

(1998) 10 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 1478 of 1991

Dr. (Mrs.) Jayashree Chandrakant Sangoi and Another

APPELLANT

Vs

D.P. Mokashi and Another

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 353
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 BomCR 767

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Mrs. P.H. Kantharia, app, for the State, S.L. Ahuja, for the Appellant;
Kedar, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The writ petition arises out of a Judgement rendered by the Metropolitan Magistrate, 41st Court, Shindewadi, Dadar in Criminal Case No. 6115/M.E. of 1985 dated 19th April, 1991 and Revisional order dated 5th October, 1991 passed by the Sessions Court, Greater Bombay in Criminal Revision Application No. 133 of 199. Both these orders are under challenge in this writ petition. It is averred in the writ petition that the petitioner has purchased a flat at 6th floor, as flat No. 34 in City Survey No. 1/118, Lalbaug, Bombay. The said flat was constructed by M/s. Maneklal Anandji Meghaji from whom the petitioner purchased the flat and it is disclosed from the materials available on record that the building licence has to be obtained from the Corporation by the aforesaid builder. After completion of the building, the petitioner was permitted to occupy by the builder and the petitioner also along with other occupiers formed Co-operative Society called "Meghchhaya Flat Owners Association". It is alleged that on 16th August, 1985 the officers of the Municipal Corporation made inspection of the flat and found that the petitioner was occupying the said flat without certificate of occupancy being issued by the Municipal Council. Accordingly complaint was filed against the petitioner before the Metropolitan Magistrate, 41st Court, Shindewadi, Dadar for the alleged

offence u/s 353-A of the Bombay Municipal Corporation Act. The Magistrate fined them for Rs. 200/- and in default S.I. for four days and Revision Court confirmed this sentence.

2. I heard learned Counsel for the petitioner Shri. S.L. Ahuja and Mr. Kedar for respondent No. 1 and Mrs. Kantharia, A.P.P. for State.

3. The Counsel for the petitioner submits among other things that the prosecution is time barred in view of section 514(c) of the Bombay Municipal Corporation Act, 1888. According to this provision, the prosecution has to be launched within three months next after the commission of the offence. Admittedly, the officers of the Corporation visited the premises on 16th August, 1985 and found that he was occupying the flat without obtaining occupancy certificate. Undisputedly, the complaint was filed on 13-12-1985 which is beyond three months. The learned Counsel for the 1st respondent submits that after knowing that the petitioner is occupying unauthorisedly, the Municipal Council has issued notice to vacate and taking into account the notice period, according to him, the prosecution is within time. I fail to understand this contention of the learned Counsel for the respondent. There is no provision in the Act that before launching the prosecution, for the offence committed u/s 353-A a notice should be issued. Of course in the fairness, notice was issued by the Bombay Municipal Corporation but that does not extend the statutory limits prescribed by the Act and that cannot be set up as defence for sustaining the prosecution which is filed beyond three months. In view of this objection raised by the learned Counsel for the petitioner has to be sustained and on that count alone, the petitioner ought to have been acquitted.

4. In the result, writ petition is allowed.

5. The orders impugned in this writ petition namely order dated 19th April, 1991 and Revision Order dated 5th October, 1991 are hereby quashed and set aside. The petitioner stands acquitted.

6. Fine, if any, paid by the petitioner, can be adjusted towards the amount, if any, due to the Corporation.

7. Rule is made absolute in the above terms.

8. Petition allowed.