

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1010 OF 2017

Harshad Anil Kale and anr. ...Applicants
Versus
The State of Maharashtra (through the
Economic Offences Wings) ...Respondent

WITH
WRIT PETITION NO. 3417 OF 2017

Nilesh Modi ...Petitioner
Versus
The State of Maharashtra (through the
Economic Offences Wings) and ors. ...Respondents

WITH
WRIT PETITION NO. 2870 OF 2018

Vanmala Kharat & anr. ...Petitioners
Versus
The State of Maharashtra (through the
Economic Offences Wings) and ors. ...Respondents

WITH
CRIMINAL APPLICATION NO. 117 OF 2018
IN
WRIT PETITION NO. 3417 OF 2017

Ravindra B. Mhatre ...Applicant
In the matter between
Nilesh Modi ...Petitioner
Versus
The State of Maharashtra (through the
Economic Offences Wings) and ors. ...Respondents

**WITH
CRIMINAL APPLICATION NO. 968 OF 2017
IN
CRIMINAL APPLICATION NO. 1010 OF 2017**

Chitra A. Salunke ...Applicant
In the matter between
Harshad Anil Kale and anr. ...Applicants
Versus
The State of Maharashtra (through the
Economic Offences Wings) and ors. ...Respondents

Mr. Karansingh Rajput a/w Kunawal Waghmare for the
Applicant in APL No.1010/2017 and for the
Respondent/MCGM in Writ Petition Nos.3471/2017
and 2870/2018.
Mr. Kevic Setalwad, Senior Advocate, a/w Sunny Punamia I/
b Harsh Agrawal, for the Petitioner in WP
No.2870/2018.
Mr. Subhash Jha, a/w Sanjana Pardeshi, Sunny Puamia I/b
M/s. SSP Legal for the Petitioner in WP No.3417/2017.
Mr. F. R. Shaikh, APP a/w Ms. S. D. Shinde, APP for the
State.
Mr. Rizwan Merchant, Senior Advocate, I/b Mr. Pradeep
Havnur, for the Intervenor/Applicant in APPA
No.968/2017 and APPW No.117/2018 and for
Respondent no.2 in WP No.3417/2017 and WP
No.2871/2018.
Mr. Niteen Pradhan a/w Abhijit Desai, I/b M/s. Desai Legal
for Respondent no.4/SRA in WP No.3417/2017.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
RESERVED ON: 26th AUGUST, 2019
PRONOUNCED ON: 19th SEPTEMBER, 2019**

ORDER:- (Per N. J. Jamadar)

1. These criminal application and writ petitions have been preferred for quashment of the First Information Report ("FIR") bearing CR No.44 of 2016 registered with Govandi

Police Station, Mumbai (EOW CR No.38 of 2016) and the consequent proceedings, being RCC No.578/PW/2017 pending on the file of 47th Metropolitan Magistrate Court, Mumbai, arising out of the registration of the said FIR for the offences punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, by the accused who have been arraigned therein.

2. As the very action of registration of the FIR is called in question, apart from the merits of the matter having bearing upon the question of quashment of the subject FIR and the consequent proceedings, we have heard the learned Counsels for the parties on the aspect of justifiability of registration of the FIR, in the absence of prior examination of the matter by the High Power Committee, now designated as the Apex Grievance Redressal Committee (“AGRC”) under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slum Act, 1971”).

3. The brief factual matrix giving rise to the instant application and the petitions can be stated as under:

A scheme under the Slum Act, 1971 for rehabilitating slum dwellers in a housing society, under the name and style of Shri. Sant Balumama Sahakari Grahnirman Sanstha

(proposed) (hereinafter referred to as “the Society”) was initially conceived and commenced in the year 2006. M/s. Srushti Raj Enterprises (India) Ltd. (“M/s. Shrushti Raj”) was then appointed as the developer for the said scheme (hereinafter referred to as “original SRA scheme”). In the year 2010, a proposal came to be submitted for Cluster Development Slum Rehabilitation Scheme, for development of approximate 1,89,000 sq. mtrs. of land, including the land upon which the “society” was proposed, at village Borla, Taluka Chembur, Mumbai Sub-urban District, Mumbai (hereinafter referred to as “the Cluster Development Scheme”). Certain proceedings were initiated by M/s. Srushti Raj, the developer of the original scheme, and M/s. Sterling Buildcon Pvt. Ltd. (“M/s. Sterling”), the developer of the Cluster Development Scheme, to which we shall make a reference a little later. As the draft Annexure-II, containing names of 159 slum dwellers was published by the officers of the Municipal Corporation of Greater Mumbai, on 16th April, 2015, certain allegations of improper, unjustified and fraudulent inclusion of the members therein were made.

The FIR:

4. On 16th February, 2016, Advocate Smt. Chitra Anant

Salunke (hereinafter referred to as “the first informant”) lodged a report with the Director General of Police, Anti Corruption Bureau, Mumbai, alleging a large scale fraud in the SRA Scheme relating to Shri. Sant Balumama Housing Society. The substance of the allegation was that one Vanmala Kharat, wife of Yuvraj Hanumat Kharat (the then Deputy Treasurer of the society), usurped the powers of the office bearers of Shri. Sant Balumama Housing Society, upon the death of one Arun Tukaram Jadhav, the then Secretary. Vanmala Kharat arrogated office of the President of the said society for her husband. Vanmala Kharat initially established a rapport with the builder, namely, Nilesh Modi of M/s. Sterling and subsequently blackmailed him. Vanmala Kharat, in connivance with the builder and officers of the Municipal Corporation and Slum Rehabilitation Authority, gave false and fabricated receipts of membership of the society to the persons who were not otherwise eligible slum dwellers by accepting huge amount from them. The persons, who were having one tenement were shown to possess multiple tenements. Ineligible slum dwellers and those who were not at all residing on the land in question were shown to be the slum dwellers. It was further alleged that for causing wrongful gain to Mr. Nilesh Modi, by showing the consent of

more than 70% members of the proposed SRA society, the ineligible persons were shown to be members and the list of the slum dwellers was inflated in pursuance of a conspiracy by the said Vanmala Kharat, her associates, developer Mr. Nilesh Modi and the officers of Municipal Corporation of Greater Mumbai, especially, Mr. Harshad Anil Kale, the then Assistant Commissioner, and Mr. Sayyad Iqbal Ahmad Kadir, the then Rent Controller.

