

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 598 OF 2017

1. Vasudev A. Gangal & Ors. ... Petitioners.

V/s.

1. Mumbai Municipal Corporation & Ors. ... Respondents.

Mr. Ashok P. Mundargi, Sr. Advocate a/w. Mr. Netaji Gawade
i/by M/s. Sanjay Udeshi & Co. for the Petitioners.

Mr. Kunal Waghmare, Advocate for the Respondent No.1.
Ms. Pallavi Dabholkar, APP for the State.

Mr. Ganpat B. Talpade, Junior Overseer, "G" South Ward,
MCGM, is present.

CORAM : RAVINDRA V.GHUGE,J.

DATE : 21 MARCH, 2017

P.C. :

1 The Petitioners are aggrieved by the issuance of summons dated 01.08.2016 by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, by which the petitioners are directed to appear on 11.11.2016 before the court.

2 I have heard the learned senior counsel for the petitioners and the learned counsel for the respondent corporation.

3 It is evident that the complaint filed by the respondent corporation is under section 381(A) of the Mumbai Municipal Corporation Act, 1988, which reads as under :

“381A. Permission for new well etc.-

(1) No new well, tank, pond, cistern or fountain shall be dug or constructed without the previous permission in writing of the Commissioner.

(2) If any such work is begun or completed without such permission the Commissioner may either -

(a) by written notice require the owner or other person who has done such work to fill up or demolish such work in such manner as the Commissioner shall prescribe, or

(b) grant written permission to retain such work, but such permission shall not exempt such

owner from proceedings for contravening the provisions of sub-section (1).”

4 It is undisputed that the issue involved in this case is with regard to mosquito breeding in the water storage facilities and the tank constructed by the petitioners in the co-operative housing society for the purpose of storing water for the utilization of the society members. Nevertheless, it is equally undisputed that these storage facilities did not have a lockable cover in order to ensure that the water is not infected and mosquito breeding would be prohibited. However, section 381-B has not been invoked by the respondent corporation.

5 Petitioner No. 1 is an aged practicing Advocate and Petitioner No.2 is a designated senior Advocate in this court. Both the petitioners represent Petitioner No.3, which is a co-operative housing society.

6 Learned counsel for the respondent corporation and its officers, submits, on instructions from Mr. Ganpat B. Talpade, Junior Overseer, “G” South Ward, MCGM, Mumbai, who is present in the court, that the petitioners have promptly resorted to remedial actions and have installed a lockable cover over the water storage tank. The corporation is, therefore, satisfied with the remedial steps taken by the petitioners.

7 Two colour photographs are placed on record by the corporation, which are collectively marked as Exh. "X" for identification and which indicate that remedial steps have been taken by the petitioners.

8 In so far as the merits of the matter are concerned, it is apparent that the corporation does not have any grievance about the petitioners' society having constructed storage tanks for storing water. Grievance of the corporation is that lockable covers were not installed and that was likely to create a possibility of mosquito breeding. This aspect would fall under section 381(B) of the Mumbai Municipal Corporation Act, which has not been invoked by the corporation at all.

9 Considering the contents of the complaint made, it is obvious that section 381-A is not attracted and the corporation has not invoked section 381-B.

10 In the light of the above, since the order of issuance of a summons under section 381-A clearly indicates non-application of mind and since the contents of the plaint did not attract section 381-A, the issuance of summons is perverse and erroneous. The impugned order of issuance of summons is, therefore, quashed and set aside and writ petition stands allowed in terms of prayer clause (a) of the petition, which reads as under :

(a) This this Hon'ble Court be pleased to call for the records and proceedings of Court Case No. 4104806/SS/2015 before the Court of Hon'ble Metropolitan Magistrate, 41st Court at Shindewadi, Dadar, Mumbai and after examining the legality, validity and property thereof, be pleased to quash and set aside the said complaint and the said process.

(RAVINDRA V.GHUGE,J.)

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