

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.17 OF 2018

Jhanvi Jagasia and others .. Applicants
Versus
The State of Maharashtra & Anr .. Respondents

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Mr.Prathamesh Kamat i/b M/s.T.N. Tripathi & Co. for the applicant.
Mr.Kunal Waghmare for respondent no.2.
Mr.Ajay Pati, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 24th SEPTEMBER, 2019

P.C:-

1 The applicant nos.1 to 3, Trustees of applicant no.4 Trust are aggrieved by the issuance of process by the Metropolitan Magistrate by an order dated 11th October 2017 for an offence punishable under Sections 381 read with Section 471 of the Mumbai Municipal Corporation Act.

 The bare minimum facts perused disclose that the Trust owns a building on Kalbadevi Road, Mumbai and the said building is around 70 years old and is categorized as 'Category B cessed Building' and thus, falls within the ambit and scope of Chapter VIII of the Maharashtra Housing and Area Development Act, 1976.

2 A complaint came to be filed by one Harikishan D. Goradia, a resident of the said building alleging that there was a leakage on the overhead tank which resulted into pre-inspection by the Corporation on 26th July 2017. Pursuant to the said inspection, notice came to be issued under section 381 to the applicants.

3 On perusal of the documents placed on record by the applicant, it is apparent that the applicant had addressed a letter to the M.B.R & R Board Mumbai on 23rd February 2017 intimating that the building came to be repaired by BMC a few years ago after obtaining NOC from the Trust. A reference is made to a communication dated 7th June 2016 where the BMC was asked to visit the site and carry out the inspection so that the necessary repairs could be carried out. It is also mentioned that the complaints have been received from the residents residing below the terrace slab in Room No.22 on the fourth floor and the complaints are about seepage of water from the roof and apprehension is also expressed that if the repairs are not immediately carried out, it would result into a serious harm and cause loss of life and property. A heap of correspondence was then exchanged between Executive Engineer of the Board and the Trust

and an impediment put forth was an NOC from the Trust. The correspondence does disclose that the Trust had expressed its readiness and willingness to co-operate with the Board for carrying out the repairs and have answered to the correspondence while pointing out that whenever the repairs are to be carried out, they are ready to submit the NOC. A complaint under Section 381 resulted into issuance of process by the Metropolitan Magistrate in ignorance of the entire set of documents placed on record reflecting the communication between the Board and the petitioner Trust.

4 The applicants have been issued with a notice under Section 381 in relation to the carrying of repairs in respect of the nuisance which exists. However, a perusal of sub-section (ii) of Section 381 would make it apparently clear that the Commissioner, by notice in writing may require the person whose act, default or sufferance, a nuisance arises, exists or continues, or is likely to arise and the owner, lessee and occupier of the land, building or premises on which the nuisance arises, exists or continues or is likely to arise or anyone or more of such person, either an owner, lessee and occupier can be directed to remove, discontinue or abate the nuisance by taking all necessary measures and execute such work within

such manner and within such period of time as the Commissioner shall prescribe in such notice.

5 Undisputedly, the notice has been issued by the Commissioner to the petitioner Trust. However, from the perusal of the facts, it is very apparent that since the building was a B Category cessed building, the repairs could not have been carried out by the Trust and the onus of carrying out the repairs under the MHADA Act 1976 was on the Board and there being a failure on the part of the Board to carry out the said repairs, the Trust was subjected to action by the Corporation. In such circumstances, the issuance of process for an offence punishable under Section 381 against the Petitioners cannot be sustained in light of the specific wordings under sub-section (2) of Section 381, where the notice would be issued by the Commissioner to the person by whose act, default or sufferance, a nuisance has either arisen or it exists or continues to exist. In spite of the repeated reminders, the Board has failed to discharge its duty to carry out the necessary repairs.

6 In such circumstances, the issuance of process against the present petitioners cannot be sustained and continuation of the proceedings against them would amount to abuse of process of law and in

order to secure the ends of justice, the same deserves to be quashed.

7 In such circumstances, the impugned order dated 11th October, 2017 is quashed and set aside.

8 Criminal Application is allowed in terms of prayer clause (a).

SMT. BHARATI DANGRE, J