5. On the basis of the said report initially a crime was registered at Gowandi police station (CR No.44 of 2016) and subsequently it came to be transferred to Economic Offences Wing (EOW CR No.38 of 2016). In all 12 persons including applicants/petitioners herein, namely, Mr. Harshad Kale, Mr. Sayyad, Mr. Nilesh Modi, Smt. Vanmala Kharat and Mr. Yuvraj Kharat have been arraigned as accused therein.

Applications and Petitions:

6. In the backdrop of the initiation of the prosecution in the aforesaid fashion, Mr. Harshad Kale and Mr. Sayyad, the officers of the Mumbai Municipal Corporation have invoked the inherent powers of this Court for quashment of the FIR by filing Criminal Application No.1010 of 2017. The applicants assert that they had issued the public notice of

draft Annexure II, inviting suggestions and objections in respect of Shri. Sant Balumama Co-operative Housing Society, on 16th April, 2015, in adherence to the order passed by this Court in Notice of Motion (L) No.204 of 2014 in Writ Petition No.1165 of 2012. The applicants aver that there was no element of criminal conspiracy as in terms of the aforesaid order dated 14th August, 2014, passed by this Court, the developer was granted one year's time to obtain the consent of 70% of eligible slum dwellers. What the applicants had done, in discharge of their official duties and in compliance of the order passed by this Court, was just to publish the draft Annexure-II inviting suggestions and objections. Thus, the allegations against the applicants are *ex facie* false and motivated. The first informant has lodged the report *mala fide*. The first informant has no concern with, much less interest in, the said scheme.

7. It is further averred that in view of the binding judicial pronouncements of this Court, the police could not have registered the FIR without the matter having been first examined by the High Power Committee, constituted pursuant to orders of this Court for consideration and determination of grievances in respect of the SRA schemes. This haste in registering the FIR, in defiance of the orders of

this Court, has caused grave miscarriage of justice and thus on this count, as well as on the merits, the FIR deserves to be quashed.

8. Writ Petition No.3417 of 2007 is filed by Mr. Nilesh Modi of M/s. Sterling, whose proposal for cluster development has been approved. After narrating the history of the said slum development scheme and the various orders passed by this Court, in pursuance of which the development of the said scheme has ultimately commenced, the petitioner asserts that the driving force behind the prosecution is erstwhile developer, namely, M/s. Srushti Raj, who lost out on the development of the scheme. It is alleged that the first informant has been set up by M/s. Srushti Raj. The allegations in the FIR are stated to be patently false, baseless and unworthy of investigation. The very registration of the FIR is, in fact, an egregious disobedience of the series of orders passed by this Court which mandate the consideration of the grievances by the High Power Committee before any FIR is registered in the matter of allegations of criminality in the development of slum rehabilitation schemes.

9. Writ Petition No.2870 of 2018 is filed by the accused Vanmala Kharat and Yuvraj Kharat. The quashment of the FIR and the consequent proceedings is sought on the count

of the breach of the binding orders of this Court in the matter of registration of the FIR and alleged *malafide* report by the first informant at the behest of M/s. Shrushti Raj.

10. The applicants and petitioners thus seek the quashment of the FIR and the consequent proceedings.

11. In contrast, the first informant has filed an application being Criminal Application No.968 of 2017 in Criminal Application No.1010 of 2017, seeking the permission to intervene in the matter and resist the prayer of the applicants to quash the FIR. Mr. Ravindra Mhatre, another local resident, has filed Application No.117 of 2018 in Writ Petition No.3417 of 2017, raising similar contentions.

12. We have heard Mr. Rajput, the learned Counsel for the applicants (in Application No.1010/2017) and for Respondent no.3/MCGM (in Writ Petition Nos.3417/2017 and 2870/2018), Mr. Setalwad, the learned Senior Counsel for the petitioners (in WP No.2870/2018), Mr. Jha, the learned Counsel for the Petitioner (in WP No.3417/2017), Mr. Merchant, the learned Senior Counsel for the first informant/intervenor (in Application No.968/2017 and Application No.117/2018) and for Respondent no.2 (in WP No.3417/2017), Mr. Pradhan, the learned Counsel for

Respondent no.4/SRA in WP No.3417/2017 and Mr. Shaikh the learned APP for the State, at considerable length. The parties have also tendered written submissions.

Resume of history of litigation:

13. Before we advert to record and deal with the submissions advanced by the learned Counsels, in order to appreciate the controversy in a correct perspective, it would be apposite to note the history of litigation in the matter of rival claims to develop the original scheme and cluster development scheme.

13.1 The original developer M/s. Shrushti Raj filed Writ Petition No.879 of 2012, assailing the order dated 10th January, 2012 passed by the Chief Executive Officer, SRA (respondent no.2 therein), whereby the development proposal filed by M/s. Sterling (respondent no.3 therein) was directed to be considered and that of the M/s. Shrushti Raj was not favourably considered, and the said petitioner was directed to submit NOC from the owners of the plots within four weeks and/or to submit a copy of the award passed by the competent authority, if any, as alleged by them, within four weeks. It was further directed that if the petitioner failed to comply with the above terms, its proposal shall

stand recorded i.e. rejected.

