान के विपरीत जाकर भूमि के उपयोग में परिवर्तन करते हुए आवासीय उपयोग की भूमि पर व्यवसायिक निर्माण की अनुमति दिए जाने हेतु भवन निर्माण अनुज्ञा क्रमांक/सीसी/0948/2019/जेड04/डब्ल्यू44 दिनांक 14.05.2019 जारी की और इस प्रकार आपने वह आपराधिक अवचार का अपराध किया, जो भ्रष्टाचार निवारण अधिनियम 1988 (संशोधन अधिनियम 2018) की धारा-13 (1) (ए) सहपठित धारा 13(2) के तहत दंडनीय होकर इस न्यायालय के संज्ञान में है।

द्वितीय:- दिनांक 14.05.2019 को झोन क्रमांक 4, नगर पालिक निगम उज्जेन में भवन निरीक्षक (लोकसेवक) के पद पर पदस्थ एवं कार्यरत रहते हुए आपने लोकसेवक के रूप में अपनी स्थिति



का दुरुपयोग करके भूमि विकास नियम 2012 के नियम 27 के अधीन भवन निर्माण अनुज्ञा जारी करने की अधिकारिता के बिना आर.एम.विनो इस्टेट डेवलपर्स प्रायवेट लि.कंपनी के संचालक सुशील जैन द्वार विक्रय विलेख दिनांक 16.09.2010 के पंजीयन दिनांक 27.12.2010 से क्रय की गई अचल संपत्ति क्रमांक 40, विश्वविद्यालय मार्ग उज्जैन स्थित 2811.170 वर्गमीटर भूमि जिसे मास्टर प्लान में आवासीय भूमि दर्शित किया गया था, को क्रेता आर.एम.विनो इस्टेट डेवलपर्स प्रायवेट लि.कंपनी के संचालक सुशील जैन को अनुचित लाभ प्रदाय करने एवं शासन को आर्थिक क्षति पहुंचाने के लिए सहअभियुक्तगण मनोज पाठक, तत्कालीन नगर निवेशक, रामबाबू शर्मा, तत्कालीन भवन अधिकारी, अरूण जैन तत्कालीन भवन अधिकारी, नगर पालिक निगम उज्जैन के साथ मिलकर नगर तथा ग्राम निवेश विभाग से ले-आउट (स्थल अनुमोदन) स्वीकृति के बिना मास्टर प्लान के विपरीत जाकर भूमि के उपयोग में परिवर्तन करते हुए आवासीय उपयोग की भूमि पर व्यवसायिक निर्माण की अनुमति दिए जाने हेतु भवन निर्माण अनुज्ञा क्रमांक/सीसी/0948/2019/जेड04/डब्ल्यू44 दिनांक 14.05.2019 जारी करने हेतु आप एवं सहअभियुक्तगण मनोज पाठक, राम बाबू शर्मा, अरूण जैन ने उक्त अवैध कार्य के लिए सहमत होकर शासन को छल कारित करने का आपराधिक षडयंत्र किया जो भ्रष्टाचार निवारण अधिनियम 1988 (संशोधन अधिनियम 2018) की धारा-13(1) (ए) एवं धारा 420 सहपठित धारा 120(बी) भा.द.सं. के तहत दंडनिय होकर इस न्यायालय के संज्ञान में है।

14. The complainant Divya Singh Jadon has also filed an **M.Cr.C. No.49108 of 2023 [Divya Versus The State of M.P. and others]** under Section 482 of Cr.P.C. challenging the order dated 14.07.2023, whereby permission to engage private counsel has been rejected and permission has been granted to assist the prosecution through lawyer.

Submissions of learned counsel appearing for the applicant / accused:

15. Shri Bagadiya, learned senior counsel appearing on behalf of Mr Mukesh Ranka argued that entire formalities before granting



sanction were conducted by Late Shri Sushil Jain, who was arrayed as a co-accused in the FIR, but during the investigation he expired, therefore, this applicant being one of the directors has been implicated as an accused. No role has been assigned to him in the charge sheet except that he is now the surviving director of the company. The applicant has not committed any act in respect of obtaining the execution sale deed, building permission, revised building permission and construction. Hence, he has wrongly been arrayed as an accused in the FIR and further proceedings are liable to be quashed.

