

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI APPLICATION NO. 634 OF 2018

Purshottam Vishaldas Raheja & anr ...Applicants
Versus
The State of Maharashtra & ors. ...Respondents

Mr. Ashish Raghuvanshi, for the Applicants.
Mrs. A. S. Pai, APP for the State/Respondent no.1
Mr. Vinod Chate a/w Munal Waghmare, for Respondent
no.3.

CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
DATED: 19th AUGUST, 2019

Oral Order :-

1. Heard Mr. Raghuvanshi, the learned Counsel for the applicants, Mrs. Pai, the learned APP for the State/respondent no.1 and Mr. Chate, the learned Counsel for respondent no.3.

2. The application is filed for the following reliefs:

"b. That this Hon'ble court may be pleased to quash and set aside the sanction granted for prosecution vide reference No.ACD/025332/B/dated 09.10.2015 in FIR bearing Spl. LAC No. 06 of 2014 dated 05.03.2014.

c. That this Hon'ble Court may be pleased to quash and set aside entire proceeding in CC No.32/PW/2016 pending on the file of learned Metropolitan Magistrate 42nd Court at Shindewadi, Mumbai, arising out of the same qua the Applicant.

C(i) That this Hon'ble Court may be pleased to set aside the Compounding Orders dated 30/07/2018 and 08/08/2018 and further compound may be pleased to compound the offences under Section 143 of the

Maharashtra Regional Town Planning Act, 1966 on such terms and conditions as this Hon'ble Court may deem fit and proper.”

3. The applicants were the office bearers of the Rialto CHS Ltd. prior to year 2010. Subsequently post 2010 for some period there was an Administrator to manage the affairs of the Society. The applicants in their capacity of the office bearers of the said society had carried out unauthorised construction in the nature of 7 glass cabins and 3 toilet blocks on the 14th floor of the building of the said society, which was designated as a refuge area.

4. On 25th January, 2011, a notice was issued by respondent no.3 – Corporation to the applicants, in their capacity as occupants of the unauthorised structure, under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act”).

5. The applicants filed an application on 21st February, 2011 under Section 53(3) of the MRTP Act for regularisation of the unauthorised structure, which was rejected by Respondent no.3 – Corporation on 3rd August, 2011. Thereafter the Corporation passed final order on 17th January, 2014 under Section 53(6)(b) of the MRTP Act.

6. Despite this final order under Clause (6) of Section 53 of the MRTP Act, applicants did not remove the offending structure referred as above and, therefore, at the instance of respondent no.3 – Corporation FIR was registered against the applicants with Malbar Hill Police Station bearing CR No.6 of 2014 for the offence punishable under Section 53(7) of the MRTP Act.

7. Section 143 deals with the compounding of offences. Under the said section, the Regional Board or Planning Authority or Development Authority concerned or any person authorised in this behalf by general or special order, may either before or after the institution of the proceedings compound any offence made punishable by or under this Act.

8. In the light of the provisions of Section 143, the applicants made a representation to respondent no.3 – Corporation for compounding the offence. The said representation was rejected by the Assistant Commissioner, 'D' Ward, by order dated 30th July, 2018.

9. Subsequently, the Municipal Commissioner delegated powers to the Assistant Commissioner, 'D' Ward, to compound the offence, by the order dated 3rd August, 2018 and under the delegated powers the Assistant Commissioner,

'D' Ward, passed fresh order dated 8st August, 2018, rejecting the applicants representation for compounding of the offence.

10. The applicants are firstly seeking quashment of the subject criminal proceedings arising out of the subject FIR. The applicants also seek to challenge the orders dated 30th July, 2018 and 8th August, 2018.

11. We have perused the provisions of Section 53 and 143 of the MRTP Act. Undisputedly final order is passed by the Corporation on 17th January, 2014. It is the contention of the applicants that subsequent to the final order under Section 53(6), they have removed the unauthorised construction in the year 2015 and this fact is not disputed by the learned Counsel for respondent no.3.

12. Before removal of the offending structure, the subject FIR came to be registered under Clause (7) of Section 53 of the MRTP Act. As stated above, this offence is compoundable under Section 143 of the MRTP Act and for that purpose representation was made by the applicants to the competent officer of respondent no.3 – Corporation. The applicants representation was rejected on two grounds namely that applicants did not remove the offending structure within the

period of 15 days from the receipt of order under Section 53(6)(b) of the MRTP Act and secondly the matter is subjudice before the Metropolitan Magistrate and charge has already been framed.

13. In our considered view, the grounds on which the applicants application is rejected, are not germane, while determining the request for composition of offence. The first ground is that the applicants did not remove the offending structure within the time stipulated in the notice. The competent officer of the respondent – Corporation has failed to consider that had the applicants complied with the notice, within the stipulated time, then there would not have been any offence under sub-section (7) of Section 53 of the MRTP Act. Be that as it may, under Section 143 of the MRTP Act, the authorised officer can compound the offence either before or after the institution of the prosecution. In view of this application, the second ground that the matter is subjudice before the Metropolitan Magistrate and therefore offence cannot be compounded, is wholly unsustainable. The concerned officer also lost sight of the object of making a provision which permits compounding of the offence either before or after the institution of prosecution.

14. In the light of above, we have no alternative but to quash the orders dated 30th July, 2018 and 8th August, 2018 passed by the Assistant Commissioner, 'D' Ward of respondent 3 – Corporation. The matter is remanded to the competent officer to take fresh decision on applicants representation, in the light of the provisions of the MRTP Act. Needless to mention that the Assistant Commissioner shall pass speaking order, after giving opportunity of hearing to the applicants, as expeditiously as possible, preferably within six weeks from the date of receipt of this order.

15. In view of the above, the criminal application stands disposed of.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]