A Division Bench of this Court, by order dated 11th May, 2012, disposed of the petition by granting the petitioners therein an opportunity to approach the High Power Committee in respect of their grievances including those raised in the said petition. We are informed that the special leave petitions filed against the said order came to be dismissed by the Supreme Court on 8th September, 2015.

13.2 M/s. Sterling and Mr. Nilesh Modi filed Writ Petition No.1165 of 2012, assailing the order dated 24th April, 2012 passed by the State Government, whereby the circular dated 12th November, 2010 and the provisional Letter of Intent dated 7th December, 2010, both issued by the Slum Rehabilitation Authority in favour of the petitioners therein, came to be cancelled. The action of the State Government cancelling its own letter dated 8th October, 2010 under which the petitioners proposal for slum rehabilitation scheme was approved by the Government, was also assailed therein.

13.3 A Division Bench of this Court by the judgment and order dated 24th September, 2013, allowed the petition in the following terms.

“55. In the result, the impugned order dated 24 April 2012 is quashed and set aside.

(1) It is declared that the Government approval dated 8 October 2010 read with Government letter dated 11 November 2010 and the SRA circular dated 12 November 2010 are in accordance with the provisions of the Slum Act, including sections 3A and 3K thereof.

(2) As a consequential direction, the respondents are directed to treat the circular dated 12 November 2010 and the provisional LOI dated 7 December 2010 issued by SRA as subsisting with modification that the petitioner shall be permitted to submit draft Annexures II for slum dwellers, other than those for whom the petitioner had already submitted the draft Annexures II by 31 March 2014.

(3) Within one year from the date of Competent Authority certifying Annexures II, the petitioner shall obtain consent in writing of 70% of the eligible slum dwellers as already provided in clause 2.17 of the Government Approval dated 8 October 2010, which shall also be treated as subsisting with the clarifications contained in Government letter dated 11 November 2010, accepting the suggestions of SRA made in SRA letters dated 16 October and 3 November 2010.”

(emphasis supplied)

13.4 The Special Leave Petition CC No.2807 of 2014 preferred against the said judgment and order dated 24th September, 2013, was dismissed by the Supreme Court by order dated 7th March, 2014.

13.5 The Division Bench of this Court passed further order in Notice of Motion (L) No.204 of 2014 in Writ Petition No.1165 of 2012. Paragraphs 10 to 12 of the said order dated 14th August, 2014, read as under:

“10. The MCGB shall, therefore, proceed to certify Annexures-II in light of the above without insisting for any NOC from the Estate Department in respect of payment of 25% premium or without insisting for consent of 70% of the eligible slum dwellers which consent is to be provided by the Petitioners within one year from certification of Annexures-II, as was already provided in paragraph 55 of our judgment dated 24 September 2013.

11. Learned counsel for the Petitioners has placed on record a statement indicating the proposed co-operative housing societies of the slum dwellers for which the MCGB

has already displayed provisional Annexure-II. These societies are as under :

- (i) Kashinath Patil Wadi and Mukti Nagar (SRA) CHS (proposed),
- (ii) Vaibhav Nagar (SRA) CHS Ltd;
- (iii) Om Asha Kiran (SRA) CHS (proposed);
- (iv) Sai Vitthal Rukmini (SRA) CHS (proposed);
- (v) Bhramhandev MS Patil Wadi (SRA) CHS (proposed) and
- (vi) Surya Kiran (SRA) CHS (proposed)

In respect of items societies at sr.nos.(i) to (iv) above, the final certification will be done by MCGB by 15 September 2014 and in respect of (v) and (vi) above the certification shall be done by MCGB by 31 December 2014. For other sixteen proposed co-operative housing societies, the MCGB shall make certification by 31 December 2015 at the rate of four societies per quarter.

12. Accordingly, present Notice of Motion (L) No.204 of 2014 stands allowed in above terms. Notice of Motion (L) No.479 of 2014 taken out for clarification/modification of our order dated 24 September 2013 by MCGB stands dismissed.”

(emphasis supplied)

13.6 Special Leave Petition Nos.26546 and 26547 of 2014, preferred against the said order, were disposed of by the Supreme Court by order dated 24th September, 2014 with the following modification:

“Shri. Shyam Divan, learned Senior Counsel appearing for the first respondent, on instructions, states that first respondent has already paid the first installment of 25% of the land premium payable to the Slum Rehabilitation Authority (S.R.A.). Keeping in view the aforesaid made by Shri. Shyam Divan, we declined to entertain these special leave petitions.

In respect of Societies at serial Nos.(i), (iii) and (iv), as stated in the impugned order, the final certification shall be done by MCGB on or before 30.11.2014.”

14. In the backdrop of the aforesaid orders, it becomes abundantly clear that the legal rights of M/s. Sterling to

develop the cluster development scheme, including the SRA scheme of Shri. Sant Balumama Housing Society (proposed) attained finality. Conversely, the clam of M/s. Shrushti Raj to develop the original scheme did not pass muster. M/s. Sterling was permitted to submit draft Annexure-II by 31st March, 2014. The MCGM was directed to make certification of draft Annexure-II by 31st December, 2015. Liberty was given to M/s. Sterling to obtain consent in writing of 70% of the eligible slum dwellers, within one year from Competent Authority certifying Annexure-II. The subsequent action of the concerned authorities as well as the office bearers of the society and the developers are required to be considered in the backdrop of the aforesaid crystallization of the rights and obligations.

Submissions :

15. Mr. Jha, the learned Counsel for the petitioner (WP3417/17) submitted that the initiation of the prosecution based on the FIR lodged by the first informant is an atrocious abuse of process of law. By placing reliance upon the judgments of this Court in the cases of (i) *Tulsiwadi Navnirman Co-op. Housing Society ltd. and another Vs. State of Maharashtra and ors.*¹, (ii) *Shailesh Gandhi vs.*

1 2008(1) BCR 1.