16. Shri Madhur Sharma learned counsel appearing for Arun Jain submitted that in the FIR, there is no allegation of bribery and enrichment against her as there is no charge under section 7 of the PC Act is there. The ingredients of Section 13(1)(a) and (b) of the PC Act are missing in this case. The applicant neither dishonestly nor fraudulently misappropriated the property, there is no allegation that the applicant intentionally enriched himself illicitly during the period of his office. There is absolutely no material in the charge sheet to substantiate the charges of criminal conspiracy under Section 120-B of IPC. Even if the building permission has wrongly been granted it can be revoked or cancelled by the higher authorities, but that does not constitute criminal misconduct under the provisions of IPC as well as PC Act.

17. Shri Amol Shrivastava, learned counsel appearing for Ms. Meenakshi Sharma (Mishra) submitted that the applicant at the relevant point of time was only working as a Building Inspector whose job was limited to inspecting the plot and submitting the report to the Building officer. The applicant raised technical objections which were ignored by the higher officers and granted the approval. Merely her digital signature was there in the building permission, therefore, she has wrongly been



accused in this case. She was not the competent authority to grant building permission. The ingredients of Section 13(1)(a), 13(1)(b) and 13(2) of the PC Act are missing in this case. So far as the sanction is concerned, the Municipal Corporation is not an appointing authority to grant sanction under Section 17 of the PC Act. The applicant is an employee of the UAD who is competent to grant sanction for prosecution.

Submissions of prosecution's counsel:

18. *Per contra*, Shri Vaibhav Jain, learned counsel appearing for the respondent / Special Police Establishment has argued that the applicants Meenakshi Sharma and Arun Jain have illegally granted the building permission contrary to the provisions of the Nagar Tatha Gram Nivesh Adhiniyam and Municipal Corporation Act. As per the master plan, the land in question was reserved for residential purposes, but the building permission for commercial cum residential purposes has illegally been granted. Therefore, they misused their authority in connivance with the company, thus, they are liable to be prosecuted under the provisions of the PC Act. It is further submitted that the building permission has been granted to the company that purchased the land of the complainant also without her signature in the sale deed, therefore, the company is not an absolute owner of the land in which Ms Divya Singh Jadon is also having a share. Hence, all the present petitions are liable to be dismissed.

Arguments of complainant's advocate:

19. Shri Bhachawat, learned counsel appearing for the complainant Divya Singh Jadon has argued in support of Shri Vaibhav Jain, learned counsel for the respondent / SPE. Learned counsel submitted that the scope of interference by the High Court under section 482 of the Cr.P.C.



is very limited it is a matter of trial as to whether there was any corruption in granting building permission contrary to the law in favor of the company by the officials of the UMC, hence all the M.Cr.C. and Criminal Revision are liable to be dismissed. Learned counsel admitted that the suit filed by the complainant challenging the sale deed has been pending since the last 10 years in which there is no interim injunction in operation in favour of the plaintiff. It is further admitted that the plaintiff / the complainant has not challenged the building permission before the court of law.

Additional facts:

20. During the arguments, Shri Amol Shrivastava, learned counsel has produced a copy of the judgment dated 29.07.2024 passed by the VIII Civil Judge, Junior Division, Ujjain, whereby the civil suit RCA No.28/2021 filed by the company has been decreed by declaring the show-cause notices dated 03.10.2020 and 24.10.2020 void and illegal. It has also been decreed that the Municipal Corporation has no authority to interfere with the building permission dated 14.05.2020 and the mutation in favour of the company, therefore, the issue in respect of the validity of the building permission has been upheld by the civil Court.

We have heard learned counsel for the parties and perused the entire record.

21. Undisputed facts are that the complainant: Ms. Divya Singh Jadon D/o Prayag Singh Jadon made a complaint to the Lokayukta that she is a co-owner of a property situated at 40, Vishwavidyalaya Marg, Ujjain, which is undivided and as per the master plan, it is residential. Co-owners of the land have sold the entire land to the late Sushil Jain, the Director of R.M. Vino Estate Developers Pvt. Ltd. and thereafter,



