

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Pursis St. No. 3329 of 2016
IN
Criminal Application [APL] No. 161 of 2016
[Sanjaykumar Mahendrakumar Jain Vs. State of Mah. & another]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. R.R. Vyas, Adv., for the Applicant.
 Mr. Ghurde, APP for respondent No.1.
 Mr. M.I. Dhatri, Adv., for respondent no.2.

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**CORAM : B. P. DHARMADHIKARI
AND
A.S. CHANDURKAR, JJ.**

DATE : 07th October, 2016

Construction alleged to be unauthorized is already discontinued. Short submission of learned Adv. Mr. Vyas for the applicant is, without sanction of planning authority as contemplated by Section 142 of the Maharashtra Regional & Town Planning Act, 1966, the prosecution has been launched. Respondent no.2, Municipal Corporation, has placed on record a Pursis [mentioned supra] on 23rd September, 2016 accompanying therewith a Note-sheet which only shows ongoing construction, issuance of notice for discontinuing it and its approval by Municipal Commissioner on 16th March, 2015.

We are, therefore, satisfied that there is no sanction of planning authority in the present matter. Planning authority here implies a Body Corporate which can act only through resolution. No such resolution of the planning authority is either pleaded or produced on record. Municipal Commissioner can execute that decision, but he cannot take decision itself.

In this situation, following the Judgment in **Mahesh Shivram Puthran Vs. Commissioner of Police & others** [2011 (3) Bom.C.R. (Cri.) 526], as prosecution is not launched after due sanction, the same is quashed and set aside. Criminal Application No. 161 of 2016 is, thus, partly allowed. However, by way of abundant precaution, it is clarified that this does not mean that the applicant can resume and continue with the offending construction.

Judge

Judge

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C E R T I F I C A T E

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Pvt. Secretary.

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