*State of Maharashtra and others*² and (iii) *Sayed Anwar Ahmed and anr. vs. State of Maharashtra and others*³ it was vehemently urged that the FIR and the consequent proceedings initiated without an examination by, and recommendation of, High Power Committee are wholly unsustainable and unjust as well. The officers, who brazenly registered the FIR, in teeth of the law laid down by this Court, in a series of judgments which mandate the examination of the grievances as regards the SRA scheme by the High Power Committee, have committed not only an illegality but a wilful contempt of this Court. Thus, the FIR and the consequent proceedings deserve to be quashed on this count alone and the concerned officers are liable to be proceeded against in contempt jurisdiction, urged Mr. Jha.

16. Mr. Jha, further submitted that the sole purpose of the instant prosecution is to derail the cluster development scheme, which has been allotted to the petitioner, despite the challenge to the said allotment having been negatived repeatedly, and up to the Supreme Court. As the continuation of the prosecution is being cited as an hindrance in granting permission for the petitioner to carry

2 2010(2) BCR 408.

3 2017 SCC Online Bom. 3972.

on the development, the instant prosecution deserves to be quashed and set aside to prevent the abuse of law and secure ends of justice.

17. Mr. Setalwad, the learned Senior Counsel for the petitioners (Writ Petition No.2870/2018) submitted that the fact that the investigation on the basis of the FIR lodged by the first informant has been shown to be completed qua the petitioners in Writ Petition and a charge-sheet has been filed against the petitioners does not preclude this Court from quashing the FIR and the consequent proceedings, even at this stage, in exercise of inherent powers. Mr. Setalwad assailed the initiation and continuation of prosecution, sans prior examination and consideration of the grievances by the High Power Committee, in terms of the law laid down by this Court in the aforesaid cases. It was further urged that, even on merits, the proceedings deserve to be quashed as they are nothing but the abuse of process of law.

18. In the alternative, Mr. Setalwad, submitted that even at this stage there is no hindrance in directing the High Power Committee to examine the substance of the grievance, raised in the FIR, and submit a report thereof. Amplifying the submission it was urged that the core allegation that

ineligible person were shown in the draft Annexure-II and the number of slum dwellers has been inflated, squarely falls within the mandate assigned to High Power Committee.

19. Mr. Niteen Pradhan, the learned Counsel for respondent no.4/Slum Rehabilitation Authority (WP No.3417/2017) supported the contention of the applicants/petitioners. Mr. Pradhan would urge that in view of the Full Bench judgment in the case of *Tulsiwadi* (supra) and the circular issued by the Government, the investigating agency was enjoined to make over the report submitted by the first informant to the High Power Committee for further examination and recommendation, if any. The registration of FIR, without such examination and recommendation according to Mr. Pradhan can be stated to be without jurisdiction. In view of the judgment of the Supreme Court in the case of *A.R. Antulay vs. R. S. Nayak and another*⁴, the registration of the FIR and the consequent investigation, leading to the filing of charge-sheet is *non-est* in the eye of law and is of no consequence, being without jurisdiction.

20. The learned APP, however, supported initiation and continuation of the prosecution. Since an element of criminality is found and the investigating agency has lodged

4 (1988) 2 SCC 602.

charge-sheet against the petitioners in Writ Petition No.2870 of 2017 and further investigation under Section 173(8) of the Code of Criminal Procedure (“the Code”) is under-way, at this stage, according to the learned APP, the exercise of inherent power to quash the proceedings is unwarranted.

21. Mr. Merchant, the learned Senior Counsel for the first informant/respondent no.2 stoutly countered the submissions on behalf of the applicants/petitioners. It was urged with tenacity that the broad proposition that no FIR could be registered without the grievance being first examined by High Power Committee is totally misconceived. Taking us through the judgments of this Court in the cases of *Tulsiwadi* (supra) and *Shailesh Gandhi* (supra) a painstaking effort was made to bolster up the submission that neither the Full Bench judgment in the case of *Tulsiwadi* (supra) nor the Division Bench judgment in the case of *Shailesh Gandhi* (supra) laid down a proposition of law that even when a cognizable offence is made out in the matter of development of slum rehabilitation scheme, the police cannot register a crime. Banking upon certain observations in the cases of *Tulsiwadi* (supra) and *Shailesh Gandhi* (supra), it was submitted that a proper appreciation of the ratio of the said judgments would indicate that where

serious offences are committed in the matter of execution of SRA schemes, this Court has directed that the matter must be investigated by the competent investigating agency. What has been left to the High Power Committee is the consideration of the grievances in administrative matters. Mr. Merchant would urge that High Power Committee is neither statutorily empowered nor competent to investigate into serious allegations of fraud and the like offences.

22. As regards the judgment of this Court in the case of ***Sayed Anwar*** (supra), it was urged that the facts of the said case are quite distinct and, thus, the ratio therein would not govern the facts of the instant case.

23. As the investigating agency has already filed the charge-sheet against accused Vanmala Kharat (petitioner in Writ Petition No.2870/2018) and the competent criminal Court has taken cognizance of the offences, at this stage, even the suggestion to direct the examination of the matter by the High Power Committee was stated to be in derogation of fundamental principles of criminal jurisprudence. The High Power Committee cannot be placed at a higher pedestal than a Court of competent jurisdiction, empowered to take cognizance of the offence. The High Power Committee cannot

sit in judgment over the existence or otherwise of criminality in the alleged transactions, of which the concerned Magistrate has already taken cognizance. Entrusting such power to an extraneous agency is inconceivable under the scheme of the Code, in accordance with which only, the investigation, enquiry and trial of the offences must proceed. This factor, according to Mr. Merchant, takes the instant case out of the purview of the direction in the case of *Shailesh Gandhi* (supra) as in the said case, the Division Bench had directed the examination of 87 complaints by High Power Committee except the one's which are already before the Court of competent jurisdiction. Thus, the learned Counsel for the first informant submitted that none of the petitions deserve to be countenanced.

