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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL PUBLIC INTEREST LITIGATION NO. 36 OF 2010

Mahendra Singh and anr. .. Petitioners

Vs.

Union of India and ors. .. Respondents

WITH
CRIMINAL WRIT PETITION NO. 3359 OF 2010

Simpreet Singh .. Petitioner

Vs.

State of Maharashtra and ors. .. Respondents

WITH
CRIMINAL PUBLIC INTEREST LITIGATION NO. 34 OF 2010

Ketan K. Tirodkar .. Petitioner

Vs.

Central Bureau of Investigation and anr. .. Respondents

Shri H. C. Dabhi for petitioners in Cri.PIL No. 36 of 2010.
Shri Y. P. Singh and Shri Ashish Mehta i/by Shri Kiran Bhalerao for petitioner in Cri.W.P. No. 3359 of 2010.
Shri Ketan Tirodkar, petitioner, party-in-person present in Cri.PIL No. 34 of 2010.
Shri Ravi Kadam, Advocate General with Shri P.A. Pol, PP for State.
Shri Darius J. Khambata, Additional Solicitor General with Mrs. Revati

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Mohite Dere for Union of India.
Shri S. S. Pakale and Ms. Seena Rawade for BMC – Respondent No.12 in Cri. PIL No. 36 of 2010.
Mrs. Kiran Bhagalia for respondent no.11 in Cri.PIL No. 36 of 2010.
Mr. Milind S. Sawant for Union of India in Cri.PIL No. 34 of 2010.

CORAM: B. H. MARLAPALLE &
U. D. SALVI, JJ.

FEBRUARY 17, 2011.

P.C.

1. In response to our last order dated 1/2/2011, Shri Himanshu Roy, Joint Commissioner of Police (Crime), Mumbai, has filed affidavit-in-reply and has stated that in view of the substantial progress made in the investigation of the missing file and more particularly the notings and four pages of File No. TPB/2099/1095/CR154/99/UD XII from the Urban Development Department of the Government of Maharashtra, the investigation be allowed to be continued by the Crime Branch of Mumbai Police. Shri Ravi Kadam, the learned Advocate General, therefore, urged before us that the Crime Branch of the Mumbai Police be allowed to continue with the investigation in C.R. No. 180 of 2010 initially registered

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with the Marine Drive Police Station and subsequently transferred to the Crime Branch on 27/11/2010. Shri Khambata, the learned Additional Solicitor General has supported this argument of Shri Kadam.

2. Shri Dabhi and Shri Singh, the learned counsel appearing for the petitioners and Shri Tirodkar, the petitioner, party-in-person, in Cri. PIL No. 34 of 2010, on the other hand, have urged that it would be in the interest of fair and speedy investigation undertaken by the CBI that the investigation in C.R. No. 180 of 2010 is transferred to the CBI rather than allowing two separate investigations to continue. It was submitted by them that the missing papers are from the Urban Development Department file along with four pages and the Urban Development Department has been, for the last more than one decade, with the Chief Minister. It was also pointed out that one of the former Chief Ministers has been named in the FIR registered by the CBI on 29/1/2011 for the offences punishable under Sections 120-B, 429, 468 and 471 of IPC as well as under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It was urged that in view of the link and involvement of the Urban Development Department in allocation of land, additional FSI and de-reservation etc., the investigation of missing papers ought to be taken up by

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the CBI.

