

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.67 OF 2016
IN
CRIMINAL WRIT PETITION NO.4465 OF 2013
WITH
CRIMINAL WRIT PETITION NO.4465 OF 2013**

Ms Sindha Sreedharan
& Others

.... Petitioners.

V/s

The Commissioner of Police
and Others

..... Respondents.

WITH
ORIGINAL SIDE WRIT PETITION NO.378 OF 2010

Mrs. U. Saraswati Sridharan

.... Petitioner

V/s

Brihanmumbai Municipal Corporation
and Others

.... Respondents.

WITH
NOTICE OF MOTION NO.287 OF 2014
IN
WRIT PETITION NO.378 OF 2010
WITH
CHAMBER SUMMONS (ST) NO.124 OF 2014
IN
WRIT PETITION NO.378 OF 2010

Mr. Satyam Shreedharan and Others

.... Applicants

V/s

Brihanmumbai Municipal Corporation
and Others

.... Respondents

WITH
CRIMINAL APPLICATION NO.240 OF 2014
IN
CRIMINAL WRIT PETITION NO.4465 OF 2013

Sunaina Sanjay Potnis

.... Applicant.

V/s

The Commissioner of Police & Others

..... Respondents.

WITH
CRIMINAL WRIT PETITION NO.268 OF 2014

Sindha Shreedharan and Others

.....Petitioners.

V/s

Sanjay Govind Potnis and Another

..... Respondents.

WITH
CRIMINAL WRIT PETITION NO.3101 OF 2014

Sindha Shreedharan and Another

..... Petitioners.

V/s

The State of Maharashtra and Others

..... Respondents.

WITH
CRIMINAL WRIT PETITION NO.3223 OF 2014

Sindha Shreedharan and Another Petitioners.
V/s

The Commissioner of Police & Others Respondents.

Ms. Sindha Shreedharan, Advocate in person in Criminal Application No.67 of 2016 in Criminal Writ Petition No.4465 of 2013.

Mr. S.K. Shinde, Government Pleader for the State.

Mr. J.P. Yagnik, APP for the State.

Mrs M.B. Thorat alongwith Mr Shreyas Mehta for Respondent Nos. 16 and 17 and for Respondent No.1 in Criminal Writ Petition No.268 of 2014.

Ms. Priyanka H. Rane i/b Mr Prasad Gaonkar for Respondent Nos. 13, 14 and 17 in Cri. Writ Petition No.4465 of 2013

CORAM: V. M. KANADE &
M.S. KARNIK, JJ.

DATE: 6th April, 2016

P.C.:- (Per V.M. Kanade, J.)

1. Heard the Petitioner No.1 who is appearing in person in Criminal Application No.67 of 2016 and the learned Counsel for the Respondents.

2. Criminal Writ petition No.4465 of 2013 has been filed by the Petitioners seeking various directions from this Court. Petitioner No.1 who is appearing in person also appears on behalf of Petitioner Nos. 2 to 4. Petitioners are seeking the following reliefs in Criminal Writ

Petition No.4465 of 2013:-

“(a) To declare that all concerned Respondents i.e. Respondent No.2 to Respondent No.17 have violated fundamental rights of the Petitioners under Art. 21 of the Constitution and the deceased parents who expired on April 2006 and June 2010.

(b) To declare that Vakola Police, B.M.C. Officer, local Shiv Sena Corporator Sanjay Potnis and Auction Purchaser Ashok P. Mastkar have been violating the Petitioners' right under Art. 21 of the Constitution since 1997 and continue to do so till date.

(c) To direct the Respondent No. 19 to investigate into their racket of B.M.C. Officers, local Shiv Sena politician Sanjay G. Potnis and Vakola Police and Auction Purchaser for accumulation of wealth which is disproportionate to their income.

(d) This Hon'ble Court be pleased to direct CBI to enquire into the extortion racket of Vakola Police Officers, B.M.C. Officers, local Shiv Sena politician Sanjay G. Potnis, Auction Purchaser and Developer Vaibhav Builders and others resulting in their attempt to demolish the Petitioners' residence on 10th October, 2013.

Also to direct the CBI to hold and investigate racket of the Respondents Nos. 2 to 18 hereinabove for forcibly dispossessing the Petitioners from their

lawful residence without providing alternate accommodation while developing the said property.

To direct the CBI to hold an enquiry as to from where the funds have been released by the Respondent Nos. 3 to 17 for carrying out propping work in Shankar Lok building in August 2008.

(e) To hold enquiry by the C.B.I. from where the funds of B.M.C. Officer Nos. 2 to 12 have secured to demolish the said building as stated in their Notice of Motion Ldg. 52 of 2013.

(f) To direct the Vakola Police B.M.C. Officers, Shiv Sena politician Snajay G. Potnis, Auction Purchaser and Vaibhav Developers to pay appropriate compensation as per Chart annexed Exhibit 'Q' to the petition for violating fundamental rights under Article 21 of the constitution, right to shelter, right to live and dignity and privacy of the Petitioners and their deceased parents;

(g) Pending the hearing and final disposal of this petition the Respondents herein be restrained from taking any steps to demolish the Petitioner's ground floor residence situate at Shankar Lok Building, Yashwant Nagar, Vakola, Santacruz (East), Mumbai – 55;

(H) To direct the Respondents to maintain status quo on date of filing this petition when the Petitioners continue to reside in the said premises as the address mentioned in the cause title and para Clause (g) above as there is

already interim order dated 11th March 2013 passed by the Division Bench of this Hon'ble Court in Writ Petition No.378 of 2010.