Consideration:

24. We have given careful consideration to the submissions advanced across the bar. We have also perused the material on record. Since the fate of the issue raised in the instant application/petitions turns upon the correct construction of the law enunciated by this Court in the cases of *Tulsiwadi* (supra), *Shailesh Gandhi* (supra) and *Anwar Sayed* (supra) and extensive reliance has been placed on the observations in

the said judgments, in support of the rival submissions, we deem it appropriate to refer to those judgments at the outset.

25. To start with, the Full Bench decision in *Tulsiwadi* (supra). The Full Bench after noticing the spate of litigation concerning the slum rehabilitation schemes, the diverse issues involved therein, the necessity of adjudication by Slum Rehabilitation Authority and State Government and alternate mechanism for dealing with those grievances, instead of the parties being forced to invoke the writ jurisdiction of this Court for every grievance, directed that the State Government must devise a mechanism to deal with the grievance, supervise and issue directions.

26. The directions of this Court in paragraphs 113 and 114 are of material significance and they read as under:

“113. Till such time as the Legislature or the State Government makes changes or amendments, it would be just, fair and proper to direct that a Monitoring Agency/mechanism should be set up by the State so that the power to supervise and issue directions available in the Slum Act can be exercised effectively. The State Government as also the Slum Rehabilitation Authority has not opposed this course during oral arguments. Hence, we are of the view that the State should immediately establish a monitoring agency. It is necessary to do so for the following reasons:-

114. That apart, with a view to remove all apprehensions in the minds of slum dwellers and other aggrieved parties, we suggested to the learned Advocate General that the State should immediately set up a monitoring agency/mechanism so that the power to supervise and issue directions available in the slum Act can be exercised effectively. In all fairness, learned Advocate General stated that directions be issued in that behalf. The State should immediately put a monitoring agency in place.

.....

c) It would be of utmost importance that the Government sets up high power committee, consisting of a person, preferably a Principal Secretary, to be nominated by the Secretary, who shall be assisted by Chief Executive Officer / SRA, CEO / Vice President of MHADA and CEO / Vice President of MMRDA and Commissioner of Municipal Corporation, Gr. Mumbai.

d) That any complaint about eligibility of slum dwellers, eligible slum dwellers being denied tenement, developers not undertaking and completing the project as per the permission and approval so also within the stipulated time frame, transit accommodation being unavailable or not provided for etc. shall be addressed to this Committee and grievances be looked into by it accordingly. The Courts cannot be approached straightway unless and until above mentioned Committee is first moved by the aggrieved person in the form of an application / complaint in writing. If the grievance is not redressed or complaint / representation is not attended to, then and in that event this Court can be approached under Article 226 of the Constitution and not otherwise. Ordinarily, no person can approach this Court directly without exhausting the above remedy.”

(emphasis supplied)

27. The Full Bench, answered the reference, *inter alia*, as under:

“118. In the result, we answer the question framed hereinabove as under:-

.....

D) As far as disputes and questions involving the slum dwellers and Slum Rehabilitation Authority/Public Body/State, Cooperative Housing Society of Slum Dwellers and Developers, Registered Cooperative Housing Society of Slum Dwellers on one hand and proposed Cooperative Society on the other, Developers and S.R.A./State, a Writ petition under Article 226 of the Constitution of India would not lie or would be entertained unless and until the parties exhaust the remedy of approaching the High Powered Committee referred to above.

E) The only exception that can be made to Clause (D) above, is with regard to Writ petitions challenging the validity and legality of the Rules, Regulations and Policy Circulars/ directives issued under the Statutory provisions or the vires of the Statutory provisions themselves. In such cases, the Court would not insist upon exhaustion of remedies stipulated above. Similarly, if a High Powered

Committee/ Authority refuses to act on the representations/ applications despite proof of the same having been received, then, in appropriate cases, directions can be issued to the said Authority. However, the parties must satisfy this Court that they had made a grievance with regard to inaction of High Powered Committee to the State Government and it has also refused to issue any directions to either that Authority or SRA. Thus, if the State inaction is also alleged, then, the petition can be entertained. However, grant of relief would depend upon this Court satisfying itself about the promptness or sense of urgency shown by the aggrieved party apart from its bonafides in approaching this Court.”

28. In the case of *Shailesh Gandhi* (supra), a public interest litigation was filed with the assertion that a major fraud was being perpetrated on the citizens, the slum dwellers and the State by hijacking a welfare scheme to the benefit of the few at the cost of the public at large. Several complaints, including that of commission of serious offences in execution of the slum rehabilitation schemes were lodged but neither they were properly investigated nor the culprits were brought to justice. It was thus prayed that a special investigation team be directed to be set up for examination of those complaints, furnish adequate staff to the team to complete those investigations, expeditiously, and also to take action against all the erring officers and the individuals who were involved in those fraudulent activities.

29. The Division Bench of this Court adverted to the Full Bench judgment in the case of *Tulsiwadi* (supra), and the

notification issued by the State Government dated 15th November, 2007, constituting the High Power Committee in furtherance of the directions in the said case and the action taken by the said High Power Committee on the matters referred to it. Thereafter, the Division Bench made the following observation:

“16. We have already mentioned in some details the nature of these complaints and the necessity for examining them in accordance with law. The complaints, except the one's which purely indicate administrative or departmental irregularities need detailed inquiry. In their substance and nature, they indicate serious lapses and even element of criminality. Thus there would be every need for their proper examination by a specialized investigating agency or appropriate authority to avoid injustice to the slum dwellers and even in the larger public interest. Transparency is one of the essential features of proper governance or public administration.....”

