

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.341 of 2015

Ramkishan s/o Badrinarayanji Jethe. .. **Petitioner.**

Versus

Sanjay S/o Kashinath Dhakane
And Others.

.. **Respondents.**

Shri. M.M. Chaudhari, Advocate, for petitioner.

Shri. K.S. Patil, Additional Public Prosecutor, for
respondent Nos.6 and 7.

**CORAM: T.V. NALAWADE
Smt. I.K. JAIN, JJ.**

DATE : 15th APRIL 2015

ORDER:

1) The petition is filed for giving directions to respondent No.7, Anti Corruption Bureau, to register crime and make investigation of the crime and submit report to the Judicial Magistrate on the basis of report given by the petitioner. Both the sides are heard.

2) It appears that a private complaint was filed by the present petitioner in the Court of the Judicial Magistrate, First Class, Aurangabad against present respondent Nos. 1 to 5 for offences punishable under sections 109, 120-B, 166, 175, 179, 187, 202, 217, 408, 420, 447, 5067, 34 etc. of the Indian Penal Code and Sections 10, 12 and 13 of the Prevention of Corruption Act, 1988. The petitioner is owner of house property bearing CTS No.12363 admeasuring 30 x 10 ft. situated at Galli No.5/A, Sanjaynagar, Baijipura, Aurangabad. On the West of this property there is property of accused No.1. Allegations are made that without obtaining permission for demolition of old house and for making construction of new house, the accused No.1 demolished the previous construction and started making construction of new house illegally on his property. It is contended that there was common wall between the two houses and it was also pulled down. He has contended that encroachment of two feet was made by the accused No.1 over the space of the complainant. It is his case that he approached the Corporation and other authorities but they did not take any action against accused No.1. It is his case that officers

of the Corporation had visited the premises to make inspection but no further action was taken by the Corporation.

3) It is his case that one officer working in the Corporation was transferred from her post as she was honest. He has contended that accused No.1 has acted in collusion with the officers of the Town Planning section and so action needs to be taken against the officers of the Town Planning Section of the Corporation. They are shown as accused in the private complaint. It is contended that by giving go-by to the rules, regulations and law the accused No.1 has made construction and it is almost 90% completed. It is contended that he had given notice to pull down the construction but no action is taken. He submitted before the Magistrate that, the officers of the Corporation mentioned in the complaint are liable for action and there is no necessity of permission under section 197 of the Code of Criminal Procedure to prosecute them for the aforesaid provisions of the Prevention of Corruption Act.

4) The learned Judicial Magistrate heard the complainant and returned the complaint on 18-5-2013. This order was challenged by filing Cri. Misc. Application No. 80/2013 in the Sessions Court Aurangabad. The Sessions Court dismissed the application after hearing the parties. It appears that this order was challenged by filing Criminal Writ Petition No.310/2014 by present petitioner. The learned Single Judge disposed of the petition and advised him to approach appropriate authority and this order was made on 16-4-2014. He then gave complaint to the ACB on 1-7-2014 and as the action as expected by him was not taken he has come to this Court.

5) This Court has called report of the ACB. It shows that the ACB has formed opinion that the allegations as against the officers of the Corporation from Town Planning section are very vague. It can be said that the dispute is mainly in respect of so called pulling down of the common wall by accused No.1, making of construction allegedly illegally by accused No.1 though on the property of accused No.1 and the alleged encroachment of two feet area made by the accused No.1.

6) For offences punishable under the Prevention of Corruption Act separate procedure is given for allowing prosecution under this Act. It is clear that the petitioner wants to see that the construction made by accused No.1 is pulled down and he gets possession of the so called encroached portion from the accused No.1. In view of the aforesaid circumstances, this Court holds that no such relief can be given.

7) In the result, the petition stands dismissed.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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