



Harish

APL 979 of 2012.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 979 OF 2012

Bakhtiar Sunavala
having his office at 11, Jorawar Bhavan,
South Wing, 3rd Floor, M. K. Marg, New
Marin Lines, Mumbai 400020

...Applicant

V/s.

1. The State of Maharashtra

2. Assistant Commissioner, A Ward,
Municipal Officer, 134- E.S.B.S. Road,
Near R.B.I. Bldg. Fort, Mumbai-400001.

...Respondents

Mr. Sanjog Parab, Senior Advocate a/w Mr. Santosh Pawar, Mr. Mohan Rao, Ms. Sulbha Rane & Ms. Sakshi Baadkar i/b Mr. Mihir Gheewala for the Applicant.

Ms. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

**RESERVED ON : 5th OCTOBER, 2023.
PRONOUNCED ON : 16th OCTOBER, 2023.**

JUDGMENT : (PER SHARMILA U. DESHMUKH, J.)

1. Heard Mr. Sanjog Parab, learned senior Advocate for the Applicant and learned APP for the Respondent-State. Despite service, none appears for Respondent No. 2 as such, we have proceeded with the hearing of the matter.

2. The present Application has been filed under Section 482 of the Cr.P.C. seeking quashing of the chargesheet filed before the 41st Metropolitan Magistrate's Court at Shindewadi, Dadar, Mumbai in C.C.No.8/PW/2012 for the offence under Section 53(7) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short).

3. Mr. Parab, learned senior Advocate for the Applicant submits that, the complaint has been lodged by the official of the Mumbai Municipal Corporation alleging that there has been a change of the user of the premises occupied by the present Applicant and despite notice being issued under Section 53(1) of the MRTP Act, the requisition of the notice was not complied with. He would submit that, the lodgement of the crime is an abuse of process of law as the Applicant an Advocate and Solicitor is running a law firm in the said premises as a licensee. He would further submit that, the sanction granted by the Assistant Commissioner of Municipal Corporation to prosecute the present Applicant itself mentions that, the owner of the premises Shivkumar Sood had been issued a notice dated 17th November, 1997 for change of the user and that a proposal has been submitted for regularizing the change of user in the year 1998. He would further submit that, the

notice under Section 53(1) of MRTP Act was received by the Applicant on 24th February, 2010, to which a reply was sent by the owner of the premises stating that, the premises were used as commercial premises for the past 15 years and that communications dated 15th January, 1998 and 16th January, 1998 which were in the nature of Application under Section 44 of the MRTP Act for regularization of change of user of premises from residential to commercial have been filed. According to him, the notice issued to the present Applicant under Section 53(1) of MRTP Act is not maintainable in law as it called upon the Applicant to restore the original user of the premises i.e. residential purpose which is not contemplated under the provisions of Section 53(1) of the MRTP Act.

4. We have considered the submissions and perused the record.
5. The Applicant has been chargesheeted along with the owner of the premises for the offence under Section 53(7) of MRTP Act. Sub-section (7) of Section 53 of the MRTP Act is the charging section for offence under clause (a) of sub-section (6). Clause (a) of Sub-Section (6) of Section 53 provides that, within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied

with, the Planning Authority may prosecute the owner for not complying with the notice and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice.

6. Sub-Section (6) of Section 53 provides for prosecution of the occupier if the occupier fails to comply with the notice calling upon the occupier to discontinue the use of land. The factual foundation for prosecution in the present case is the non-compliance of notice dated 17th November, 1997. In the instant case, the notice annexed at Page No. 39 of the Petition calls upon the Applicant to restore the original user of the premises i.e. residential purpose. The Applicant being the licensee of the premises, cannot be called upon to restore the premises to its original use. Such a notice directing restoration of original use of the premises is contemplated only to the owner of the premises. Clause (a) of Sub-Section (6) of Section 53 being clear and specific, the prosecution of the Applicant is permissible only in event of non compliance of notice to discontinue the use of land.

7. In the present case, as the notice calls upon the Applicant to restore the original use of the premises and there is no requisition for discontinuance of the use of the land, the condition precedent was not

satisfied. As such there is a legal bar to prosecute the Applicant for non-compliance of the notice.

8. In addition thereto, the sanction Order itself notes that a proposal for regularization of the change of user has been pending since the year 1998. From the material on record, it is not demonstrated that the Application for regularization has been adjudicated by the Planning Authority and pending the final determination or withdrawal of the Application, the mere notice itself does not affect the retention of buildings or works or the continuance such use as provided in sub-Section 3 of Section 53. The Applicant, who is the licensee of the premises, is sought to be prosecuted for use of the premises as commercial premises which use is in force since past 15 years by the erstwhile owner/occupier. The notice to restore the original use of premises is required to be issued to the owner of the premises and not to the occupier. It is cardinal principle of criminal jurisprudence that, there cannot be vicarious liability unless the statute specifically provides. We do not find such a provision exposing the occupier to vicarious criminal liability for offence committed by the owner. In this context, clause Nos. 1 and 6 of paragraph No. 102 of the decision in the case of *State of Haryana & Ors. vs. Bhajan Lal & Ors. (AIR 1992 SC 604)* are squarely

applicable to the present case.

9. Having regard to the discussion above, the continuance of the proceeding i.e. C.C.No.8/PW/2012 pending on the file of Metropolitan Magistrate's Court at Shindewadi, Dadar, Mumbai will amount to abuse of the process of law.

As such, the Application succeeds and the said case is quashed.

Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)