

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

**CRIMINAL WRIT PETITION NO.5315 OF 2018**

Shri Prakash V. Gidwani & Anr.

... Petitioners

Vs.

The Municipal Corporation  
of Greater Mumbai & Ors.

... Respondents

**WITH  
CRIMINAL WRIT PETITION NO.5316 OF 2018  
TO  
CRIMINAL WRIT PETITION NO.5341 OF 2018,**

**WITH  
  
CRIMINAL WRIT PETITION NO.5343 OF 2018  
CRIMINAL WRIT PETITION NO.5344 OF 2018  
CRIMINAL WRIT PETITION NO.5355 OF 2018  
and  
CRIMINAL WRIT PETITION NO.5346 OF 2018**

Mr.J.N. Jayale for the Petitioners in all WPs.

Mr.Kunal Wagmare for respondent/Municipal Corporation

Ms.Veera Shinde, APP, for the Respondent – State

**CORAM: Mrs.MRIDULA BHATKAR, J.**

**DATED: DECEMBER 11, 2018**

**P.C.:**

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The petitions are directed against the order of issuance of process dated 2.2.2018 passed by the learned Metropolitan Magistrate, 42<sup>nd</sup> Court, Mumbai against the petitioners, who are prosecuted under section 353A r/w 471 of the Mumbai Municipal Corporation Act.

3. The Assistant Law Officer No.II, 'L' Ward, has filed complaints against the Developer, the Architect and the occupants of the flats in the B and C wings of the building, namely, Paramount CHS Ltd.

4. Heard the submissions of the learned Counsel for both the sides. The order of process was challenged before the Sessions Court, Greater Mumbai and the learned Sessions Judge by order dated 22.10.2018 in Revision Applications dropped the proceedings against accused No.2, the Architect and the flat owners/occupants. On 11.8.2016, after construction of 'B' and 'C' wings of the said society, accused No.2 Architect had submitted the Completion Certificate on 11.8.2016. It was argued by the learned Counsel that under section 353A(2b), the Corporation is bound to inform the refusal of issuing Occupation Certificate within 21 days and if at all, it is not communicated, then, it is deemed to

be issued. The learned Counsel for the Corporation has submitted that there was correspondence between the Corporation and the Architect and finally, the Architect submitted letter on 9.1.2018 for his occupation and permission for 'B' and 'C' wings. There were some minor changes found on the site inspection which was conducted by the Corporation on 22.12.2017. It was submitted by the Corporation that after inspection on 22.12.2017, file was processed to the legal department and as the flat owners were occupying without Occupation Certificate, complaints were filed against the Developer, the Architect and the flat owners on 2.2.2018. In between, the letter dated 9.1.2018 was received seeking permission for Occupation Certificate. When the letter was under consideration, the legal department has filed these complaints. Thereafter, on 26.2.2018, part Occupation Certificate was granted i.e., Occupation Certificate was granted for the flats constructed in 'B' and 'C' wings.

5. The learned Counsel for the petitioners has pointed out that the Corporation has accepted the non-occupancy charges and the receipts of the said payment are also annexed to the petitions. The learned Counsel for the Corporation affirms the fact of payment of

non-occupancy charges by the respective flat owners and also issuance of Occupation Certificate (Part) on 26.2.2018 to the 'B' and 'C' wings of the society.

6. In view of these facts and the submissions made by the learned Counsel and on perusal of the documents placed before the Court, I am of the view that no prosecution is to be initiated against the petitioners/accused. In fact, these particular facts ought to have been taken into account by the learned Sessions Judge at the time of hearing of the revisions.

7. Hence, the petitions are allowed and the impugned order of issuance of process is hereby quashed and set aside in all the petitions. Rule made absolute accordingly.

**(MRIDULA BHATKAR, J.)**