

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3866 OF 2017

Salim Furniturewala

....Petitioner

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * * *

Mr. U.R. Mankapure, Advocate for the petitioner.

Mr. K.V. Saste, Addl. P.P. for the State, respondent no.1.

Mr. Vinod Chate i/by. Mr. Kunal Waghmare, Advocate for
respondent no.2.

CORAM :-

R.M. SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

29TH JANUARY, 2018.

P.C. :-

1. The above writ petition has been filed for quashing of the FIR being No. 187 of 2015 registered with the Nagpada Police Station, Mumbai for the offence

punishable under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”).

2. The gravamen of the allegations in the said FIR, is of unauthorised construction being carried out by the petitioner, the FIR discloses the occurrence of the offence as sometime in the year 2012. The quashing of the FIR is principally sought on the ground that the petitioner was never the owner of the Flat in question being Flat No. 34, F-Wing, Dhudhwala Complex, Mumbai Central, Mumbai but it was his wife and that his wife has divested herself of the ownership rights in the year 2013. Hence, as on the date of the registration of the FIR which was on 12th June, 2015 the petitioner's wife was not the owner of the property in question. On behalf of the First Informant i.e. the Municipal Corporation of Greater Mumbai, an Affidavit has been filed, as also, an additional Affidavit. To the petition is annexed, the notice dated 7th June, 2014

issued under Section 488 of the Mumbai Municipal Corporation Act, to which is annexed the inspection report dated 24th August, 2014. The notice indicates that the same has been addressed to the petitioner herein, as also, one Afzal Lakdawala who is purportedly the present owner of the flat in question. The said notice under Section 488 is followed by the notice dated 11th November, 2014 issued under Section 53(1) of the MRTP Act which is addressed to the owner/occupier/user i.e. Salim Furniturewala i.e. the petitioner. Thereafter, there is a letter addressed to the Senior Inspector of Police, Nagpada Police Station dated 9th April, 2015 mentioning the alleged unauthorised construction carried out and requesting the Inspector to register an offence against the concerned persons. That is how, it seems, the FIR in question came to be registered against the petitioner.

3. The quashment of the FIR being No. 187 of 2015 is sought on the ground that the statutory regime as comprised in Section 53 of the MRTP Act, postulates a

notice being issued and time being given to the party to comply with the same and it is only after the notices are not complied within the statutory period mentioned in the notice, that criminal prosecution can be lodged under Section 53(7). The Learned Counsel sought to place reliance on the judgment of the Learned Single Judge of this Court reported in **2005 (2) Bom. C.R. 747 in the matter of D.N. Poonamiya Vs. State of Maharashtra (through Bhoiwada Police Station)** in support of the said contention. The Learned Counsel would contend that, in the instant case, since a notice under Section 53(1) has not been issued to the petitioner, the petitioner could not be made criminally liable for the alleged unauthorised construction. Per-contra, the Learned Counsel appearing for the MCGM would justify the lodging of the FIR at the behest of the MCGM. The Learned Counsel would draw our attention to the fact that, Section 53 contemplates, the owner/occupier etc. who could be made liable. The Learned Counsel by

drawing our attention to the notice at page-51 of the writ paper-book dated 7th June, 2014 would contend that, the notice was also issued to the petitioner alongwith the owner. The Learned Counsel would draw our attention to the fact that, in the suit filed by the present owner i.e. Afzal Lakdawala, he has annexed the complaint dated 17th December, 2012 in respect of the alleged unauthorised construction carried out by the petitioner. The name of the petitioner appears at Item no.19 and the alleged unauthorised construction carried out by him is to the following effect :

“19. Mr. Salim Furniturewala

Flat no.F/304

Encroached on canopy (space above podium lobby's concrete chhajja) at 3rd floor and have done small construction and have put up a very large patra shade illegally and made a small garden over.”

4. It was therefore the submission of the Learned Counsel appearing for the MCGM that having regard to the fact that, the complaint was received in the year 2012, the occurrence to the offence of the alleged

unauthorised construction is recorded as in the year 2012 in the FIR. The Learned APP would support the submissions of the Learned Counsel appearing for the MCGM.

5. Having heard the Learned Counsel for the parties and having considered the rival submissions, the question that is posed before us is whether the petitioner who was admittedly the occupant of the premises in question i.e. Flat no.304, F-Wing could be made criminally liable for the alleged unauthorised construction carried out in the vicinity of his flat. To answer the said question, it is required to be noted that the petitioner's wife who was the owner of the flat in question, has divested herself of the ownership rights sometime in the year 2013. Though, the complaint in respect of the unauthorised construction was made in the year 2012, the actual fillip to the said action was given in June, 2014 and ultimately culminated in the FIR being lodged in May, 2015. Since by the said time, the petitioner and his wife had ceased to

be the occupants/owners of the flat in question, the petitioner obviously could not have complied with the notice under Section 53(1) issued under the MRTP Act. Merely because the notice was not issued during the currency of the ownership of the petitioner's wife and during the occupancy of the petitioner, it cannot be said that the petitioner herein can be absolved of the criminal liability, if it is ultimately found that, it was during the currency of the ownership of the petitioner's wife and during the occupancy of the petitioner that the said unauthorised construction was carried out. In our view, the judgment (supra) of the Learned Single Judge of this Court would not further the case of the petitioner, in so far as, he being prosecuted for the offence under Section 53 of the said Act is concerned. If the submission of the Learned Counsel is to be accepted, then the same would open a pandoras box wherein the person who has carried out unauthorised construction, on he selling the property in question, would then be required to be absolved of

criminal liability. In our view, the provisions of a planning statute cannot be interpreted in this manner. In so far as, the judgment of the Learned Single Judge is concerned, the facts in the said case were that the Chairman of the Society in question wherein the alleged unauthorised construction was carried out, was issued with a notice under Section 53 of the MRTP Act. However, the petitioner who was another office bearer was not issued the said notice. The Learned Single Judge observed that, the petitioner who was an office bearer could not be criminally prosecuted as the provisions of Section 53(1) were not complied with in his case. However, the facts of the present case, stand apart from the facts of the case before the Learned Single Judge, as in the instant case, the petitioner's wife has divested herself of the ownership rights in the year 2013 whereas the FIR records that the offence of unauthorised construction has allegedly occurred in the year 2012. In our view, therefore, it is not possible to accede to the request of the

petitioner for quashing of the FIR. The Writ Petition is accordingly dismissed.

5. Needless to state that the observations made in the instant order are only for the purposes of considering the prayer for quashing of the FIR. The trial Court would decide the criminal case on its own merits and in accordance with law uninfluenced by any observations made in the instant order.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)