

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 280 OF 2015

1] Dilip Mishrilal Bang.
2] Kishore Mishrilal Bang. ..Petitioners.
Versus
State of Maharashtra. ..Respondent.

Mr. Abad Ponda i/b Mr. Ravichandra S. Hegde, Ms. Aditi Desphande, Mr. Kapil Jetly i/b J. Sagar Associates for the Petitioners.

Mr. S. K. Shinde, Public Prosecutor with Mr. K. V. Saste, APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **March 24, 2015.**

P. C. :

1. At the outset, Mr. Ponda, learned Counsel appearing for the Petitioners seeks leave to amend the petition so as to incorporate the details of Criminal Case No.50 of 2014. Leave granted. Necessary amendment be carried out forthwith.

2. Heard. This is a writ petition filed under Article 226 of the Constitution of India and section 482 of the Code of

Criminal Procedure, 1973 seeking to quash the proceedings of CC. No. 50 of 2014 pending on the file of JMFC, Murud. The said case has arisen from the registration of FIR No. II-3004 of 2010 dated 5th March 2010 registered with Murud Police Station against the Petitioners at the instance of Circle Officer, Nandgaon, Murud, District – Raigad for the offences punishable under section 15 of the Environment Protection Act, 1986 and sections 52 and 54 of the Maharashtra Regional and Town Planning Act, 1966. Upon completion of investigation the police has filed charge-sheet in the Court of JMFC, Murud, which is numbered as CC.No. 50 of 2014.

3. At the outset Mr. Shinde, learned PP fairly conceded that in the light of provisions of section 19 of the Environment Protection Act, 1986, cognizance of the offence under section 15 of the said Act cannot be taken on the basis of the police report. In the light of statement, prosecution under section 15 of the Environment Protection Act, 1986 against the Petitioners cannot be allowed to be continued.

4. So far as the allegations pertaining to offence under sections 52 and 54 of the the Maharashtra Regional and Town Planning Act, 1966 are concerned, it is the case of the Petitioners that the property bearing Survey No.17, Hissa No. 4D of village Kashid, Taluka Murud originally belonged to his brother – Nirmal and upon his death in the year 2001, same is inherited by his wife – Sangita Bang, son - Sagar Bang and daughter – Vriti Bang. The Petitioners have claimed that they have no right, title and interest in the said property. The Petitioners have claimed that their names are wrongly recorded in the Mutation Entry No. 2202. The Petitioners have already made an application on 18th February 2014 to the Tahsildar, Murud, requesting for deletion of their names from the record of rights of the subject property.

5. Mr. Ponda, learned Counsel appearing for the Petitioner submitted that the Petitioners are not the co-owners of the subject plot of land and if at all any unauthorised construction is carried on the subject plot of land, the Petitioners cannot be charged for violation of any of the provisions of the MRTP Act. Mr. Ponda, the learned Counsel appearing for the

Petitioners further submitted that the Petitioners were not served with the requisite notice under the MRTP Act. He submitted that prosecution against the Petitioners under MRTP Act is therefore not maintainable and the same deserves to be quashed.

6. Mr. Shinde, the learned PP submitted that the records reveal that the Petitioners are the co-owners of the subject property. Learned PP has further submitted that the notice was duly served on Sangita Bang. The learned PP has submitted that service of the notice on one of the co-owners is deemed to be the service on all other owners. The learned PP Mr. Shinde has submitted that charge-sheet is already filed and this is not the stage at which the proceedings can be quashed.

7. Section 52 of the Maharashtra Regional and Town Planning Act, 1966 prescribes penalty for unauthorised development or use otherwise than in conformity with the Development Plan, and the same reads thus :

“52. Penalty for unauthorised development or

for use otherwise than in conformity with Development plan:-

(1) Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out development or institutes, or changes the use of any land-

- (a) without permission required under this Act; or
- (b) which is not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted;
- (c) after the permission for development has been duly revoked; or
- (d) in contravention of any permission which has been duly modified shall, on conviction, [be punished with imprisonment for a term 3[which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] for every day during which the offence continues after conviction for the first commission of the offence.

