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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO.1392 OF 2015

Qusay Shaikh Yusufbhai Kothari ...Petitioner
vs.
The State of Maharashtra ...Respondent

Mr.Sachin Ramrao Pawar for the Petitioner
Mr.N.B.Patil, APP for the respondent

CORAM : A.S.OKA, &
 SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 23, 2017

P.C.:

1 Rule. The learned APP waives service for the first respondent. Forthwith taken up for final disposal.

2 The prayer in this petition under Article 226 of the Constitution of India is for quashing the FIR and charge sheet filed for the offence punishable under section 52 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). The first informant is the Talathi of village Washind who is in the employment of the State of Maharashtra. In his statement, he has stated that an order was passed by the Sub Divisional Officer, Bhiwandi directing him to take action of registration of the offence under section 52 of the MRTP Act as regards illegal construction on land bearing Gat No.84-A admeasuring 5000 sq meters at village Khativali, Taluka Shahpur, District Thane.

All that he stated in the statement is that he visited the spot and a Panchnama was drawn. It was found that the construction of buildings consisting of ground plus three floors was made without permission of the Urban Development Department and without seeking permission for non-agricultural use from the Collector.

3 After having heard the learned counsel for the petitioner and the learned APP for the State, we find that absolutely no offence has been made out under the MRTP Act.

4 The learned APP has submitted a report dated 23rd March 2017 which is taken on record and marked 'X-1' for identification. The report discloses that no notice under section 53 of the MRTP Act was served to the petitioner and only a notice under sub-section 3 of section 45 of the Maharashtra Land Revenue Code, 1960 was served to the petitioner.

5 Thus, the petitioner was never called upon to remove unauthorized construction by issuing notice under sub-section 1 of section 53 of the MRTP Act. Had such notice been given to the petitioner, he would have always applied for tolerating the structure. Hence, the petition must succeed.

6 Accordingly, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) That this Hon'ble Court may be pleased to issue writ of certiorari and any other appropriate writ/order and further be pleased to quash and set aside the FIR being C.R.No.II-I of 2015, lodged with the Shahpur Police Station, Thane against the petitioner as accused.”

(ANUJA PRABHUDESSAI,J.)

(A.S.OKA,J.)