30. Ultimately, the Court disposed of the petition by issuing certain directions to the State Government. The observations and directions relevant for the determination of the issue raised in the instant petition, are as under:

“16..... It is neither permissible nor possible for this Court to examine these 87 complaints on their merit and supervise their inquiry or day to day investigation. It is, therefore, essential that some directions must be issued in regard to the proper investigation and disposal of these complaints and that too expeditiously. It is apparent from the record that there are different types of complaints which would require to be dealt with and investigated by different authorities. A kind of preliminary examination of all these complaints, therefore, would be necessary before actual investigating machinery is put in motion. There might be matters which can be remedied and corrected at the department level, while in other complaints, element of criminality may be involved which requires proper investigation by the concerned authorities. It is the duty of the court to ensure that rule of law prevails and the serious

matters are not scuttled by administrative authorities or are not delayed in a manner which would completely render the complainant's grievances incapable of being redressed and remedied. In our view, the most appropriate way to handle these matters would be to issue certain directions and leave it open to the Authorities concerned to proceed in accordance with law while ensuring that all the matters are examined judiciously and persons responsible for committing illegalities and acting in an unfair manner are brought to book. Thus, while disposing of this Writ Petition, we issue the following directions:

(a) All these 87 complaints, except the one's which are already before the Court of Competent Jurisdiction, would be examined by the members of the High Powered Committee constituted by the State and the Committee upon the inquiry and examination of the relevant records shall record its opinion.

(b) (c) (d)

(e) Wherever element of criminality is involved, particularly in cases of fraud, impersonation or like cases, the investigation would be handed over to an appropriate agency which shall then proceed with the matter in accordance with law and without being influenced in any manner whatsoever by the position or status of the person involved in the case.

(f) All these complaints would be examined by the High Powered Committee assisted by the Additional Commissioner of Police nominated by Director General of Police, Maharashtra, expeditiously. In the event this Committee finds that illegalities or irregularities coupled with the element of criminality justify passing of certain interim directions with regard to stopping, regulating or even cancelling the development schemes, in order to achieve the object of settlement of genuine slum dwellers and the public interest, it would be free to do so, subject to the orders that may be passed by the Courts of Competent Jurisdiction.”

(emphasis supplied)

31. The case of *Sayed Anwar* (supra) arose out of an order passed by the learned Magistrate directing investigation under Section 156(3) of the Code on a complaint filed by the respondent therein alleging commission of offences punishable under Sections 452, 465, 466, 468, 471, 420 read

with Section 34 of the Indian Penal Code in the execution of a slum rehabilitation scheme. The Division Bench of this Court, dealt with two issues: (1) the principles which are to be kept in mind by the Magistrate in passing an order under Section 156(3) of the Code and the pre-requisites for exercise of the said power, (2) the necessity of referring a complaint alleging the commission of the offences in the matter of a slum rehabilitation scheme to the High Power Committee, before a prosecution is initiated on the strength thereof.

32. On the second aspect, the Division Bench followed the decision of this Court in the case of *Shailesh Gandhi* (supra) and further expounded the law as under:

“28. In the city of Mumbai, there are large number of such Complaints filed concerning execution and implementation of several Rehabilitation Schemes which are being implemented in Mumbai. In view of the law laid down by the decision of this Court in Shailesh Gandhi Vs State of Maharashtra and Others, the aggrieved party must first approach the High Power Committee. As directed by the said Judgment, if the High Power Committee finds that there is an element of criminality and particularly in cases of fraud, impersonation and like cases, the High Power Committee will ensure that the investigation will be handed over to the appropriate agency. As stated earlier, the Complaint in the present relies on so called draft prepared containing names of the eligible slum dwellers. If the complainant has any grievance about the names included in Annexure – II, he can always approach High Power Committee. The said Committee can direct setting of criminal law in motion if it finds element of criminality.”

(emphasis supplied)

33. With the aforesaid observations, the Division Bench, quashed and set aside the FIR in the said case with liberty to

the complainant therein to file appropriate proceedings before the High Power Committee for redressal of the grievances.

34. In the backdrop of the enunciation of the aforesaid position, the submissions now fall for consideration. Undisputedly, pursuant to the directions of this Court in the case of *Tulsiwadi* (supra), the State Government has constituted a High Power Committee by the notification dated 15th November, 2007. It is also incontestible that the subsequently circulars have been issued advising the investigating agencies to forward the complaints alleging commission of offences in the execution of slum rehabilitation schemes to the High Power Committee. By way of illustration, the letter dated 6th August, 2016 addressed by the Home Department to the Director General, Anti-Corruption Bureau, makes a reference to the judgments of this Court in the case of *Tulsiwadi* (supra) and *Shailesh Gandhi* (supra) and the constitution of the High Power Committee by notification dated 15th November, 2007 and advises that the complaints received by the Anti-Corruption Bureau or Economic Offences Wing or the local police stations, wherein allegations are made about irregularities in slum rehabilitation scheme, shall be placed before the High Power Committee and based on the recommendations of the High Power Committee, further

actions be taken. It is incontrovertible that in the case at hand the FIR lodged by the first informant/respondent no.2 has been registered without prior examination by, and recommendation of, the High Power Committee.

35. The learned Counsel for respondent no.2 would urge that the necessity of the examination of the complaint by the High Power Committee to find out the existence of the criminality as was sought to be urged by the petitioners, does not find support in the judgments of either *Tulsiwadi* (supra) or *Shailesh Gandhi* (supra).

36. In all fairness to the learned Counsel for respondent no.2, it must be noted that though, *Tulsiwadi* (supra) did not specifically deal with the question as to whether the existence or otherwise of an element of criminality ought also to be examined by the High Power Committee, yet, one of the questions, which was directed to be referred to, and considered by the High Power Committee was “the complaint about the eligibility of slum dwellers and eligible slum dwellers being denied tenement” (paragraph 114 Clause (d)).

