



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.590 OF 2025

Nilesh Kishore Shah

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Ashok Kumar Dubey, with Mr. A. N. Mishra, i/b. Savj Law
Solutions, for the Petitioner.

Mr. D. J. Haldankar, APP, for the Respondent No.1-State.

Mr. P. P. Chavan, i/b. Ms. Komal Punjabi, for the Respondent
Nos.2 to 5-BMC.

CORAM Dr. Neela Gokhale, J.

DATED: 21st July 2025

ORAL JUDGMENT:-

1. The Petitioner seeks quashing of the order dated 22nd October 2019 whereby process was issued against the Petitioner for the offence punishable under Section 381A of the Mumbai Municipal Corporation Act, 1881 ('MMC Act').

2. Heard Mr. Ashok Kumar Dubey, learned counsel for the Petitioner and Mr. Chavan, learned counsel appearing for the Respondent Nos.2 to 5.

3. The Petitioner is stated to be a member of the Sai Govind Co-operative Housing Society and is the owner of Flat No.503 situated in 'A' Wing on the 5th Floor of the said building.

4. A complaint bearing Criminal Case No.5505964/SS/2019 was filed by the Municipal Corporation, Greater Mumbai against the Petitioner in the Court of the Metropolitan Magistrate at Vile Parle (West), Mumbai under Section 381-A of the Mumbai Municipal Corporation Act, 1888 complaining that the Petitioner had unauthorizedly kept a single LDPE water storage tank in the bathroom and W.C. loft which is in non-mosquito-proof condition and hence, likely to breed mosquitoes.

5. Pursuant to the said complaint, the Metropolitan Magistrate issued process against the Petitioner. Aggrieved by the said order of issuance of process, the Petitioner has filed the present petition. Mr. Chavan, learned counsel appearing for the Corporation has tendered the Inspection Report, which indicates that the water storage tank holding water is likely to

breed mosquitoes and adversely affect public safety and health at large. Hence, the Corporation directed the Petitioner to dismantle the said water tank within a period of seven days from the date of the said notice.

6. Mr. Kumar, learned counsel for the Corporation submits that the Petitioner was required to seek permission of the Commissioner before installing the said water storage tank and having failed to do so, has committed the said offence under Section 381A of the Act. Section 381-A of the MMC Act reads as under:

Section 381-A reads as under:

“381-A. Permission for new well, etc.— (1) No new well, tank, pond, cistern or fountain shall be dug or constructed without the previous permission in writing of the Commissioner.

(2) If any such work is begun or completed without such permission the Commissioner may either—

(a) by written notice require the owner or other person who has done such work to fill up or demolish such work in such manner as the Commissioner shall prescribe, or

(b) grant written permission to retain such work, but such permission shall not exempt such owner from proceedings for contravening the provisions of sub-section (1).”

7. I have perused the petition and documents on record with the assistance of both counsel.

8. Admittedly, the Corporation is at liberty to inspect the flats for the purpose of verifying safety precautions taken by the flat owners to prevent mosquito breeding and other matters affecting public health. However, the provision of Section 381-A of the MMC Act provides that no tank shall be dug or constructed without the previous sanction of the Commissioner.

9. In the present complaint, there are no allegations that the Petitioner has constructed a tank or that there was digging of any land for the purpose of installation of the tank. The said tank appears to have been kept in the bathroom by the Petitioner to store water temporarily, particularly, in times of water shortage. On a plain reading of Section 381A of the Act, it is applicable only when there is digging or construction

of the tank. The allegations and averments in the complaint do not attract the said provision.

10. Mr. Dubey, has brought to my attention an order dated 6th November 2023 passed by this Court in Criminal Writ Petition No.2759 of 2022 in respect of the similar complaint filed against him, which was also assailed before this Court. The process issued in that proceeding was quashed and set aside by this Court. I have also perused the order. Paragraph 8 of the said order reads thus:

“8. The only remaining question is whether Section 381A of the MMC Act has been violated. The allegation is not that the petitioner is drawing water without authorisation and storing it in a water tank. There are no allegations that the storage tank in the flat is causing any damage to the stability of the structure. As per Section 381A of the MMC Act, no new well, tank, pond, cistern or fountain can be dug or constructed without the prior written permission of the Commissioner. However, in this case, there are no allegations that any tank was constructed or that the land was dug for the purpose of constructing a well, pond, or fountain. Clause (a) of Sub-Section 2 of Section 381A of the MMC Act specifies that the

terms 'to fill up' or 'demolish' are in relation to digging and constructing. Therefore, this Section is only applicable when there is digging or construction of a well, tank, etc. The allegations in the present complaint do not fall under the provisions of Section 381A. None of the ingredients of Section 381A of the MMC Act are satisfied, which justifies the discontinuation of the prosecution. It is important to note that penal statutes are required to be strictly construed, and hence, the prosecution deserves to be quashed."

- 11.** In view of the aforesaid discussion, the petition is allowed in terms of prayer clause 'b', which reads as under:

"(b) After perusing the record and proceedings of the Ld. Metropolitan Magistrate 55th court, in respect of the Complaint No. 5505964/SS/2019, for the offences punishable under section 381A r/w 471 of MMC and the process issued on 22.10.2019 be quashed and set aside."

(Dr. Neela Gokhale, J)