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*IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPEAL NO.1093 OF 2003*

Municipal Corporation of Greater
Mumbai through Shri P.P.Dhawade
Legal Assistant, of R/Central Ward,
Municipal Corporation of Greater
Mumbai, having office at Mahapalika
Marg, Fort, Mumbai 400 001.

..Appellant.

V/s.

1. Pradip Nandlal Gandhi,
Gala No.20, Indraprastha
Shoppint Centre, Basement
S.V. Road, Borivali (W),
Mumbai.

2. The State of Maharashtra

..Respondents.

None for the Appellant.

Mr.Prashant Hagare – Amicus Curaie for Respondent No.1.

Mr.P.H.Gaikwad-Patil, APP for Respondent-State.

Coram : N.M.Jamdar, J.

Dated : 30 JUNE, 2017

ORAL JUDGMENT

This appeal has been filed by the Municipal Corporation of Greater Mumbai challenging the judgment and order dated 11 January 2002 passed by the Metropolitan Magistrate, Mumbai acquitting the Respondents-accused for offences punishable under section 351 read with 475A(1)(b) of the Mumbai Municipal Corporation Act, 1888.

2. The incident in question is alleged to have occurred on 12 May 1999, that is 18 years ago. The appeal is pending since the year 2003. On the last occasion none appeared for the Appellant as well as the Respondent. The Board is notified well in advance. Today also, none appears for the Appellant. Respondent No.1 is served. I have requested Mr. Prashant Hagare, learned Advocate to appear on behalf of Respondent No.1 as *amicus curiae*.

3. With the assistance of the learned *Amicus* and the learned APP, I have gone through the record and proceedings. According to the prosecution, the officers of the Appellant i.e. the Corporation, on 12 May 1995 found unauthorised enclosure of basement at gala No.20 by brick masonry in place of wire mesh and rolling shutters. A notice under section 351 of the Mumbai Municipal Corporation Act was issued and according to the Appellant, in spite of the same, the Respondent No.1 did not

comply. A complaint was filed by the Appellant Corporation. The case was tried by the learned Magistrate, who proceeded to acquit the Respondent-accused of the offences charged.

4. Pursuant to the notice issued for unauthorised construction, the Municipal Corporation can take civil action against the noticee and also criminal prosecution is provided for. However, the parameters of both these proceedings are different. The Municipal Corporation led evidence, however, the same was not found sufficient as regards the involvement of the Respondent-accused and as regards the alleged enclosure of basement. It was not clear in what capacity the Respondent-accused was prosecuted. It was not clear as to who had enclosed the said basement. The act was stated to be noticed on 12 May 1999 and the complaint was filed on 20 July, 2000, beyond the period of three months under the Mumbai Municipal Corporation Act. Considering this position, the learned Magistrate acquitted the Respondent-accused. It cannot be said that the judgment and order is wholly perverse. In the circumstances, no case is made out to reverse the order of acquittal. The appeal is accordingly dismissed.

(N.M.Jamdar, J.)