

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.13 OF 2023

Vijaybharti Ganpatbharti Goswami .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Kunal Kamble i/b Kirtimala Kamble for the applicant.
Ms.PN. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 18th APRIL 2023

P.C:-

1 By the present application, the order dated 6/12/2022 passed by the Sessions Judge under the Prevention of Corruption Act, 1988, and the City Civil and Sessions Court, Greater Mumbai, is called in question.

2 Heard learned counsel for the applicant and the learned APP for the State and perused the impugned order.

The applicant was working as an Assistant Engineer pursuant to the report being lodged on 2/12/2022 at the instance of one Shailesh Shetty, and an open inquiry was conducted, which revealed that Survey No.36-A and 36-B were owned by Ideal Institute Private Limited and by carving out separate lay out, distinct part and parcel were sold to different Societies. In CTS

No.654 was owned by Pestom Sagar, 15% of the land was reserved for Recreational Ground, and when the proposal was moved by the owner Dhananjay Nana Shinde, through the present applicant before the Executive Engineer (Building and Proposal), this fact was not projected. The case of the prosecution is, that the owner as well as the Architect had clear knowledge that 15% of the land was reserved for recreational ground and despite this, they moved proposal for development of the land through M/s.AIMS Consultants, and this proposal came to be granted by Executive Engineer, Shri Ingawale.

3 The learned counsel would vehemently submit that the proposal submitted by him was based on a site inspection report by one Pankaj Khandke along with the Architech, who gave a positive report and based on this, a proposal was put up through the present applicant on 21/10/2008 and which came to be approved as proposed by the Executive Engineer.

4 The thrust of argument of the learned counsel is that the Executive Engineer who has granted the proposal which was made subject to the IOD, is not even charge-sheeted. The learned APP justify the same by submitting that no sufficient material was found against the Executive Engineer, who acted upon the proposal routed through the present applicant based on report of the Architect and the actual inspection report.

5 Whether the applicant had knowledge or not, would be a matter of trial, as the lower Court has clearly recorded that the document filed along with the charge-sheet, clearly indicate that the Municipal Engineer (Building and Proposal) had informed M/s.Gaitonde Bhavsar and Associates, that the plot in question was reserved for recreation and the letter dated 12/10/1988 form part of the charge-sheet. Apart from this, the warning letter was also issued to the applicant in capacity of Executive Engineer, where he was specifically warned that before submitting any approval, he shall keep himself conversant with the site condition.

6 As far as letter dated 12/10/1988, it is a letter issued by Executive Engineer issued by Assistant Engineer (Building Proposal) to M/s.Gaitonde Bhavsar and Associates, Licenced Surveyor, where it is clarified that the proposal cannot be considered as the plot under reference, is reserved for 15% recreational ground and hence, the C.C, as requested under Section 44/69 of the M.R.T.P Act, was refused.

Pertinent to note that this letter emanated from the office of the Assistant Engineer and the applicant stepped into the shoes of the erstwhile occupier of the said post, and therefore, when he put up the proposal, he ought to have examined the files and therefore, it is presumed that he was aware that on an earlier occasion, a proposal was rejected on the ground of reservation of recreational ground. If he has failed to do so, it is open for him to

point out the circumstances like the particular document being kept away from him and he had no opportunity to know about the said reservation. In any case, all these factors will have to be weighed at the time of trial and cannot be said that there is no sufficient material to frame the charge against the present applicant.

7 Knowing this wholly well that the development permission has been withdrawn as the plot was reserved for recreational ground, the proposal was put up by him. In any case, this will be a matter of evidence and it will always open for the applicant to demonstrate that he had no knowledge about the said aspect, as he was in-charge of the said position only for a short span of time.

In any case, there is sufficient material on record to frame the charge and the learned trial Judge has rightly rejected the application and directed that he shall undergo the trial.

Pertinent to note that the case is registered in the year 2012 and charge-sheet came to be filed in 2019, and it is expected that on framing of charge, the Special Judge shall proceed with the trial with utmost promptitude.

Application is rejected.

(SMT. BHARATI DANGRE, J.)