



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

CRIMINAL WRIT PETITION NO.1058 OF 2017

Swati Wd/o Kevalkumar Nemmaniwar,
Age-39 years, Occu:Household,
R/o-Velmapura, Kinwat,
Tq-Kinwat, Dist-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) The Kinwat Municipal Council,
Kinwat, Tq-Kinwat, Dist-Nanded,
Through its Chief Officer,
- 3) Azhar Ali S/o Taher Ali,
Age-50 years, Occu:Service,
R/o-Kinwat, Tq-Kinwat,
Dist-Nanded.

...RESPONDENTS

...
Mr. Aditya A. Puranik Advocate for Petitioner.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1.
Mr. B.A. Darak Advocate for Respondent Nos.2 and 3.
...

**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.7 of 2016 dated 17th February 2016 (New FIR No.78 of 2016 registered on 18th February 2016) registered with Kinwat Police Station, District-Nanded for the offence punishable under Section 52 of the Maharashtra Regional Town Planning Act, 1966.

2. Heard learned Advocate Mr. Puranik for petitioner, learned APP Ms. Bharaswadkar for respondent No.1 and learned Advocate Mr. Darak for respondent Nos.2 and 3.

3. Learned Advocate for the petitioner contends that the petitioner's husband late Mr. Kevalkumar Venkatrao Nemmiwar was the owner and possessor of municipal property No. 16/36(old), New No.16/19 admeasuring 390 square meters situated at Kinwat. He had prayed for permission for construction on the said property which was in triangular shape. According to the petitioner, respondent No.2 had granted permission on 7th August 2014 and as per the plan, necessary portion from the land was left open. The husband of the petitioner expired on 29th October 2014. A notice was issued by respondent No.2 on 6th January 2016 on the petitioner purporting to be under Section 52 of the Maharashtra Regional Town Planning Act, which was on

the basis of complaint lodged by one Sayyad Rahimoddin S/o Sayyad Habibiddin @ Munna Kazi, resident of Islampura, Kinwat. It was alleged in the notice that even the permission granted had expired after a period of one year, yet the construction was not completed nor there was extension of permission sought either by the petitioner or her late husband during his life time. The petitioner says that she has filed R.C.S. No. 67 of 2016 for declaration of the said notice as null and void. The trial Judge rejected the temporary injunction application on 3rd March 2016. However, the petitioner filed Misc. Civil Appeal No.18 of 2016 before the learned District Judge-2, Nanded, who allowed the Appeal and till the pendency of the suit, the injunction was operative. In spite of having application made on 30th April 2016 for entering the name of the petitioner in place of name of her husband, no action has been taken by the municipal authorities. 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 petitioner in this Petition. The Petition was pending for considerable time and no charge-sheet has been produced. In the meantime the petitioner had made application for regularization of the construction. She has 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 petitioner has submitted that the Petition be allowed as it would be unjust to ask the petitioner to face the trial.

4. Learned Advocate for respondent Nos. 2 and 3 relies on the affidavit of Mr. Azhar Ali Taher Ali, Regional Officer, serving with Municipal Council, Kinwat. It has been stated that the petitioner's construction is beyond permission i.e. unauthorizedly using excess area and therefore, Section 52 of the M.R.T.P. Act has been attracted.

5. Learned Advocate for respondent Nos.2 and 3 now submits that the construction has been regularized by order dated 27th March 2018 and the necessary amount has been deposited by the petitioner.

6. The very act of seeking regularization of the construction implicates that the petitioner 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 petitioner to face the trial. The petitioner has paid an amount of Rs.6,14,828/- towards the regularization charges.

7. 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, Head Constable Mr. Tukaram Pandurang Wadgure was present and he submits that this Court by order dated 4th August 2017, had granted stay to the filing of the charge-sheet. 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 1st April 2023 and

the investigation of the crime was handed over to him in the month of July 2023. He has tendered unconditional apology for not completing the investigation.

8. 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 petitioner 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. In fact, though initially stay was granted for filing the charge-sheet, there was no stay to the investigation because in the order dated 4th August 2017 it has been observed that "Investigating Officer to proceed with the investigation, however, in case the charge-sheet is not yet filed, the same shall not be filed in respect of the petitioners till next date of hearing." There was no reason for the investigating officer not to carry out the investigation. Thereafter that ad-interim relief continued for 2 to 3 dates but thereafter it has not been continued. Again in the meanwhile it was continued but certainly after 7th December 2020 it 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.

9. By keeping the matter pending for considerable long time and then utilizing the machinery and getting the regularization of the construction done, the petitioner has gained and therefore, while quashing the FIR, we are imposing the cost on the petitioner. 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.7

of 2016 dated 17th February 2016 (New FIR No.78 of 2016 registered on 18th February 2016) registered with Kinwat Police Station, District-Nanded for the offence punishable under Section 52 of the Maharashtra Regional Town Planning Act, 1966 stands quashed and set aside as against the petitioner.

(III) The petitioner to deposit an amount of Rs.50,000/- (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) Place the matter for compliance on 1st April 2025.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE