

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4182 OF 2014

Shri Abdul Aziz Abdul Latif Patel ... Petitioner
Vs.

M/s. Aaditya Constructiinio through
Shri Arvind Mahadeo Savlekar & Ors. ... Respondents

WITH
CRIMINAL WRIT PETITION NO. 169 OF 2015

Shri Abdul Aziz Abdul Latif Patel ... Petitioner
vs.
Shri Mahendra Laxmilal Jain & Ors. Respondents

Mr. D.D.Rananaware, Advocate for the petitioner.

Mr. N.S.Jain, APP, for the State.

Mr.Drapad S. Patil for respondent No.1 in W.P.No.4182/2014.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 17th April, 2017.

P.C.

Heard. The learned counsel for the petitioner submits that respondent No.3 has not yet been served. It is apparent on the face of the record that the petitioner has not taken any effective steps to cause service upon the respondent No.3.

2. The petitioner herein happens to be the complainant in Regular Criminal Case No.501 of 2012. The petitioner had filed a complaint against six persons. The present respondent No.3, happens to be the original accused No.3 in the original complaint.

3. The learned Magistrate had recorded verification on 29.6.2016

and had issued process against the accused under Section 3(2)(i), 3(2)(a), 3(2)(b), 3(2)(d) and 3(2)(k) of Maharashtra Ownership of Flats Act (in short 'MOFA').

4. Being aggrieved by the said order, the respondent herein had filed Criminal Revision Application No.96 of 2012 before the Sessions Court at Raigad. The learned Sessions Judge had considered the facts of the case as well as the citations relied upon by both the parties and had recorded a finding in the negative as the order of issuance of process is not legal and proper and hence had allowed the Revision Application and set aside the order of issuance of process.

5. The learned Revisional Court, after perusing the facts of the case, had observed that the complainant had not made out a prima facie case for issuing process under the provisions of MOFA. There was no transaction between the respondent and the complainant to even remotely indicate that the present petitioner had either purchased a flat in the scheme developed by respondent No.1 and that the petitioner had entered into some agreement with respondent Nos. 2 and 3. According to the petitioner, there was a breach of contract and that the respondents had developed the said plot and had sold the flats and that the purchasers were put in possession of the said flats.

6. The petitioner had made allegations to the effect that possession was handed over to the residents/owners prior to obtaining the completion certificate. That the title certificate was not free from all encumbrances.

7. It is pertinent to note that the present petitioner has filed Special Civil Suit No.297 of 2011 in respect of the same suit plot. The application filed by the petitioner under Order XXXIX, Rules 1 and 2 below Exhibit 5 has been rejected. In view of this, it cannot be said that the findings recorded by the Revisional Court in allowing the Revision deserves to be interfered with. The learned Revisional Court has assigned justifiable reasons for allowing the Revisional Application which warrants no interference. It appears that continuance of the proceedings filed by the petitioner before the learned Magistrate, First Class would be an abuse of process of law as the petitioner had given a criminal cloak to the civil proceedings.

8. The above observations are restricted to the disposal of these Writ Petitions.

9. In view of this, the Petitions stand dismissed. Rule is discharged.

(SMT. SADHANA S.JADHAV, J.)