

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.106 OF 2014

Aniket Rohidas Mhatre	...	Applicant
Vs.		
Municipal Corporation of Gr. Mumbai & Anr.	...	Respondents

Mr. Ketan A Chothani, Adv. for the applicant.

Mr. S.S. Pednekar, APP for the State.

Mrs. Surekha Sonawane, Adv. for Corporation.

CORAM : SMT ANUJA PRABHUDESSAI, J.

DATE : 15th December, 2015.

P.C. :

1. The applicants herein have invoked the powers under Section 482 of the Cr.P.C. for quashing and setting aside the order dated 22nd October, 2013 passed by the 39th Court at Vile Parle (W), Mumbai in Criminal Case No.73/SW/13.

2. Heard Mr. Chothani, the learned counsel for the applicant and Mrs. Sonawane, the learned counsel for the respondent.

3. The records reveal that the applicant is a partner of M/s. Haritara Construction Co. The said company owns a residential building 'Sumati Vihar' under survey No.281 H.No.1 / (Part) CTS No.711, 711/1 to 711/5 admeasuring about 369.5 Sq.mtrs. in village Dahisar, Taluka Borivali. By notice dated 5th November, 2007 issued

under Section 256 of the Act, the respondent No.1 had called upon the applicant to carry out the repairs of the building.

4. By reply dated 15th November, 2007 the applicant had informed the respondent No.1 that the building was in dilapidated and dangerous condition. The respondent No.1 was further informed that the applicant was proposing to develop the property and IOD was already issued. However, the process of demolition and reconstruction could not be implemented due to non co-operation by the two tenants.

5. The records reveal that the applicant had filed a suit bearing No. RAE Suit No.406 of 2008 against the tenant Tansalkar for recovery of possession of the said tenanted premises for the purpose of demolition and reconstruction. During the pendency of the said suit, the respondent No.1 issued another notice bearing No. AC/RN/354/BF/109/1 of 2008 dated 20th October, 2008 calling upon the applicant as a partner of M/s. Haritara Construction Co. to demolish 'Sumati Vihar'. The records further reveal that the front portion of the said building had collapsed. The applicant therefore moved an application in Suit No.406 of 2008 for demolition of suit structure alleging that there was imminent danger and likelihood of

collapse of the building during the pendency of the suit. By order dated 30th October, 2010 the Small Causes Court had permitted demolition of the structure. The tenant Mr. Tansalkar challenged the said order in Writ Petition No.9438 of 2010. The said order was stayed by this Court vide order dated 1st December, 2010 with an observation that the respondent No.1 was not prevented from taking further action in accordance with law. It is not in dispute that the applicant had communicated the said order to the respondent No.1 and had expressed his inability to demolish the structure. The Writ Petition No.9438 of 2010 was withdrawn on 3rd December, 2011.

6. It is to be noted that the respondent No.1 had issued another notice under Section 354 of the MMC Act bearing No. AC/RN/354/422/BF/II of 2013 dated 11th July, 2013. The said notice was replied to vide reply dated 22nd July, 2013. In the meantime the RAE Suit No.406 of 2008 was disposed of as per the consent terms filed by the parties and the possession of the premises was handed over to the applicant on 5th October, 2013 and the structure was demolished on 9th October, 2013.

7. The records thus indicate that though the applicant was served with the notice of demolition, he was unable to demolish the

structure in view of the pendency the civil litigation and further stay order by this Court which was duly communicated to the corporation. The possession of the premises was given to the petitioner on 5th October, 2013. The structure had been demolished on 9th October, 2013 and the Asstt. Engineer, respondent No.1 was informed about the said demolition process.

8. It is pertinent to note that the complaint was filed on 22nd October, 2013, after the demolition of the structure and after being informed about the demolition vide letter dated 9th October, 2013. The said letter was produced along with the complaint despite which the learned Magistrate has issued the process mechanically without application of mind.

9. Considering the fact that structure was already demolished even before filing of the complaint, continuation of the proceedings would be nothing but abuse of process of law. Under these circumstances, the application is allowed. The impugned order 22nd October, 2013 is set aside and quashed.

(ANUJA PRABHUDESSAI, J.)