



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.703 OF 2015
WITH
CRIMINAL APPLICATION NO.2064 OF 2017**

- 1) Venkatrao S/o Mukundrao Nemaniwar,
Age-67 years, Occu:Agril.,
R/o-Yelmapura, Kinwat,
Tq-Kinwat, District-Nanded,
- 2) Sow. Kalawatibai W/o Venkatrao Nemaniwar,
Age-57 years, Occu:Household,
R/o-As Above.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
[The Department of Home (Urban),
Urban Development, General Administration,
Law, Government of Maharashtra,
Mantralaya, Mumbai-32,
- 2) The District Collector, Nanded,
District-Nanded.
- 3) The Kinwat Police Station,
Kinwat, Dist-Nanded,
Through the Police Inspector
attached to that Police Station,
- 4) Azhar Ali S/o Taher Ali,
Age-50 years, Occu:Service,
Working as Regional Officer in
Kinwat Municipal Council,
Kinwat, R/o-Kinwat, Dist-Nanded,

...RESPONDENTS

...
Mr. Aditya A. Puranik Advocate for Petitioners.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1, 2 and 3.
Mr. B.A. Darak Advocate for Respondent Nos.4 in Criminal
Writ Petition No.703 of 2015 and for Applicant in Criminal
Application No.2064 of 2017
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 6th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for quashment of the First Information Report (for short "the FIR") vide Crime No.11 of 2015 dated 7th May 2015 registered with Kinwat Police Station, District-Nanded for the offence punishable under Sections 51 and 52 of the Maharashtra Regional Town Planning Act, 1966.
2. Heard learned Advocate Mr. Puranik for petitioner, learned APP Ms. Bharaswadkar for respondent Nos. 1, 2 and 3 and learned Advocate Mr. Darak for respondent No.4.
3. Learned Advocate for the petitioners contends that the petitioners purchased 1 hectare land from Survey No.3 situated on Kinwat Mahur Road under registered registered sale deed dated 17th December 2007 and on 25th May 2011 an amount of Rs.5,02, 412/- came to be deposited towards stamp duty. Out of

the said 1 hectare land, 40 R land was purchased in the name of petitioner No.2, where as 60 R land was purchased in the name of petitioner No.1. However, as petitioner No.2 wanted to construct a Mangal Karyalaya, additional area of 20 R land was taken by petitioner No.2 out of the land purchased by petitioner No.1 with his permission. On 15th November 2008, petitioner No.2 submitted a map and all relevant documents to Kinwat Municipal Council with an application for permission. Petitioner No.2 by letter dated 20th January 2009, informed the Municipal Council, Kinwat that permission was not granted and within 60 days nothing was informed in the matter of grant of permission and therefore, taking that the deemed permission is granted, the construction of Kalawati Mangal Karyalaya was started and completed. It is contended that one Narayan Mukundrao Nemaniwar had given application to respondent No.2 for demolition of Mangal Karyalaya constructed by petitioner No.2. In view of said application, respondent No.2 had called for the report from respondent No.4 and even the matter was taken up to Mantralaya. The correspondence shows that Kalawati Mangal Karyalaya was constructed, completed and in existence prior to 26th January 2010. Thereafter petitioner No.2 made application seeking permission for further construction for providing parking

facility and the said permission was granted as per permission letter dated 11th August 2014. Even the Municipal Council in its General Body Meeting resolved to grant permission to petitioner No.2 to construct the said Mangal Karyalaya and the minute book extract at Sr. No.265 of 11th June 2009 shows the same.

4. Learned counsel for the petitioners has further contended that in the meanwhile petitioner No.1 came to be elected as Councillor of Kinwat Municipal Council on 6th November 2012. During the period when construction of Mangal Karyalaya started and completed, petitioner No.1 was not the Councillor of Kinwat Municipal Council. The ex-superintendent of Council, namely Baburao Oddiwar, who was having grudge against petitioner No.1, filed an application under Section 44(1)(e) and 44(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, for action against the petitioners, alleging that Mangal Karyalaya came to be constructed without permission and the site was used for construction of Mangal Karyalaya though the plot was purchased for industrial purpose. Respondent No.2 by Judgment and order dated 2nd February 2015 allowed the said application and petitioner No.1 was disqualified being a Councillor of Kinwat Municipal Council for the remainder period and it was ordered that the action within one

month be taken under Section 51 and 52 of the Maharashtra Regional Town Planning Act. The appeal filed by the petitioners against the said order came to be dismissed. Against the decision of the Hon'ble State Minister dismissing the appeal, the petitioners filed Writ Petition No.4784 of 2015 before this Court, which is still pending. Under the said circumstance, the FIR came to be lodged on behalf of the Municipal Corporation and the quashment of the same has been prayed by the petitioners in this Petition. The Petition was pending for considerable time and no charge-sheet has been produced. In the meantime the petitioners had made application for regularization of the construction. Petitioners had deposited the amount with the Municipal Council that was charged for regularization. Thereupon the order of regularization has been passed by the Municipal Council, Kinwat on 27th March 2018. Under the said circumstance, now the learned counsel for the petitioners has submitted that the Petition be allowed as it would be unjust to ask the petitioners to face the trial.

