

Sequeira

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

WRIT PETITION No. 2232 of 2018

Nagesh Arun Malve and others ... Petitioners
Vs
State of Maharashtra ... Respondent

Mr.S.P.Rajepandhare, for Petitioners.
Ms.A.S.Pai, APP, for Respondent-State.

***CORAM : B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.
Date : 19th December, 2018.***

P.C. :

Petitioner claims to be owner of piece of land on which construction has been made. Learned counsel appearing for Petitioners relies upon a decree of Civil Court for that purpose. Admittedly, the notice issuing authority namely 'Municipal Council, Pandharpur' is not party to that suit.

2. Second contention is notice under Section 53(1)(a) of Maharashtra Regional Town Planning Act, 1966 is not served upon Petitioners. Petitioners are not in position to demonstrate that such a notice needs to be served upon person who has encroached upon Municipal property and raised construction. Section 52 does not

envisage a development undertaken by a person who in law, is not authorized to develop.

3. It is their contention that show-cause notice before initiating impugned action is not served upon Petitioners. The statement in support of FIR shows that construction is on land of Municipal Council and by way of encroachment. Hence, the contention is erroneous as construction is not one under Section 52.

4. Learned counsel also submits that Petitioners have applied for regularisation and that application is still not considered. To point out deemed sanction, he relies upon Section 45(5) of MRTP Act, in support. Since Petitioner is not the owner and shown to be encroacher, it is apparent that reliance upon concept of “deemed sanction” is erroneous.

5. Lastly, it is contended that report to police should have been filed by Chief Officer of Municipal Council and the City Engineer, who has given statement in support of report has no such authority.

6. The statement and report is given by Dinesh Shastri, City Engineer and it also mentions approval even by Chief Officer of Municipal Council. He has also stated that he is filing complaint in pursuance of Section 52 read with Section 43 of MRTP Act. Neither said Complainant nor Municipal Council is party Respondent before

this Court.

7. In this situation, we are not inclined to intervene in extra ordinary jurisdiction. It is needless to mention that observation by this Court are only to indicate reasons for not intervening in extra ordinary jurisdiction. All contentions are open and can be raised before trial Court at appropriate juncture.

(Sarang V.Kotwal, J.)

(B.P.Dharmadhikari, J.)