

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2466 OF 2018**

M/s. Raycon Infrastructures
formerly known as
M/s. Swehan Enterprises & Anr. ...Petitioners
Versus
State of Maharashtra & Anr. ...Respondents

Mr. Siddhesh Bhole with Ms. Kirtida Chandarana & Mr. Biswadeep Chakravarty i/b Mahernosh Humranwala for the Petitioners

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent No.1-State

Mr. Kunal Waghmare for the Respondent No.2-MCGM

Mr. Vijay Wagh, Assistant Engineer, 'S' Ward is present

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
THURSDAY, 5th JULY, 2018***

P.C. :

1 Rule, with the consent of the learned counsel for the parties,
made returnable forthwith and heard.

2 The above Writ Petition is filed for quashing and setting aside
the FIR bearing No. 36 of 2018 registered with the Bhandup Police Station,

Mumbai, on 7th June 2018 for the offences punishable under Section 53(7) of the Maharashtra Regional Town Planning Act, 1966 ('MRTP Act' for short). The said FIR has been lodged by one Shri Sachin Khodade, Sub-Engineer, pursuant to the authorisation given to him by the concerned Assistant Municipal Commissioner and Ward Officer, 'S' Ward, Mumbai.

3 The said FIR has been preceded by a notice issued under Sections 53(1) of the MRTP Act dated 19th April 2018. It is alleged against the Petitioners who were earlier known as Swehan Enterprises that they have carried out work without permission required under the MRTP Act. The nature of the work alleged to be carried out is mentioned in the Schedule to the said notice. It is alleged that unauthorised construction of office on the 3rd and 6th floors beyond the approved plan is being carried out without the permission of the Competent Authority. The FIR in question has been founded on the said allegation of the work being carried out without the permission of the Competent Authority and hence, the Petitioners have alleged to have committed an offence under Section 53 of the MRTP Act.

4 It is required to be noted that the Petitioners had challenged the notice issued under Section 53(1) by filing a Suit in the City Civil Court at Mumbai being LC Suit (Lodging) No. 7391 of 2018. In the said Suit, the Petitioners who were the Plaintiffs, filed a Notice of Motion for interim reliefs by way of an injunction. In the said Notice of Motion, ad-interim reliefs were granted to the Petitioners by the learned Judge of the City Civil Court by order dated 6th June 2018. The said order was thereafter continued up to 15th June 2018 and we are informed that the said order is in operation till date.

5 It seems that the Petitioners had filed an application for regularization of the work that they had carried out on the 3rd and 6th floors in respect of which, as indicated above, the notice under Section 53(1) had been issued to the Petitioners. The said application for regularization has been allowed by the Competent Authority, as can be seen from the documents produced by the Petitioners and which are tendered across the bar by their learned counsel. The said documents have been downloaded from the website of the Municipal Corporation of Greater Mumbai.

Amongst the documents is the note-sheet and the status flow of the proposal. The note-sheet discloses that the proposal has been approved as proposed by the Executive Engineer (BP) E.S-II. The learned counsel appearing for the Municipal Corporation for Greater Mumbai Mr. Waghmare, on the instructions of the Assistant Engineer, 'S' Ward, Mr. Vijay Wagh, does not dispute the said position. The note-sheet and the proposal status flow are taken on record and marked 'X' for identification collectively.

6 There can be no dispute about the fact that the offence alleged against the Petitioners can be compounded under Section 143 of the MRTP Act. In the facts and circumstances of the case, where the construction which was initially carried out without the permission of the Competent Authority, has now been regularized by the Competent Authority, in our view, no useful purpose would be served by keeping the proceedings pending. A useful reference could be made to the judgments of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*², which would assist in the quashing of the

1 (2012) 10 SCC 303

2 2014 AIR SCW 2065

proceedings. In that view of the matter, the above Writ Petition is required to be allowed and is accordingly allowed. Rule is accordingly made absolute in terms of prayer clause (a).

REVATI MOHITE DERE, J.

R. M. SAVANT, J.