5. Learned Advocate for respondent No. 4 relies on the affidavit filed on behalf of respondent No.4. It has been stated that the petitioners construction is beyond permission and

without following due procedure of law, therefore, Sections 51 and 52 of the M.R.T.P. Act have been attracted.

6. Learned Advocate for respondent No.4 now submits that the construction has been regularized by order dated 27th March 2018 and the necessary amount has been deposited by the petitioners.

7. The very act of seeking regularization of the construction implicates that the petitioners accepted that there was violation of the rules and the permission that was granted for construction. However, since the construction has been now regularized, which is certainly within the powers of Municipal Council, it would be unjust to ask the petitioners to face the trial. The petitioners have paid an amount of Rs.2,26,820/- towards the regularization charges.

8. Another interesting part is, when the matter was heard for a while on 18th February 2025, it was observed by this Court that the investigating officer appears to have not bothered to approach the Court for seeking leave to file the charge-sheet and it was not clear as to why he has not completed the investigation

and therefore, the learned APP was directed to call the investigating officer. Accordingly, today the investigating officer, Police Sub-Inspector of Kinwat Police Station, Mr. Dinesh Shivajirao Yewale was present and he submits that this Court by order dated 7th January 2016, had granted stay to the criminal proceedings in Crime No.11 of 2015. Accordingly, the then investigating officer had stopped the further investigation in the crime. Thereafter for two times the stay was continued and the then investigating officer was under bona fide impression that the stay has been continued further. It was not noticed that there was discontinuation of the stay and therefore, he has failed to complete the investigation. This officer states that he joined the concerned police station on 2nd March 2024 and the investigation of the crime was handed over to him in the month of July 2024. He has tendered unconditional apology for not completing the investigation.

9. Thus, the above position clarifies, therefore, that there is absolutely no investigation in the matter and charge-sheet is not filed. Therefore, after such a long time it would be certainly inappropriate to ask the petitioners to face the trial even if the investigating officer is now directed to complete the

investigation. We have considered all the orders previously passed in this matter. Though by ad-interim order dated 7th January 2016, stay to the criminal proceedings was granted, and the same was continued for 2 to 3 dated, but thereafter it has not been continued and therefore, there was no reason for the investigating officer not to carry out the investigation. Certainly after 7th July 2016, ad-interim relief has not been continued at all. We also wonder that when such old crime was still under investigation and charge-sheet was not filed, how it had missed from the inspection that is supposed to be carried out by the Sub Divisional Police Officer of the division and Superintendent of Police of the District. We deprecate such practice of keeping the crimes undetected or under investigation for unnecessary long time and not filing of the charge-sheet. Rather, if we consider the framework of the new Bhartiya Nagarik Suraksha Sanhita, it is now made mandatory that the charge-sheet should be filed within a particular period. Hope the police machinery will cope-up with the requirement of the law in future.

10. By keeping the matter pending for considerable long time and then utilizing the machinery and getting the regularization of the construction done, the petitioners have gained and therefore,

while quashing the FIR, we are imposing the cost on the petitioners. With the above observations, we proceed to pass following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The First Information Report vide Crime No. 11 of 2015 dated 7th May 2015, registered with Kinwat Police Station, District-Nanded for the offence punishable under Sections 51 and 52 of the Maharashtra Regional Town Planning Act, 1966 stands quashed and set aside as against petitioner Nos. 1 and 2 i.e. 1) Venkatrao S/o Mukundrao Nemaniwar and 2) Sow. Kalawatibai w/o Venkatrao Nemaniwar.

(III) The petitioners to deposit an amount of Rs.25,000/- (Rupees Fifty Thousand) with the Registry i.e. the Committee consisting of learned Registrar (Administration) of the High Court, Bench

at Aurangabad and the Medical Officer of the High Court Medical Dispensary, Aurangabad on or before 28th March 2025.

(IV) Criminal Application No.2064 of 2017 stands disposed of.

(V) Place the matter for compliance on 1st April 2025.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25