3. Shri Kadam, the learned Advocate General, also invited our attention to the observations made by the Constitution Bench in the case of State of West Bengal and ors. vs. Committee for Protection of Democratic Rights, West Bengal and ors. **[(2010) 3 SCC 571].**

4. The affidavit filed by Shri Roy states that the concerned file had originated in the Urban Development Department, Desk XII in the year 1999 and was closed in the year 2003. After thorough interrogation and study of the photostat copy of the file, it was revealed that the note-sheet of the File No. TPB/2099/1095/CR154/99/UD XII and four pages from the correspondence section were missing. The missing report was lodged with the Marine Drive Police Station on 20/11/2010 and C.R. No. 180 of 2010 was registered on 26/11/2010. The last movement of the file was at the office of the Principal Secretary, Urban Development Department on 2/11/2005 and this date also has been overwritten as 2/1/2006. During the inventory of all files prepared during the period 2008-2009, the Adarsh file was not in the list of available files and when the cupboard, in which the said file was kept, was searched on 28/10/2010 by the senior officials of

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Mantralaya, the said file was not traceable despite all possible efforts made by the Urban Development Department staff. Surprisingly, when the said cupboard was again searched by the Clerk on 1/11/2010, the file was traced in the very same cupboard, in which it could not be traced on 28/10/2011. The scrutiny of the file revealed that the entire noting portion and four pages from the correspondence side were missing. During the course of investigation, 66 employees from Mantralaya have been interrogated and statements of 40 of them have been recorded. In addition, cell phone records (CDRs) of 37 officers from Mantralaya were also analyzed so as to get the information about their involvement in the missing file case. This was done to the extent of checking all the incoming and outgoing calls from Mantralaya Tower Cell Site ID during the suspected time of reappearance of the file between 28/10/2010 to 1/11/2010. 31/10/2010 was a holiday for the Mantralaya staff. Efforts were also made to retrieve the footage of CCTV, but the same could not be done as the record gets automatically deleted after a specific time period. The Crime Branch has approached the Director, Forensic Science Laboratory, Kalina for conducting the Narco Analysis, Brain mapping and Polygraph tests of five suspected officials, who have consented for such tests and an application has been moved before the concerned court for seeking appropriate orders.

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The application is likely to go before the concerned court on 21/2/2011. The Crime Branch hopes that the brain mapping and polygraph tests of these officials may get important clues as to the identity and motive of the person or persons responsible for the missing file pages.

5. The affidavit of Shri Roy indicates that the investigation by the Crime Branch cannot be faulted with. However, the missing notings and four pages have a direct nexus to the investigation which is undertaken by the CBI, in our considered opinion and though we agree with Shri Kadam that the investigation by the Crime Branch, as of now, appears to be in order, it would be appropriate for better coordination that the investigation in C.R. No. 180 of 2010 is transferred to the CBI. This will also enable the CBI to undertake proper analysis of the entire case/material/record/documents collected from all the concerned agencies. We have also make it clear that this order of transfer of investigation has no adverse reflection on the investigation till now undertaken by the Crime Branch of the Mumbai Police and it is only for facilitating the investigation by CBI, we deem it appropriate to ask the said agency to undertake the entire investigation.

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6. We have noted that the CBI while registering the FIR on 29/1/2011 has not invoked the Benami Transactions (Prohibition) Act, 1988 and on our queries, we have been assured by Shri Khambata, on instructions from the officer of CBI, that due steps will be taken by the Investigating Officer concerned to amend the FIR so as to invoke the provisions of the Benami Transactions (Prohibition) Act, 1988, so that every membership of Adarsh Co-operative Housing Society is investigated into.

7. We, therefore, direct that the investigation in C.R. No. 180 of 2010 initially registered with the Marine Drive Police Station at Mumbai be transferred by the Crime Branch of Mumbai Police to the CBI and the CBI will take over the said investigation immediately and proceed further.

8. It was urged by Shri Kadam as well as Shri Khambata that the petitions have served their purpose as the CBI has registered the FIR and the investigation is in progress and, therefore, nothing further survives. However, Shri Dabhi as well as Shri Singh, the learned counsel for the petitioners, insisted that the investigation undertaken by the CBI be monitored by this court in view of the nature of the Adarsh Society's case.

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As of now, we deem it appropriate to grant some time to the CBI to amend the FIR and place before us the progress report of the investigation on the next date.

Stand over for three weeks.

(U.D. SALVI, J.) (B. H. MARLAPALLE, J.)

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