

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

CRIMINAL WRIT PETITION NO. 2813 OF 2014

Ravi Goenka

...Petitioner

Versus

1. The State of Maharashtra
2. Mumbai Municipal Corporation,
A-Ward For, Mumbai.

...Respondents

....

Ms.Aarti R. Dharamsey i/by Mr.Amol Arote, Advocate for the Petitioner.

Mr.Anant Vadgaonkar a/w Mr.Kunal Waghmare, Advocate for
Respondent No.2-BMC.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 29th JULY 2022

PC :

1. The Petitioner is facing prosecution initiated by Respondent No.2. Vide C.C. No.4101487 of 2014 pending before the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai for offences punishable under Sections 381 read with 471 of the Mumbai Municipal Corporation Act, 1888. (for short “M.M.C. Act”).

2. The complaint was filed by Officer of Respondent No.2. The Petitioner is alleged to be the user of the premises known as Saroosh Building, 251, Dr. D. N. Road, For, Mumbai. According to the complainant, it was found that, the accused had placed two HDPE

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water storage tanks on terrace and the same are non mosquitoes proof conditions which is likely to breed mosquitoes therein. The Junior Officer had submitted inspection report before the Pest Control Officer, who was duly empowered by the Deputy Municipal Commissioner under Section 68 of the M.M.C. Act to sign the notice under section 381 read with Section 471 of M.M.C. Act. Notice was prepared against the accused to carry out the requisition within stipulated period. After expiry of notice period, the Junior Officer had again visited premises in question on 25th February 2014 and found that, the work was not carried out as per notice requisition. The accused failed to carry out work within stipulated period. The accused committed offence punishable under Section 381 read with 471 of M.M.C. Act.

3. The learned Magistrate issued process under Section 381 read with 471 of M.M.C. Act and the summons was served upon the petitioner.

4. The Petitioner has challenged the proceedings on several grounds. It is contended that, the Petitioner is neither the landlord nor tenant of the property. Mr. Pravin Jain is the landlord of building. M/s. Advance Commercial Co. Ltd. are the tenants in respect of the entire 1st floor of the building. The Petitioner is the Advocate of M/s. Advance Commercial Co. Ltd. The Petitioner has

been made an accused as user without any action taken against owner, lessees and occupier. There is dispute between landlord and the tenant which is pending in the Court. Property tax is not recovered by the MMC from landlord. Notice dated 30th July 2007 was sent by Assistant Assessor and Collector, A-Ward Municipal Officers to Mr. Pravin Jain regarding inspection extract of the property in the year 2006-07. The Petitioner is neither tenant nor landlord. As per Section 381 (ii), the responsibility of the owner/lessee or occupier to comply with the provisions. The commissioner by notice in writing require the person by 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 any one or more of such person, owner, lessee and occupier, to remove, discontinue or abate the nuisance by taking such measures and by executing such work in such manner and within such period of time as the commissioner shall prescribe in such notice.

5. Learned Advocate for Respondent No.2 submitted that, the petitioner was the occupier and user of the premises. His defence cannot tested in this proceedings. The grounds urged by Petitioner are required to be appreciated during trial.

6. It is apparent that, the Petitioner is neither landlord nor the tenant of building. There is no evidence to show that he is landlord and tenant of the building. The owner of premises is not prosecuted. Section 381 of M.M.C. Act provides that, the commissioner by notice in writing, require the person by whose act default or sufferance, a nuisance arises, exist 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 any one or more such persons owner, lessee and occupier to remove, discontinue or abate the nuisance by taking such measure and by executing such work in such manner and within such period prescribed in the notice. The primary responsibility of the owner or lessee and or occupier to comply with the provisions. As per section 381 (3), the commissioner may by notice under clause 2 or by any other notice serve on owner, lessee or occupier or any one or more of them or require any one or more of them to take all steps requisite or necessary to prevent re-occurrence of the nuisance and may if he thinks it desirable specify any work to be executed or measures to be carried for that purpose or may serve any such notice notwithstanding that the nuisance may have been abated or removed if he considers that it is likely to recur. If at any time within four months from date of service of the notice if the nuisance so occurs to

the failure of the person or persons upon whom such notice has been served to comply with the requirements contained in such notice such person or persons shall be liable without any further notice to penalties provided in the Act for the offences under the said Section. As per the provision of section 381(4) where the nuisance arises or exists or is likely to arise or recur in connection with the construction/re-construction or demolition of any premises or any part of any premises the commissioner may in addition to serving any notice on any one or more of the persons mentioned in clause 2 of Section 371 serve any such notice on any architect, contractor or other person employed to carry out such work of construction, re-construction or demolition and also on any sub-contractor employed by such contractor or any such person or any one more of such contractor, person and sub-contractor. As per provision of Section 381 (2) if any person who by requisition made under sub-section (1) is required to fill up, cover over or drain of a well delivers to the commission within the time prescribed for compliance therewith written objection to such requisition the commissioner shall report such objection to the standing committee and shall not institute any prosecution for failure to comply with such requisition except with the approval of standing committee but the commissioner may nevertheless if he deems the execution of the work called for by such

requisition to be of urgent importance proceed with section 489 and pending the standing committee disposal of the question whether the said well shall be permanently filled up, covered or otherwise dealt with may cause such well to be securely covered over so as to prevent the ingress of mosquitoes and in every such case the commissioner shall determine with the approval of standing committee whether the expenses of any work done as aforesaid shall be paid by such person or by commissioner out of such fund or shall be shared and if so in what proportion.

7. Petitioner is not tenant of the premises. The petitioner has not received any notice personally. The defects as alleged cannot be cured by the Petitioner. Corporation has served notice believing that the Petitioner is either owner, lessee or occupier of the premises. The learned Magistrate has mechanically issued the process. The petitioner cannot be prosecuted in the alleged offences.

ORDER

(i) Criminal Writ Petition No. 2813 of 2014 is allowed and disposed off.

(ii) The order dated 7th July, 2014 issuing process passed by 41st Metropolitan Magistrate, Shindewadi, Dadar, Mumbai and proceedings in C.C. No. 4101487/2014 are quashed and set aside.

(PRAKASH D. NAIK, J.)