the UMC has illegally granted building permission for commercial use of the property contrary to the provisions of law. It is further alleged that she neither sold her share nor gave consent for building permission and construction. She also submitted an objection before the Municipal Corporation and filed a civil suit which is pending adjudication. According to the complainant, there was a stay in her favour, she made an allegation against Mr. Kshitij Singhal, the then Commissioner who had wrongly granted the building permission by changing the use from residential to non-residential. On the basis of the said complaint, the Office of Lokayukt registered an enquiry case No.39/2020 and the enquiry was got conducted by the Law Officer (II) posted at Lokayukt Office as Legal Advisor on deputation. The Legal Advisor directed the then Commissioner, Building Officers, and City Planner to produce the entire record and record their statement. The correspondence was made to the Office of Joint Director, Town and Country Planning in order to confirm certain facts. After the enquiry, the Legal Adviser recorded its opinion in the note sheet that the first building permission was granted on 14.05.2016 by the then City Planner Manoj Pathak, Building Officer Rambabu Sharma, Building Inspector Meenakshi Sharma and the second permission was granted on 14.07.2020 by the then City Planner Manoj Pathak, Building Officer Arun Jain, Building Inspector Meenakshi Sharma by misusing their official post and committed criminal misconduct under the provisions of PC Act, 1988 (Amended) in order to give benefit to the company.

22. The Legal Advisor advised for registration of a criminal case against Sushil Jain and other directors under Section 120-B of I.P.C. to the learned Lokayukta. The said note sheet was approved by the then Lokayukt on 28.02.2021 by directing the DGP of SPE for compliance.



The then DGP, Special Police Establishment Bhopal vide letter dated 04.03.2021 directed DSP Lokayukt Office, Ujjain to register an FIR against Manoj Pathak, Rambabu Sharma, Meenakshi Sharma under Section 7, 13(1)(a) and (b) of PC Act and against Sushil Jain under Section 120-B of IPC and accordingly the FIR was registered at crime No.0/09/2021 under Section 7, 13(1)(a) and (b) of PC Act and Section 120-B of IPC.

23. Thereafter, Mr Basant Shrivastava Inspector SPE started the investigation, but the same was completed by Mr. Anand Kumar Yadav, DSP Special Police Establishment. The charge sheet was filed on 05.07.2022 only under **Section 13(1)(a), 13(1)(b) and 13(2) of the PC Act and Section 120-B of IPC** against Ms Meenakshi Sharma (Mishra) the then Building Officer, Mukesh Ranka, the Director of R.M. Vino Estate Developers Pvt. Ltd. The charge-sheet against Rambabu Sharma and Arun Kumar Jain has been kept on hold for want of prosecution sanction. The investigation has been kept open against Shri Kshitij Singhal the then Commissioner under Section 173(8) of the Cr.P.C. The Investigating Officer has opined that in the entire matter, there is no evidence in respect of a grant of bribe to any public servant, therefore, the charge sheet was not filed under Section 7 of the PC Act.

24. The sole issue which requires anxious consideration is that the entire allegation and the material collected by the prosecution are believed as it is even then whether any offence under the aforesaid sections is said to have been made out against these applicants. The investigation has revealed that as per the master plan the said plot is reserved for commercial purposes, but both the building permissions have been granted for commercial-cum-residential by the UMC in favour of the company. Admittedly as per the final charge sheet, there is



no allegation as well as material in respect of the transaction of money or any undue advantage between the official of UMC and directors of the company. Therefore, there is no material evidence or even presumption to the effect that any employee of the Municipal Corporation was bribed to get the building plan sanctioned. Even if for the sake of arguments it is held that the building permission has wrongly been granted contrary to the provisions of the Municipal Corporation Act, M.P. Nagar Tatha Gram Swaraj Adhinyam, Bhumi Sudhar Adhinyam and master plan it comes under the definition of the offence of criminal misconduct as defined under Section 13 of the PC Act. As per the definition of Section 13(1)(a) of the PC Act, a public servant is said to commit the offence of criminal misconduct if he dishonestly or fraudulently misappropriates or otherwise converts for his use any property entrusted to him or any property under his control as a public servant or allows any other person to do so or he intentionally enriches himself illicitly during the period of his offence. None of the ingredients of this section are there in the present case against the applicants/accused. There is no allegation or material that the applicants have dishonestly or fraudulently misappropriated any property or converted for their use entrusted to them. There is a provision under the Municipal Corporation Act for the grant of building permission and such permission is liable to be revoked if wrongly granted. Any person can challenge the building permission before a district court of law under subsection (5) of section 307 of the Municipal Corporation Act.

25. Section 307 is reproduced below for ready reference:-

Power to require, removal or alteration of work not in conformity with bye-laws or any scheme or any other requirement.

(1)If any building is erected or re-erected in contravention of any town planning scheme mentioned under Section 291 or of any building bye-laws made under Section 427, the Commissioner



without prejudice to his right to lake proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or bye-laws.

