

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6177 OF 2013

Bharti Airtel Limited, a Company
incorporated under the provisions
of the Companies Act, 1956, having
its Circle Office at 7th Floor, Interface
building No. 7, Link Road, Malad (W),
Mumbai 400 064

Through its authorized signatory
Ramesh Eknath Salvekar,
Age 49 years, Occu. Service,
R/o. 501/504, Pentagon P1 Tower,
Magarpatta City, Hadapsar, Pune - 411028.

....Applicant.

Versus

1. The State of Maharashtra
Through the Azad Nagar Police Station,
District Dhule.
2. Prakash Sajan Sonawane,
Age Major, Occu. Service,
R/o. Dhule Municipal Corporation,
Dhule.
3. Hemant Piraji Pavte,
Age Major, Occu. Service,
R/o. Dhule Municipal Corporation,
Dhule, Dist. Dhule.

....Respondents.

Mr. Sachin S. Deshmukh, Advocate for applicant.

Mr. R.V. Dasalkar, APP for respondent No. 1/State.

Mr. N.N. Desale, Advocate for respondent Nos. 2 and 3.

WITH
CRIMINAL APPLICATION NO. 6344 OF 2013

Mrs. Mangala Bafna,
Adult, of Dhule, Indian inhabitant
R/o. At S.No. 461, Agrawal
Nagar, Dhule.

....Applicant.

Versus

1. The State of Maharashtra
Through the Azadnagar Police Station,
Azadnagar, Dhule, District Dhule.
2. Police Station Azadnagar, Dhule,
Through Officer In Charge Police
Station, Azadnagar, Dhule.
2. Prakash Sajan Sonawane,
Adule, of Dhule Indian inhabitant,
Residing and Serving at Dhule
Municipal Corporation, Dhule)
(the original complainant)

....Respondents.

Mr. R.R. Karpe h/f. Mr. Sandeep S. Deshmukh, Advocate for
applicant.

Mr. R.V. Dasalkar, APP for respondent Nos. 1 & 2.

Mr. M.M. Jadhav h/f. Mr. S.P. Shah, Advocate for respondent No. 3.

WITH
CRIMINAL APPLICATION NO. 6345 OF 2013

Mrs. Vimalbai B. Chaudhari
Adult, of Dhule, Indian inhabitant
Residing at CTS No. 661, 662,
Old Dhule, Dhule.

....Applicant.

Versus

1. The State of Maharashtra
Through the Azadnagar Police Station,
Azadnagar, Dhule, District Dhule.
2. Police Station Azadnagar, Dhule,
Through Officer In Charge Police
Station, Azadnagar, Dhule.
2. Prakash Sajan Sonawane,
Adule, of Dhule Indian inhabitant,
Residing and Serving at Dhule

Municipal Corporation, Dhule)
(the original complainant)

....Respondents.

Mr. R.R. Karpe h/f. Mr. Sandeep S. Deshmukh, Advocate for applicant.

Mr. R.V. Dasalkar, APP for respondent Nos. 1 & 2.

Mr. M.M. Jadhav h/f. Mr. S.P. Shah, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : 30/07/2018

JUDGMENT : [PER T.V. NALAWADE, J.]

1) All the proceedings are filed to challenge the crimes registered on F.I.R. given by respondent Local Body for offences punishable under sections 43, 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'MRTP Act' for short) and also for offences punishable under sections 260 and 278 of Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as 'BPMC Act' for short). In the first proceeding, F.I.R. No. 20/2013 registered with Azad Nagar Police Station, Dhule is challenged by the company, who had installed tower on private property for cellular telecommunication and paging services. The other two proceedings are filed by the owners of private property. Criminal Application No. 6344/2013 is filed to challenge the same C.R. and Criminal Application No. 6345/2013 is also filed by owner of private property as on her property the tower

was erected and she is also accused from the said C.R. Both the sides are heard.

2) The submissions made and the record show that the dispute started when in the year 2011 Dhule Corporation passed resolution to levy tax per site on which the tower of telecommunication company was installed. This decision was challenged by filing Writ Petition No. 3722/2011 by the present company. Then a decision was taken to launch prosecution against the company and the owners of the private property as without any permission of the Local Body the construction was made and the towers were erected. Indus Towers Limited had filed Writ Petition No. 3583/2013 to challenge the notices in which it was made clear that as the constructions were illegal, they were to be removed and recourse was to be taken of the aforesaid provisions against the persons involved. In the said writ petition, it was submitted for the petitioners that regularisation applications were filed before the Local Body and so, the direction was given to Local Body to consider the applications filed for regularisation on their own merits and till the decision taken on the said applications, stay was granted to prevent the prosecution for aforesaid offences. This order was made by this Court on 21.6.2016. The submissions made show that prior to the order of 2016 in Contempt Petition No. 544/2012 which was filed in

Writ Petition No. 3722/11, this Court, the learned Single Judge had considered the order made by this Court in the case reported as **2011 (6) Mh.L.J. 215 [G.T.L. Infrastructure Ltd., Pune Vs. Dhule Municipal Corporation and Ors.] (Writ Petition No. 48/2011)**. In the year 2011, this Court had advised the companies to take permission for construction and erection of towers by making appropriate applications. The protection was given to see that such applications were moved and they were decided.

