

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4507 OF 2021

1. Bhamavati Aabasaheb Gaikwad

2. Pravin Aabasaheb Gaikwad ... Petitioners

Versus

1. The State of Maharashtra

2. Aniket Raghunath Mahajan

3. Municipal Council, Vita through

its Chief Officer, Vita, Sangli ... Respondents

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Mr. Kuldeep Nikam for the Petitioners.

Mr. Ajay Patil, APP for the State.

Mr. Nikhil Wadikar a/w Niranjan Kandade i/b Nandu Pawar
for Respondent Nos. 2 & 3.

.....

**CORAM : SMT. ANUJA PRABHUDESSAI &
N.R. BORKAR, JJ.**

DATED : 1 FEBRUARY 2024

P.C. :-

At the outset, learned counsel for the petitioner seeks leave to amend the prayer clause (a) and (b). Leave granted as to incorporate the name of the Court before which SCC No. 621 of 2021 pending. Leave granted. Amendment to be carried out forthwith.

2. The petitioners herein seek to quash FIR No. 402 of

2021 registered with Vita Police Station, Sangli for offences under Sections 52 and 53 of Maharashtra Regional and Town Planning Act and SCC No. 621 of 2021 arising therefrom, pending before learned JMFC, Vita.

3. The aforesaid crime was registered pursuant to the First Information Report lodged by respondent No. 2. The grievance of the respondent No. 2 was that the petitioner had carried out construction without prior permission of the authority.

4. Learned counsel for the petitioners states that the petitioners had already applied for permission and that the planning authority had not communicated its decision and hence, the permission was deemed to have been granted.

5. The records indicate that the permission was to carry out the repairs, whereas the allegations against the petitioners are that he has demolished the existing structure and constructed entirely new structure.

6. Learned counsel for the petitioners also states that the structure which is alleged to be unauthorized cannot

be demolished or removed without prior notice. He submits that the notice was issued to petitioner No. 2, who is not the owner of the structure and that there is no, prima facie, material to show that the petitioner No. 2 has received the said notice.

7. The Court in exercise of power under Article 226 of the Constitution of India or Section 482 of Cr.P.C., cannot enquire into the issues raised by the petitioners or adjudicate upon disputed questions of fact. As noted above, the material on record, prima facie, proves contravention of Section 52. Hence, the prosecution cannot be quashed in exercise of extra ordinary or inherent powers. The Petition is, therefore, dismissed.

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(N.R. BORKAR, J.) (SMT. ANUJA PRABHUDESSAI, J.)