37. The gravamen of the indictment, in the instant prosecution, is that the number of eligible slum dwellers have been inflated from 74 to 169. Thus, the genesis of the dispute

is in the eligibility of the slum dwellers for rehabilitation in the proposed society. The offences are alleged to have been committed in showing ineligible persons as eligible slum dwellers, by making wrongful gain, and in the process, forging and fabricating documents. Thus, the core question as to whether the draft Annexure-II has been prepared faithfully and in accordance with the governing provisions of eligibility and entitlement for rehabilitation is a matter which squarely falls within the ambit of the mandate of High Power Committee.

38. Undoubtedly, the Full Bench did not specifically advert to the question as to whether the FIR ought not be registered, despite there being allegations of commission of cognizable offence, before the matter is examined by the High Power Committee. However, the underlying purpose of the directions to constitute a High Power Committee to examine the grievances cannot be lost sight of. The issues involved in the execution and implementation of slum rehabilitation scheme are complex. Not only the stakes are high, having regard to the scarcity of land in Mumbai and the price it commands, but also the stakeholders are multiple. There are disputes *inter se* between the slum dwellers. There are disputes as to who are the true representatives of the slum dwellers, when

there are different factions. There is competition amongst the developers. Various means are adopted to wean away the maximum number of slum dwellers for bagging the project. In this backdrop, often the allegations and counter-allegations, including that of fraud and forgery of documents, are made. At the root of the controversy is often the eligibility of a person to get a tenement in the scheme. The necessity of examination and consideration of the grievances by the High Power Committee is required to be appreciated in the backdrop of these complexities, apart from the allegations of administrative lapses, connivance and complicity of the officers and officials who are involved in the execution of these projects.

39. The observations of this Court in the case of ***Shailesh Gandhi*** (supra), extracted above, are rather unequivocal. The Division Bench has, in terms, observed that a kind of preliminary examination of the complaints would be necessary before actual investigating machinery is put in motion. The Court was alive to the fact that the grievances may or may not involve an element of criminality and, thus, it was observed that “there might be matters which can be remedied and corrected at the departmental level, while in other complaints, element of criminality may be involved

which requires proper investigation by the concerned authorities”. Ultimately, the Court issued an operative direction that those 87 complaints, except the one's which were already before the Court of competent jurisdiction, would be examined by the members of the High Power Committee and it was further directed that wherever an element of criminality is involved particularly in the case of fraud, impersonation or like cases the investigation would be handed over to the proper investigating agency which would then proceed in the matter in accordance with law. The High Power Committee was further directed to take assistance of Additional Commissioner of Police nominated by Director General of Police, Maharashtra.

40. In the backdrop of the aforesaid observations and directions, which unmistakably indicate that the Division Bench of this Court consciously entrusted the examination of the matters involving the element of criminality as well to the High Power Committee, with a clear mandate that whenever such an element of criminality is found the investigation would be handed over to the proper investigation agency, we find it rather difficult to accede to the submission of Mr. Merchant that *Shailesh Gandhi* (supra), also directly does not deal with the prior examination of the complaints by the High

Power Committee.

41. An attempt was made to wriggle out of the situation by putting forth a submission that those directions were limited to the cases of 87 complaints, which the Division Bench was dealing with, and they cannot be construed as laying down a proposition of law. We are not persuaded to agree with this submission for reasons more than one. The directions are required to be read in the context of the judgment of this Court in the case of *Tulsiwadi* (supra) in pursuance of which the High Power Committee has been constituted. It can not be urged that the object and reasons for which the High Power Committee was directed to be constituted do not hold the field in the complaints post *Shailesh Gandhi* (supra). Secondly, the aforesaid directions in the case of *Shailesh Gandhi* (supra) have been subsequently followed by this Court as being operative and binding even in other complaints, in the case of *Sayed Anwar* (supra).

42. As observed earlier, the genesis of the prosecution is in the inclusion and the exclusion of the names in the draft Annexure-II published on 16th April, 2015. Thus, the endeavour on behalf of the respondents to distinguish the aforesaid pronouncement in the case of *Sayed Anwar* (supra),

on facts, also does not deserve any countenance.

43. There is no quarrel with the proposition that when a report about the commission of cognizable offence is lodged, the investigating agency is bound to register an FIR. The Constitution Bench Judgment of the Supreme Court in the case of *Lalita Kumari vs. Government of Uttar Pradesh & ors.*⁵ sets at rest the controversy and ordains that if the information discloses commission of a cognizable offence, the registration of FIR is mandatory under Section 154 of the Code and no preliminary enquiry is permissible in such a situation. Yet, in certain situations, compliance of certain pre-requisites or conformity with certain requirements, before registration of FIR is not unknown to law. The interdict on registration of FIR by the investigating agency, initiation and continuation of the prosecution may be in the nature of statutory bar, where the governing enactment provides that FIR shall not be registered unless a prior action is taken or approval of an authority is obtained.

44. It would be contextually relevant to note that in the case of *State of Haryana and others vs. Bhajanlal and others*,⁶ the Supreme Court has indicated, by way of illustration, a

5 (2014) 2 SCC 1.

6 1992 (Supp.) (1) SCC 335.

category wherein the power to quash the prosecution under Section 482 of the Code could be legitimately exercised, being;

“6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

45. In the case at hand, evidently there is no statutory bar. However, this Court, having regard to the complexities of the slum rehabilitation scheme, the multiple stakeholders therein and the ultimate deleterious impact on the rights of the slum dwellers for whose rehabilitation, the Slum Act, 1971 has been enacted, directed that the matter needs to be examined by the High Power Committee before a prosecution is initiated. The institution of a prosecution often entails collateral consequences, like the delay in the execution of the project as in the case at hand. Ultimately, the genuine and eligible slum dwellers are deprived of the beneficial provisions of the Act and the scheme thereunder.

