

GRM

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

**CRIMINAL WRIT PETITION NO. 5124 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 5125 OF 2017**

Dhirajlal Morarji Vala	... Petitioner
V/s.	
Suryakant Ganpat Garude, Ex- Employee Of Mumbai and Ors.	... Respondents

Mr. D. M. Vala, Petitioner, in person.

Ms. Madhuri More, Advocate for the M.C.G.M.

Mr. A. R. Patil, Addl. P.P. for the State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 14, 2022

P.C.:

1. The petitioner appears in person. The committee on the basis of earlier interaction with the petitioner submitted a report dated 21st December, 2017 refusing to grant permission to argue in the matter. The committee of this Court by office report dated 11th January, 2018 again refused to grant permission. The application for review of the said order is also rejected on 11th January, 2018.

2. Today the petitioner appears in person. On asking ‘whether he wants to engage an advocate through legal-aid?’, he refused to appoint advocate, therefore, the petitioner was heard in person.

3. The petitioner submitted that the impugned order permits the accused persons to get services of advocates of Municipal Corporation in view of Section 517(g) of the Mumbai Municipal Corporation Act, 1888. According to him, the acts alleged against the accused persons were not performed by them in their official capacity. According to him, no notice was issued to the petitioner before demolition of the construction. Therefore, their action is illegal. He further submitted that the accused persons conspired with each other to demolish the construction. He relied on the judgment of this Court in the case of **Chougule M. K. and Others v/s. Vinodkumar V. Kanabar and Another** reported in 1998(1) Mh.L.J 904.

4. I have considered the submission made on behalf of the petitioner. I have also perused the impugned order passed by the learned Magistrate. The learned Magistrate on the basis of averments in the complaint recorded a finding that the accused persons acted in the official capacity. I have perused the averments in the complaint. From the averments in the complaint, it appears that the accused persons acted under cover of their office. The learned Magistrate is not required to decide whether the act committed by them is legal or not in accordance with the provisions of the law. *Prima-facie*, it appears that they have acted in a official capacity. Once it is found that the accused persons acted in their official capacity, they are entitled to the benefit provided under Section 517(g) of the Bombay Municipal Corporation Act, 1888.

5. The judgment relied upon by the petitioner helps the accused persons than the petitioner. The Single Judge of this Court, after taking into consideration the provisions of section 517(1)(g) of the Bombay Municipal Corporation Act, 1888 in paragraph 13 held that 'there is no legal bar for the Law Officer of the Bombay Municipal Corporation to appear on behalf of the petitioners and to defend them in the above criminal proceedings'.

6. In that view of the matter, there is no merit in the petitions. Petitions are, therefore, dismissed.

(AMIT BORKAR, J.)