3) The format in which the applications are required to be filed is made available and the format shows that some documents are required to be submitted along with the application. The documents includes Key Plan, Site Plan, Sub-division Plan, Service Plan, Development Plan etc. The learned counsel for Corporation placed reliance on the law laid down by this Court in respect of the permission which needs to be sought under the provisions of MRTP Act in the case reported as **2011 (6) Mh.L.J. 215 [G.T.L. Infrastructure Ltd., Pune Vs. Dhule Municipal Corporation and Ors.]**. The observations are as follows :-

"One can take benefit/advantage of deeming provision only if the application for permission for development was made in the "prescribed form" and if there was no communication from the Planning Authority either granting or refusing permission to the applicant within

60 days from the date of receipt of his application. When the statute mandates that one has to apply for building/development permission in the prescribed form, the mandate of the statute has to be duly observed. The application dated 9th August, 2010, submitted by the petitioner, was not in the prescribed form. Therefore, it was not open to the petitioner to proceed with the construction of mobile tower treating the inaction/silence of the Corporation, insofar as their application dated 9th August, 2010 is concerned, as deemed permission."

In view of the observations and interpretation of the relevant provisions made by this Court, it can be said that it was necessary for the applicant company to comply the requirements given in the prescribed form.

4) The submissions made and the record show that when the order was made by this Court in aforesaid contempt petition to advise the company to file the application in prescribed form, the application was moved on 1.1.2013. The order was made by this Court on 14.12.2012. On 16.1.2013 the Local Body informed that the seven requirements from prescribed format were not complied with and so, the application was rejected. This intimation was given to all the concerns including the owners. It appears that some of the

owners filed applications on 9.4.2013 and Indus Company also filed application on 9.4.2013. The submissions made and the contents of the F.I.R. show that previous applications were already rejected and notices were given to show cause as to why the prosecution should not be launched for aforesaid offences. These notices were dated 13.3.2013. The application of G.T.L. Company dated 28.1.2013 is also on record and it shows that first time on that day, this company was applying for No Objection Certificate (N.O.C.) for mobile tower through the owner. There is record like response given to G.T.L. Company by the Local Body on 21.2.2013 in which the deficiencies were brought to the notice of the company and it was asked to remove the deficiencies and in the same notice, it was informed that further action will be taken if there was no compliance from the side of company. There is copy of notice issued on 12.4.2013 of show cause for launching prosecution for aforesaid offences and it was issued to present company. This record was shown by the learned counsel for the applicants.

5) When there is the record of aforesaid nature, the learned counsel for the applicants tried to use the order made by this Court in Writ Petition No. 3583/2013 dated 21.6.2016. There is no record at all with the applicants to show that on the date of decision of the writ petition, any more application was pending. The submission was

made that the applications will be made for regularisation but no such applications were made. A strange submission which is not acceptable and which is not true was made that the erection was started only after filing of the application for permission. That contention is not at all true and further, in view of the observations made by this Court in the case of **G.T.L. Infrastructure Limited Vs. Delhi Corporation decided in 2011**, cited supra it was not possible for the applicants to presume that there was deemed permission.

6) The learned counsel for the Local Body placed on record copy of decision given by this Court in similar application reported as **2015 SCC ONLine Bom 4943 [Bharati Airtel Limited Vs. State of Maharashtra through Dhule City Police Station]**. Similar relief was claimed and this Court dismissed the application by holding that there was breach of the aforesaid provisions of the Special Enactment and the F.I.R. cannot be quashed. The learned counsel for the applicants has produced on record the order made by this Court at Principle Seat in **Criminal Application No. 247/2013 [Bharati Airtel Limited Vs. State of Maharashtra and Ors.] decided on 8.10.2013**. In that case, the application was allowed by holding that proper procedure was not followed and the provisions of section 142 of MRTP Act was referred by this Court.

After this case, the case of same company was decided at this seat which is already mentioned and the said matter was decided by this Court on 22.9.2015.

7) In the present matter, in F.I.R. itself it is specifically mentioned that the matter was placed before giving of the F.I.R., for permission of the Commissioner and permission was obtained on 13.3.2013. In any case, the provision of section 142 relates to launching of the prosecution and not for giving of the F.I.R. However, before filing F.I.R. also the sanction is obtained and so, this point is not available to the applicants in the present matter.

8) The learned counsel for applicants placed reliance on the observations made by the Apex Court in cases reported as **(2011) 2 Supreme Court Cases 94 [Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi]** and **(2014) 13 Supreme Court Cases 759 [G.L. Batra Vs. State of Haryana and Ors.]**. The learned counsel for applicants submitted that when in one matter at Principle Seat one Court gave the relief of quashing of the F.I.R., that needs to be treated as precedent and relief needs to be given in the present matter. This proposition is not at all acceptable. Relevant facts of the present matters are already mentioned and relevant provisions are already quoted. Further, subsequently at this Bench one matter was

decided and relief was refused in similar case. In criminal matters, one or two facts can change the decision of the matter and ordinarily, a decision in the past in criminal matter is not available as precedent. This Court has already observed that permission, sanction of the Commissioner was obtained before giving of the report to police and so, the case on which reliance is placed is of no use to the applicants. In the result, all the three proceedings are dismissed. Interim relief is vacated. Rule is discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/