

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4027 OF 2015

Champalal Kishor Chand Vardhan &
Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Sandeep Ashok Bhagwat for the Petitioners.

Mr. K.V. Saste, APP for Respondent Nos.1 and 2.

Ms Surekha Sonawane with Mr. Kunal Y. Waghmare for Respondent
Nos.3 and 4.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 6th JANUARY, 2017.

ORAL JUDGMENT (Per : A.S. Oka, J.):-

On the earlier date the parties were put to notice that the Petition shall be disposed of at the stage of admission. Accordingly, we issue Rule. The learned APP waives service of notice for the Respondent Nos.1 and 2. The learned counsel appearing for the Respondent Nos.3 and 4 waives service. Forthwith taken up for final hearing.

2. The prayer in this Petition under the Article 226 of the Constitution of India read with section 482 of the Criminal Procedure

Code, 1973 (for short 'the said Code') is for quashing the First Information Report registered at the instance of the fourth Respondent for the offence punishable for violation of Sub Section 1 of Section 53 of the Maharashtra Regional Town Planning Act, 1966 (for short 'the said Act of 1966').

3. Section 53 of the said Act of 1966 reads thus:-

53. (1) Where any development of land has been carried out as indicated in sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, 4* * * * serve on the owner a notice requiring him, within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice,

(a) in cases specified in clause (a) or (c) of sub-section (1) of section 52, to restore the land to its condition existing before the said development took place,

(b) in cases specified in clause (b) or (d) of sub-section (1) of section 52, to secure compliance with the conditions or with the permission as modified :

Provided that, where the notice requires the discontinuance of any use of land, the Planning Authority shall serve a notice on the occupier also.

(2) In particular, such notice may, for purpose of sub-section (1), require—

(a) the demolition or alteration of any building or works ;

- (b) the carrying out on land of any building or other operations ; or
- (c) the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (3).

(5) If the permission applied for is granted, the notice shall stand withdrawn ; but if the permission applied for is not granted, the notice shall stand ; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be; and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-

section (4), the notice or so much of it as stands is not complied with, the Planning Authority may—

(a) prosecute the owner for not complying with the notice ; and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice ; and

(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations ; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, 1[be punished with imprisonment for a term 2[which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.]”

4. The notice was issued by the third Respondent-Mumbai

Municipal Corporation on 5th September, 2014 to the first Petitioner in exercise of powers under Sub Section 1 of Section 53 of the said Act of 1966 alleging that the Petitioners have carried out work of construction beyond the commencement certificate. As the said notice was not complied with by the Petitioners, a decision was taken to file a complaint for prosecuting the Petitioners in accordance with clause (a) of Sub Section 6 of Section 53 of the said Act of 1966. Accordingly, the impugned First Information Report was registered on 3rd February, 2015 alleging that compliance was not made by the Petitioners with the notice under Sub Section 1 of Section 53 of the said Act of 1966. It was alleged that the work carried out in excess of what is permitted under the Commencement Certificate was not removed by the Petitioners.

5. It appears that after the offence was registered, amended plans were submitted by the Petitioners to the Respondent No.3-.Mumbai Municipal Corporation. The amended plans were approved on 27th March, 2015. Therefore, an approval was granted by the Deputy Municipal Commissioner, (Zone-VI) of the Municipal Corporation to withdraw the action under section 53 of the said Act. In fact, by a communication dated 28th July, 2015 the first Petitioner was

informed that the notice dated 5th September, 2014 under Sub Section 1 of Section 53 of the Act issued to the first Petitioner by the Respondent Nos. 3 and 4, for non compliance of which the impugned First Information Report was registered, has been withdrawn. By a letter dated 17th July, 2015 addressed by the Assistant Commissioner, 'T' Ward to the Senior Inspector of Police of Navghar Police Station, the Assistant Municipal Commissioner of 'T' Ward had requested the Police Officer not to pursue further the action on the basis of the impugned First Information Report.

6. On the basis of the aforesaid two communications, the present Petition for quashing the First Information Report has been filed. There is an affidavit-in-reply filed by Mr. Prashant Sapkale, Assistant Commissioner, 'T' Ward. In clauses (e), (f), (g) of paragraph No.5 of the said affidavit in reply, he has accepted the correctness of the aforesaid two communications issued to the Senior Inspector of the concerned Police Station on 17th July, 2015. It is stated that the offending structure has been regularised by the Municipal Corporation by issuing IOD dated 5th February, 2015.

7. After having perused the averments made in the Petition, the annexures to the Petition as well as the aforesaid affidavit in reply,

we find that the continuation of criminal proceedings would be abuse of process of law as the offending structure, which is the subject matter of notice under Sub Section 1 of Section 53 of the said Act of 1966 has been regularised by the Mumbai Municipal Corporation. In fact, the Mumbai Municipal Corporation has withdrawn the notice on the basis of the non compliance of which the First Information Report was registered.

8. Considering the fact that the construction carried out in contravention of the Commencement Certificate granted earlier has been regularised and a fresh IOD has been issued, this is a fit case to exercise the powers under Section 482 of the said Code for quashing the criminal proceedings. The reason is that now the structure illegally constructed by the Petitioner has been regularised.

9. The learned APP on instructions stated that the charge sheet is not yet filed. Accordingly, the Petition must succeed. Hence, we pass the following order:

(a) The First Information Report bearing C.R. No.19 of 2015 registered at Navghar Police Station, Mumbai is hereby quashed and set aside;

(b) Rule is made absolute in above terms;

(c) All the concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)