46. It is imperative to note that such preliminary examination, by the orders of the Court, is also not something which has not been hitherto resorted to. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of *Jacob Mathew vs. State of*

Punjab,⁷ wherein in the context of criminal medical negligence, the Supreme Court, *inter alia*, directed that the investigating officer should, before proceeding against the doctor accused of rash and negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in a Government Service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam* test to the facts included in the investigation.

47. The judgment of the Supreme Court in the case of *Jacob Mathew* (supra) was expressly approved by the Constitution Bench in the case of *Lalita Kumari* (supra), wherein it was observed as under:

“115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offence, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.”

48. In view of aforesaid enunciation of the legal position, we are not persuaded to accede to the submission of Mr. Merchant that once a report of cognizable offence is lodged, the matter completely falls in the realm of the investigating

⁷ (2005) 6 SCC 1.

agency and, thus, a further enquiry by an extraneous agency like High Power Committee is not legally permissible. In view of the unequivocal observations of this Court in the case of *Sayed Anwar* (supra), now the person complaining of the commission of offences in the execution of the slum rehabilitation schemes, under the Act, must first approach the High Power Committee and it is not open to the investigating agency to directly initiate the prosecution on the basis of such a report.

49. This propels us to the submission on behalf of the respondent that since the investigation in the instant prosecution has reached an advanced stage; culminating in filing of the charge-sheet against Vanmala Kharat and Yuvraj Kharat, and even the learned Magistrate has taken cognizance of the offences, at this juncture, examination of the matter by the High Power Committee is legally impermissible, and may not serve any purpose as well.

50. Respondent no.2 lodged FIR on 26th February, 2016. The judgment in the case of *Sayed Anwar* (supra) was pronounced on 28th February, 2017. However, the charge-sheet was lodged by the investigating agency on 13th April, 2017. Thus, in strict sense, the investigating agency cannot be

heard to state that since the pronouncement of the High Court in the case of *Sayed Anwar* (supra) came subsequent to the registration of the FIR, there is no infirmity in the prosecution.

51. We are, however, inclined to deal with the submission on behalf of the respondents that once cognizance of the offences has been taken by the Court of competent jurisdiction, the High Power Committee cannot examine the matter as a superior forum. Since the learned Magistrate has taken cognizance of the offences, albeit the charge-sheet having been filed against few of the accused, the High Power Committee cannot now examine the matter to find out as to whether there is an element of criminality, urged the learned Counsel for the respondents.

52. First and foremost, so far as the powers of this Court to quash the proceedings, in exercise of inherent jurisdiction, the filing of the charge-sheet cannot operate as an impediment. If the Court finds that the initiation of the prosecution suffers from the vice of abuse of the process, the fact that the matter has advanced to the stage of filing of the charge-sheet and taking of the cognizance of the offences by the Court, is of no significance.

53. The reliance placed by Mr. Jha, the learned Counsel for the petitioner on a judgment of the Supreme Court in the case of *Anand Kumar Mohatta vs. State (Government of NCT of Delhi)*⁸, wherein it was observed that there is nothing in the words of Section 482 which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR and that it is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the Trial Court. It was further observed that it can be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation.

54. The question which, however, warrants serious consideration is whether it would be proper for this Court to quash the proceedings at this stage, when investigation is complete and charge-sheet has been lodged on the premise that the FIR ought not to have been registered without the matter having been first examined by the High Power Committee. It is in the interest of public justice that an offence should not go uninvestigated if not unpunished. Indeed, if certain offences have been committed in the

8 2018 SCC Online SC 2447.

preparation of Draft Annexure-II, the perpetrators must be prosecuted and punished, if found guilty. Viewed through this prism, the progress made in the prosecution till date may not be rendered worthless provided an element of criminality is found by High Power Committee. We do not find any impediment in the examination of the matter, even at this stage, by the High Power Committee.

55. Without professing to question or dilute the binding efficacy of any of the aforesaid judgments, namely, *Tulsiwadi* (supra), *Shailesh Gandhi* (supra) and *Sayed Anwar* (supra), in the peculiar facts of the case, in our view, the examination of the matter at this stage by the High Power Committee neither for the purpose of finding out as to whether the act of taking cognizance of the offences by the Magistrate is correct, nor in the capacity of the superior forum, as was sought to be urged on behalf of the respondents, but in discharge of its mandate to examine the grievance of alleged illegalities in preparation of the draft Annexure-II and also to find out element of criminality, if any, may not be out of place. The High Power Committee, can very well examine all the aspects of the matter, uninfluenced by the opinion formed by the investigating agency, and submit a report to this Court. Such a report, may also assist this Court in appreciating the

contentions raised by the parties, on the merits of the mater.

We are thus inclined to pass the following order:

: ORDER :

- (a) The Senior Police Inspector, Economic Offences Wing, Housing-II, Mumbai, is directed to place the FIR bearing EOW No.38 of 2016 (CR No.44 of 2016, registered with Gowandi Police Station) along with the relevant documents, before the High Power Committee (Apex Grievance Redressal Committee) for examination and consideration within three weeks from today.
- (b) The High Power Committee (Apex Grievance Redressal Committee) shall deal with the said FIR and the material placed before it by the Senior Police Inspector (EOW), in accordance with law, after providing an opportunity of hearing to the persons whom it deems necessary to hear and thereupon submit a report to this Court, especially on the aspect of an element of criminality, particularly on the aspect of fraudulent inclusion of the names in the draft Annexure-II, if any, as expeditiously as possible, preferably within three

months from the date of placing of the FIR and material before it by EOW.

- (c) Stand over after four months.
- (d) In the meanwhile, there shall be stay to the trial in RCC No.578/PW/2017 arising out of EOW CR No.38 of 2016 (CR No.44 of 2016, Govandi Police Station) pending before 47th Metropolitan Magistrate Court, Mumbai, and further investigation in the said crime, till the next date.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]