

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1369 OF 2024
IN
APPEAL NO. 57 OF 2007

Bandra Shiva CHSL thorough its authorized representative	...Applicant
<i>In the matter between</i>	
Shyam Jairamdas Bajaj	...Appellant
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Mr Rohan Hogle, with *Gursheen Kaur Sahni*, for the Applicant in
IA/1369/2024.

Mr Swapnil V Walve, APP, for the Respondent-State.

Mr Vijay Jaitkar, for the MCGM, in Appeal/1369/2024.

Mr Amit Mhatre, PI, ACB, BMU, present.

CORAM	N.R. Borkar, J.
DATED:	6th May 2024

PC:-

ARUN
RAMCHANDRA
SANKPAL

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ARUN RAMCHANDRA
SANKPAL
Date: 2024.05.09
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1. The applicant is a Cooperative Housing Society. The applicant is seized and possessed of piece or parcel of land admeasuring 773.40 square meter or thereabout, bearing Final Plat No. 81 CTS No. F/978 of Town Planning Scheme Bandra IV of Bandra Danda Divison of Village Bandra-F, Taluka Andheri in the Registration District and Sub-District of Mumbai and Mumbai sub-urban together with structure standing thereon situate at Turner Road, Bandra (W), within the limits of Greater Mumbai Municipal Corporation. The learned counsel for the applicant

submits that the applicant society is facing various difficulties as the ACB, during the course of investigation of the present case had seized various documents pertaining to the plot in question from BMC and other departments. It is submitted that the applicant society has nothing to do with the crime in question, which is in relation to fraudulently obtaining higher FSI. It is submitted that the trial court has already directed that the documents be returned to the concerned departments, however, due to pendency of the present appeal they are not returned. It is submitted that as per the order of the trial Court the documents be returned to the concerned departments.

2. I have perused the judgment of the trial Court. The operative order of the judgment of trial court reads thus:

O R D E R

1. All the accused are hereby held guilty for an offence punishable u/sec. 120-B, 466, 468, 471, 477-A 420 of IPC and sec. 5(2) r/w Sec.5(1)(d) of the P.C. Act, 1947 and are hereby convicted sentence to suffer RI for three years and to pay the fine in the sum of Rs.15,000/- in default to suffer further RI for 9 months.
2. Accused No.1 is hereby held guilty for an offence punishable u/sec. 466 r/w Sec.34 of IPC and is hereby convicted, sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
3. A/1 is hereby held guilty for an offence punishable u/sec 468 r/w sec. 34 of I.P.C. and is hereby convicted, sentence to suffer RI for 2 years and to pay the fine in the sum of

Rs.10,000/- and in default to suffer further RI for 6 months.

4. A/1 is hereby held guilty for an offence punishable u/sec. 471 r/w sec.34 of I.P.C and is hereby convicted, sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
5. A/1 is hereby held guilty for an offence punishable u/sec. 420 r/w sec. 109 of I.P.C. and is hereby convicted, sentence to suffer RI for 3 years and to pay the fine in the sum of Rs.15,000 and in default to suffer further RI for 9 months.
6. A/1 is hereby held guilty for an offence punishable u/sec. 477-A r/w sec. 34 of I.P.C. and is hereby convicted, sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
7. A/1 is hereby held guilty for an offence punishable u/sec. 5(1)(d) of the P.C. Act, 1947 and is hereby convicted u/s 5(2) of the P.C. Act, 1947 and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
8. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s 466 r/w. Sec. 109 of I.P.C. and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
9. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s 468 r/w sec. 109 of I.P.C. and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.

10. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s 471 r/w sec. 109 of I.P.C. and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
11. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s. 420 r/w sec. 34 of I.P.C. and sentence to suffer RI for 3 years and to pay the fine in the sum of Rs.15,000/- and in default to suffer further RI for 9 months.
12. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s. 477-A r/w. Sec. 109 of I.P.C. and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
13. A/2 and A/3 are hereby held guilty and convicted for an offence punishable u/s. 5(2) r/w sec. 5(1)(d) of the P.C. Act 1947 r/w sec. 109 of I.P.C. and sentence to suffer RI for 2 years and to pay the fine in the sum of Rs.10,000/- and in default to suffer further RI for 6 months.
14. All the accused are on bail. Their bail bonds stand cancelled.
15. All the substantive sentences to run concurrently.
16. Order about disposal of documents/Articles u/s. 452 of Cr.P.C.
 - (A) S.I. File at Ex. 30 colly. along with Ex. 30-A to Ex.30-D, BMC File at Ex.27 colly, along Ex.27-A to Ex.27-D, Ex.72 colly, the documents from D.I.L.R. measurement file, Ex. 60 colly, the U.L.C. File No 22/888 along with Ex. 61, E.E.T.P. file at Ex. 52 colly, be returned to the ACB for return to the respective departments.

- (B) This order of return of documents to take effect after the period of appeal is over or in case of appeal, as per the directions in the appeal.
- (C) Article-A the Waslewar book, Article-B the Original Enquiry Register, Ex.-34 original map sheet No.33, Ex.35 original review sheet of sheet no. 33 and Ex.74 original Ruled Card be returned to the Staff from City Survey Office-III on acknowledgement on condition to produce if required before the Appellate Court.

17. Dictated and pronounced in the open Court.”

3. The applicant society has stated in the application that the benefit of alleged higher FSI will not be taken for any purpose. Considering the facts and circumstances, the Registry shall return the documents mentioned in Clause 16 to the ACB within eight weeks from today. The ACB after receipt of the documents shall return the said documents to the concerned departments.

4. Needless to mention that the Registry shall retain the photocopies of the documents on record.

5. The Interim Application is disposed of in the aforesaid terms.

(N. R. Borkar, J)