(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development plan without being allowed to do so under section 45 or 47, or where the continuance of such use has been allowed under that section continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed, shall, on conviction be punished 4[with fine which may extend to five thousand rupees;] and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for every day during which such offence continues after conviction for the first commission of the offence. "

8. A bare reading of section 52(1) makes it clear that the penal provision can be made applicable to the person who at his own instance or at the instance of any other person, commences undertakes or carries out development work or institutes or changes the use of any land in contravention of the provisions of MRTP Act.

9. In the instant case, undisputedly the construction is carried out by Sangita Bang. It is not the case of the prosecution that the Petitioners had commenced, undertaken or carried out any development work or that Sangeeta Bang is carrying out the construction at the instance of the Petitioners. In our view, therefore, provisions of section 52 of the Maharashtra Regional and Town Planning Act, 1966 cannot be made applicable to the Petitioners.

10. Section 54 of the Maharashtra Regional and Town Planning Act, 1966 authorises the authority under the Act to stop the unauthorised development and further to impose penalty on any person who continues to carry out the development of the land for himself or the owner or any other person despite the directions to discontinue the development activity. Section 54 of the Act reads as under :

54. Power to stop unauthorised development:-

(1) Where any development of land as indicated in sub-section (1) of section 52 is being carried out but has not been completed, the Planning Authority may serve on the owner and the person carrying out the development a notice requiring the development of land to be discontinued from the time of the service of the notice; and thereupon, the provisions of sub-sections (3), (4), (5) and (6) of section 53 shall so far as may be applicable apply in relation to such notice, as they apply in relation to notice under section 53.

(2) Any person, who continues to carry out the development of land, whether for himself or on behalf of the owner or any other person, after such notice has been served shall, on conviction [be punished with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both]; and when the non-compliance is a continuing one, with a further fine which may extend to one hundred rupees for every day after the date of the service of the notice during which the non-compliance has continued or continues."

. The provision of section 54 can be invoked when the development has not been completed. The above provision authorises the planning authority to stop the development being carried out in contravention of the provisions as indicated in section 52(1) of the Act. Section 54(1) contemplates issuance of notice to the owner as well as to the person carrying out development, requiring them to discontinue the unauthorized

development from the time of service of the notice and further makes provisions of sub-sections (3), (4), (5) and (6) of section 53 applicable to such notice. Whereas sub-section (2) of section 54 prescribes penalty for continuation of such development after the receipt of the notice.

11. In the instant case, undisputedly the construction was not being carried out by the Petitioners. The Petitioners have emphatically stated that they are not the owners of the said land. Apart from the survey records, the prosecution has not been able to show any document to prove the title of the Petitioners in respect of subject land. Suffice it to say that survey records are not the title documents and the entries made therein are only for the fiscal purposes. Moreover, the Petitioners have already filed an application to delete their names from the survey records. Thus, there is no material on record to show that the Petitioner are the owners of the property.

12. It is also pertinent to note that the Petitioners were not served with any notice under section 54(1) of the Act. The

Petitioners were thus not given reasonable opportunity of putting forth their case, and thus precluded from giving justifiable or reasonable grounds for not penalising them under section 54(2) of the Act.

13. It is also to be noted that in terms of provisions of sub-section (3) of section 53, the person aggrieved by notice under section 54(1) of the Act can, within the time stipulated in the notice, apply for permission under section 45 for retention on the land of any building or works or for continuance of any use of the land to which notice relates. The provision provides that pending final determination of withdrawal of the application, the notice itself shall not affect the retention of buildings or works or the continuance of such use. Sub-section (5) of section 53 further provides that if the permission applied for is granted, the notice shall stand withdrawn whereas if such permission applied for is not granted, the notice shall stand. Since the Petitioners were not issued any such notice, the Petitioners, even if they are assumed to be the co-owners, were precluded from applying for permission under section 45 of the Act. Suffice it to say that in

the absence of such notice, the Petitioners cannot be penalised for non compliance of the requirements of the notice. Consequently, the Petitioners cannot be prosecuted for the offence punishable under section 54 of the Act.

14. In the light of above discussion, the proceedings of C.C.No.50 of 2014 pending on the file of JMFC, Murud are quashed qua the Petitioners.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]