

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4285 OF 2016

Wasim Shaikh s/o. Isa Sheikh and anr. ... Petitioners

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. Nitesh Acharya i/by Anjali Awasthi for the petitioners.

Mr. Kunal Waghmare i/by Adv Nasir Ali Shaikh for respondent no. 3 and 4.

Mr. K.V. Saste, APP for the State.

**CORAM : B.P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.**
DATE : NOVEMBER 20, 2019

P.C.:

Heard counsel for the petitioners, learned APP for respondent nos. 1 and 2 and learned counsel for respondent nos. 3 and 4.

2. Facts show that after service of notice to remove unauthorized construction, further action under section 52 for unauthorized development was taken. The prosecution under section 53(7) of Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short) has also been launched.

3. Counsel for the petitioners states that after receipt of the

notice, proposal for regularization in terms of section 44 of the MRTTP Act was moved and it was pending. After receipt of the order rejecting it, immediately the construction was removed and respondent nos. 1 and 2 were informed accordingly.

4. Counsel for respondent no. 3 and 4 states that the fact that the construction has been removed and it shows that offence under section 52 was committed. The prosecution therefore, cannot be quashed and set aside.

5. Learned APP supports the arguments of the respondent nos. 3 and 4.

6. The punishment prescribed under section 53(7) is of imprisonment for the term not less than one month extending upto three years with fine which shall not be less than 2,000/- and which may extend upto Rs.5,000/-. If the offence continues, there is provision for daily fine.

7. In the present facts, the matter is pending before this court since the year 2016 and on 20/1/2017, this court has directed not to file chargesheet without the leave of the court.

8. In this situation, we find that the interest of justice can be met with by directing the petitioner to pay to local authority which has issued notice under section 52 cost of Rs.5,000/-. Cost be paid within four weeks from today. Subject to payment of the

said cost, we make the rule absolute in terms of prayer clause (A).

(SMT. SADHANA S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)