(2)If a building is erected or re-erected-(a)without any sanction as required by Section 293 (1); or(b)when sanction has been refused; or(c)in contravention of the terms of any sanction granted; or(d)when sanction has lapsed under Section 300,the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 294, shall-(a)by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or(b)shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(3)If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the person.

(4)If the plans are [approved] [Substituted by M.P. Act No. 13 of 1961.] by the Commissioner and the approval is communicated to the person intending to build the house or if the plans are rejected by the Commissioner but no notice of their rejection is given to person intending to build the house within the prescribed period it shall not he open to the Commissioner to give a notice under sub-section (1) and (2) on the ground that the building is erected or re-erected in contravention of any scheme or bye-laws or any other requirements under this chapter.

(5)Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction or the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have the power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceeding.



(emphasised supplied)

Hence there is ample provision and remedy to revoke and cancel the building permission granted contrary to the Act and laws, hence wrong permission granted by any authority of the local body cannot be treated as criminal misconduct if there is no element of bribery or undue benefits between the parties.

26. The first building permission was granted to the company on 14.05.2019, in which the digital signatures of Rambabu Sharma as Building Officer and Meenakshi Sharma as Building Inspector are there, but both are not the competent authority to grant the building sanction. After some time, the company submitted an online application for revision of the building plan, the said application was entertained and building permission was granted by Arun Jain, City Planner on 14.07.2020, there cannot be two building permissions for the construction of one building. Admittedly, the building was constructed by the company as per the second building permission granted on 14.07.2020. Therefore, the earlier building permission has been superseded by the new building permission granted on 14.07.2020, hence, no offence is said to have been committed by Ms Meenakshi Sharma and Rambabu Sharma who have been accused because their digital signatures are there in building permission dated 14.05.2019. In the sanctioned building permission, there is no such signature of Rambabu and Meenakshi Sharma, therefore, they are not liable to be prosecuted in this case.

27. On the basis of the complaint made by Divya Singh Jadon, this FIR was registered as well as a show-cause notices dated 03.10.2020 and 24.10.2020 were issued by the Commissioner, Municipal Corporation for cancelling the building permission, the company filed a



civil suit No.RCSA 28/2021 before the civil Court, Ujjain in which initially, the injunction was granted which was confirmed by the First Appellate Court. Vide judgment dated 29.07.2024, both the show-cause notices have been declared illegal and void, the relevant paragraph No.36 of the judgment is reproduced below:

36. उपरोक्त विवेचना, दस्तावेज व अभिलेख के आधार पर यह न्यायालय इस निष्कर्ष पर पहुँचा है कि वादी अधिसंभावनाओं की प्रबलता के आधार पर वांछित अनुतोष हेतु अपना दावा प्रमाणित करने में सफल रहा है। अतः वाद निम्नानुसार जयपत्रित किया जाता है :-

(i) यह घोषित किया जाता है कि वादग्रस्त भवन कं 40, विश्वविद्यालय मार्ग, उज्जैन के संबंध में नगर पालिका निगम उज्जैन के द्वारा दिनांक 03/10/2020 व 24/10/2020 को जारी सूचना पत्र अवैध एवं शून्य हैं, उनके द्वारा जारी किये गये भवन निर्माण अनुज्ञा दिनांक 14/05/2020 एवं नामांतरण को निरस्त करने व वादी कंपनी द्वारा किये गये निर्माण में हस्तक्षेप करने का उन्हें कोई अधिकार नहीं है।

(ii) प्रतिवादी को निर्देशित किया जाता है कि वह उक्त वादग्रस्त भवन/संपत्ति में वादी द्वारा किये जा रहे निर्माण में किसी प्रकार से हस्तक्षेप न करें तथा वादी के पक्ष में किये गये नामांतरण एवं भवन अनुज्ञा को विधी की सम्यक प्रक्रिया के अतिरिक्त निरस्त न करें और न करावें।

(iii) अधिवक्ता शुल्क मध्यप्रदेश व्यवहार न्यायालय नियम 1961 के नियम 523 के अनुसार या प्रमाणित किये जाने पर जो भी कम हो जोडा जावे।

(iv) उभयपक्ष अपना-अपना वाद व्यय स्वयं वहन करेंगे।
तदनुसार डिक्री तैयार की जावे।

Therefore, as of today, the building permissions granted in favour of the company have been upheld by the civil Court.