(I) That this Hon'ble Court be pleased to club the Civil Writ Petition No.378 of 2010 with the present Writ Petition and both be heard together in its true contents, spirit and meaning.

(J) Interim relief in terms of prayer clause G, H, & I above be granted;

(K) Ad-interim relief in terms of prayer clause A to F as stated above be granted;

(L) That cost of this petition be provided for

(n) Any other, further reliefs be granted as this Hon'ble Court deems fit and proper.”

3. Number of orders were passed from time to time in the said Writ Petition. Petitioners have also filed Writ Petition on the Original Side of this Court being Writ Petition No.378 of 2010. In the said Writ Petition, interim relief was granted in terms of prayer clause (b) and the Corporation was directed not to dispossess and evict the Petitioners pursuant to the notice under Section 354 of the Mumbai Municipal Corporation Act (hereinfter referred to as “the said Act”). While granting ad-interim relief, Court has made the following observations:-

“3. Considering that the building was

reconstructed sometime in June, 1982, it is impossible to imagine that unless some sub-standard material was used, the building would have a shell life of 26 years. In these circumstances, we direct the Deputy Municipal Commissioner to file an affidavit explaining as to how a shell life of new building can only be 26 years and all other details which may be necessary.”

4. According to the Petitioners, in the said Petition, notice which was issued under Section 354 of the said Act was liable to be set aside since the Building was not in a dilapidated condition. On the other hand, it was the case of the Corporation that the Building was in a dilapidated condition and it was necessary to demolish the said building. It is not in dispute that all other tenants occupants of the premises in question vacated the building by 2003.

5. During the pendency of the said Writ Petition, premises in question collapsed on 14/03/2014. Petitioner No.1 lost her sister and other family members were injured and six other persons who were residing in the adjoining building died since the said building collapsed on the other adjoining structure.

6. The Apex Court has expedited the hearing of these matters.

7. Application has now been filed by the Petitioners being Criminal Application No.67 of 2016 seeking amendment in the main Criminal

Writ Petition No.4465 of 2013 and it is prayed that the Criminal Application be allowed and the Petitioners be permitted to carry out the amendment in the Petition as per Schedule-1 annexed to the said Criminal Application along with Exhibits.

8. Petitioner No.1 who is appearing in person submitted that it was necessary to amend the said Petition in view of the subsequent events which have transpired. She submitted that it was necessary therefore to amend the main petition and also amend the prayers. She has taken us through the Schedule-1 annexed to the said Criminal Application along with the Exhibits which are annexed to the Schedule.

9. On the other hand, the learned Counsels appearing on behalf of the Respondents have pointed out that in the Criminal Application as well as in the Schedule number of derogatory remarks have been made against two Division Benches of this Court; one comprising of Mr. Justice S.C. Dharmadhikari & Mr. Justice G.S. Patel and the other comprising of Mr. Justice Anoop Mohta & Mr. Justice M.S. Sonak. It is also submitted that the allegations have been made against Mr. A.Y. Sakhare, the learned Senior Counsel who was appearing on behalf of the Corporation.

10. Before hearing of this application, we have asked the Petitioner No.1 whether she was willing to delete those paragraphs in which allegations were made against the sitting judges of this Court and also

against the said learned Senior Counsel appearing on behalf of the Corporation. However, Petitioner No.1 informed this Court that she does not wish to delete those paragraphs.

11. After having heard both, the Petitioner No.1 and the Respondents at length, we are of the view that all the incidents which are mentioned in the amendment application are events which have taken place after the Petition is filed. Applicant is also seeking several other new reliefs by virtue of the said application for amendment. In our view these events have nothing to do with pendency of the said Criminal Writ Petition and nothing to do with the reliefs claimed by the Petitioner in the said Petition. At the best, it can be said that on account of subsequent events, Petitioner may be at liberty to file fresh Petition and, therefore, we are not inclined to accept the submissions made by the Petitioner No.1 who is appearing in person. Hence, Criminal Application No.67 of 2016 for amendment is rejected reserving the right of the Petitioners to file fresh Petition, since, at the most, it can be said that fresh cause of action has arisen. Needless to state that all contentions of the Petitioners and Respondents are kept open. We have also not expressed any opinion on the merits of the allegations and counter-allegations which are made in the Criminal Application and the reply to the said Application.

12. We must note that the Petitioners in the said Application have made various allegations against the sitting Judges of this Court.

Petitioner No.1 has narrated what according to her was observed by the Court during the course of hearing. It is a settled position in law that parole discussion which take place in the Court cannot be the subject matter of challenge or cannot be quoted in any Petition. Petitioner No.1 is a senior Advocate practicing in this Court and though we had requested her to delete these references which are made against the two Division Benches of this Court and also against the learned Senior Counsel who was appearing on behalf of the Corporation, she declined to accede to our request. Though the Petitioners have right to agitate their legal rights in the Court that does not give any authority to the litigants to make scandalous allegations against the Courts when they are discharging their lawful duty. We express our displeasure over the kind of averments and allegations which are made against the sitting Judges of this Court.

13. Criminal Application No.67 of 2006 is accordingly dismissed, reserving the right of the Applicants/Petitioners to file fresh Petition.

14. We had asked Petitioner No.1 to proceed with the hearing of the Petition since the Petition is expedited by the Supreme Court. However, Petitioner No.1 submitted that the matter may be adjourned since she wanted to decide whether the order passed by us in the Criminal Application should be challenged or not. She requested that the matter may be kept in the last week of April, 2016.

15. Hence, Criminal Writ Petition No.4465 of 2013 and the other connected matters are kept on 27/04/2016.

(M.S. KARNIK, J.)

(V.M. KANADE, J.)