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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1225 OF 2013**

Kartik G. Shetty	... Applicant
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. Ganesh K. Gole for the Applicant.
Dr. F.R. Shaikh, APP for the Respondent No.1.
Mr. Sanjeev A. Sawant a/w Ms. Surekha Sonawane for the Respondent No.2.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 20th SEPTEMBER, 2016

PC.

1 Heard the learned counsel appearing for the Applicant. The prayer is for quashing the First Information Report registered for the offences punishable under Section 52 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The FIR is registered at the instance of one Shri Sandeep Ramesh Sawant, an officer of the Mumbai Municipal Corporation. The allegation is that illegal structure erected by the Applicant was demolished in June, 2013 and on 2nd December, 2013 when the second Respondent visited the same site, it was found that the structure of the size of 15.6 meters x 12.40 meters having height of 3.8 meters + 3.5 meters was constructed. It is alleged

that the present Applicant was present who claimed that a permission for the construction was not necessary.

2 The learned counsel appearing for the Applicant relies upon notice dated 26th October, 2010 under Section 354-A of the Mumbai Municipal Corporation Act, 1888 issued by the Mumbai Municipal Corporation. He submitted that when allegation of carrying out illegal construction was made in the said notice, the present Applicant replied that he is not concerned with the said construction. While passing an order on the basis of the said notice, the name of the present Applicant was deleted. He pointed out that one Jaywant Ramnath Bhandari and Shri Dewoo Anantya Putran challenged the order/notice dated 22nd November, 2010 by filing a suit in the City Civil Court and the said order/notice was declared as bad in law. He relied upon the orders passed by the City Civil Court in suits filed by the said two persons in the year 2013. He submitted that the suits were disposed of by recording a statement of the Municipal Corporation that the structures subject matter of the said suits were demolished. He pointed out that the order was passed in both the suits on 12th November, 2013. He submitted that thereafter the said two persons filed Writ Petitions in this Court.

3 The learned counsel appearing for the second Respondent produced for perusal of Court panchanama and other documents. The report shows that apart from the FIR subject matter of this application there are nine other FIRs registered against the Applicant out of which six are for the offences punishable under Section 52 of the MRTP Act.

4 The stand of the second Respondent is that the structure referred to in his statement is different from the structure subject matter of proceedings filed by Shri Bhandari and Shri Putran and even the notices dated 26th October, 2010 and 22nd November, 2010 do not relate to the structure erected by the Applicant.

5 Between 2008 and 2012, six offences punishable under Section 52 of the MRTP Act have been registered against the Applicant. Only on the basis of the annexures to the application it cannot be concluded that the offending structure was not erected by the Applicant. The allegation is that in place of demolished structure, the Applicant erected the unauthorised structure. According to us, this is a case where factual aspects will have to be investigated into and at this stage, extraordinary powers under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised. Accordingly, the application is rejected. We, however, make it clear that we have made no final

adjudication on the contentions raised by the Applicant and the observations made in this order are confined to the question whether this Court should interfere under Section 482 of the Code of Criminal Procedure, 1973 at this stage. Accordingly, all contentions of the Applicant are kept open.

(A.A. SAYED, J)

(A.S. OKA, J)