28. Before amendment in Section 13 of the PC Act, the offence contemplated therein is committed if a public servant obtains for himself or any other person, any valuable things or pecuniary advantage by corrupt or illegal means, by abusing his position as a public servant or without any public interest. This issue was examined by the Apex court



in the case of ***C.K. Jaffer Sharief V/s State (The CBI), (2013) 1 SCC 205*** and held that “*if in the process, the Rules or Norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct.*” Paragraph No.16 of the judgment is reproduced below:

16. A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work “Criminal Law” by K.D. Gaur. The relevant passage from the above work may be extracted below:

“Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called *actus reus* and *mens rea* respectively.”

29. The Hon’ble Apex Court in the case of ***State of Madhya Pradesh V/s Sheetla Sahai and others, (2009) 8 Supreme Court Cases 617***, examined the provisions of Section 13(1)(d)(2)(ii-iii) r/w Section 13(2) of PC Act and Section 120A of IPC and held that “*even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as a public servant or holding office as a public servant. In the latter category of cases, the absence of any public interest is a sine qua non. The materials brought on record do not suggest in any manner whatsoever that the respondent Nos. 1 to 7 either had abused their*



position or had obtained pecuniary advantage for the respondent Nos. 8, 9 and 10, which was without any public interest.”

30. In the present case also, there is no such allegation and material that these applicants had abused their position or had obtained any pecuniary advantage from the directors of the company in order to grant the building permission. There is no such material to establish the criminal conspiracy by meeting of mind of the accused person before committing this so-called offence. In the case of ***Zakia Ahsan Jafri V/s The State of Gujarat, AIR 2022 SC 3050*** the Hon’ble Apex Court has held that *“every act of commission and omission would not result in hatching criminal conspiracy unless acts have been done deliberately and there is a meeting of minds of all concerned. The dishonest intention is a sine qua non to attract the offence punishable under Section 13 of the PC Act.”*

31. In the case of ***M. Narayanan Nambiar V/s State of Kerala, AIR 1963 SC 1116***, the Hon’ble Apex Court while interpreting Section 5 of PC Act has held that the dishonest intention is the gist of the offence.

32. In the present case, the only allegation is that while granting the building permission the master plan was ignored and the use of the land was changed from residential to commercial, for which the director of T&CP is a competent authority to change the use of the purpose of the land, not the Municipal Corporation. This could be an illegality or violation of the provisions of the act and rules, but it is not criminal misconduct. Every authority or quasi-judicial authority passes an order under the act and if said order is illegal or wrongly passed, the same is liable to be set aside by the higher authority or the court, the same authority who has passed such order cannot be prosecuted for criminal misconduct under the provisions of the PC Act. Ms Divya Singh Jadon



has any objection with respect of the grant of building permission on her land, she could have challenged that building permission by filing a Writ Petition or civil suit instead of making a complaint to the Lokayukt. In this case, the learned Lokayukt did not conduct any enquiry but got conducted by the Legal Advisor who was on deputation from the Higher Judicial Services sent on deputation. They are posted in the Lokayukt Establishment only to give legal advice, they are not supposed to conduct any enquiry as an Enquiry Officer because their report sometimes becomes the basis of Charge-sheet which goes before the court against the accused. The Lokayukt can take the services of any other prosecution agency for conducting any enquiry but not the Judicial officers who are only posted to give legal opinions such a practice violates the norms of judicial independence and the doctrine of separation of powers.

33. The learned Special Judge, without examining the aforesaid provision of the law has wrongly framed the charges against the present applicants, therefore, all the M.Cr.Cs i.e. M.Cr.C. Nos.6969 of 2023, 42380 of 2023, 49108 of 2023 and 57759 of 2023 are **allowed**. The FIR registered at crime No.43/2021 under Sections 13(1)(a), 13(1)(b) and 13(2) of PC Act and Section 120-B of IPC at Police Station – Special Police Establishment Lokayukt, Ujjain (M.P.) and all consequential proceedings arising out of said crime number are hereby **quashed** so far as the applicants in the present cases are concerned.

34. So far as CRR No.93 of 2024 is concerned, the order dated 31.01.2023 framing the charges under Sections 13(1)(a), 13(2) of PC Act and Section 420 r/w Section 120-B of IPC since the entire FIR has been quashed hence, further proceedings pending before the Special Judge (PC Act), Ujjain in Special Case No.4/2022 are hereby **quashed**.



23

35. Let a photocopy of this order be kept in all the aforesaid connected cases.

Certified copy, as per rules.

(VIVEK RUSIA)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

Divyansh