
(1990) 03 BOM CK 0039
In the Bombay High Court
Case No : Criminal Appeal No. 218 of 1983

Pimpri-chinchwad Municipal Council	Vs	APPELLANT
Tilakram Gyaniram Agarwal and another		RESPONDENT

Date of Decision : 07-03-1990

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 53, 54

Citation : (1991) CriLJ 243

Hon'ble Judges : D.J. Moharir, J

Bench : Single Bench

Advocate : P.S. Patankar, S.B. Patil, P.P, for the Appellant; P.M. Mengane, for the Respondent

Judgement

1. This appeal by the Pimpri Chinchwad Municipal Council is directed against the order of acquittal of accused No. 1 Tilakram Gyaniram Agarwal for commission of an offence u/s 53 read with 54 of the Maharashtra Regional and Town Planning Act, 1966.

2. The case of the Complainant Pimpri Chinchwad Municipal Council was that at Chinchwad, Plot No. 201 belongs to one Anantrao Gavade. An old shop structure admeasuring 14" x 16" was standing thereon. On 18-9-1980, however, it was found by the complainant that construction of a structure admeasuring 14" x 16" and 6.4" in height was being carried on by respondent-accused No. 1 Tilakram Gyaniram Agarwal and on inquiry it was realised that this was without any prior sanction from the Municipal Corporation. It appears that the statement of the respondent-accused No. 1 was also recorded wherein he gave an assurance that he would not proceed with the construction work. On 26-9-1980, the Municipal Corporation sent a Notice to the Respondent-accused No. 1 calling upon him to refrain from proceeding with any further construction of the structure and to demolish the said which had already been constructed within a period of 35 days from the date of the receipt of that notice. According to the prosecution this notice was not complied with, the construction already made was not demolished

and the accused was found still proceeding with the construction work. Therefore, a complaint was filed against accused No. 1-respondent which, upon trial by the learned Magistrate, has resulted in the acquittal of the respondent No. 1-accused. Hence, this appeal.

3. At the hearing of this appeal a vital question of fact which must impinge upon a sustainability at all of the prosecution arises to be answered by the prosecution.

Under Section 54(1) of the Maharashtra Regional and Town Planning Act, where any development of land as indicated in sub-section (1) of Section 52 is being carried out but has not been completed, then in such a case Planning Authority may serve on the owner and the person carrying out a development a notice requiring the development of the land to be discontinued from the time of service of the notice; and thereupon, the provisions of sub-sections (3), (4), (5) of Section 53 are to apply, so far as these be applicable in relation to such notice, as they would apply in case of notice u/s 53.

Sub-section (2) of Section 54 provides for the constitution of the offence as such, any person who continues to carry out the development of the land, whether for himself or on behalf of the owner or any other person, after such notice has been served shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both. Therefore, it is quite clear that the offence is contemplated by law to be one committed only after the service of a notice under sub-section (1) of Section 54, and it is only upon service of such notice, and the non-compliance therewith which would lie in the failure to forebear from proceeding with the construction or continuing with the construction that punishment is provided.

4. The pre-requisite, is, therefore, the service of a notice and which means proof of service of such notice. The copy of notice under sub-section (1) of Section 54 has been filed on record but what is missing and absent in the prosecution evidence is the evidence of service of notice on the respondent No. 1-accused. After considerable effort, the learned Counsel for the appellant conceded that there was nothing on record which would establish that Exhibit 15 which is the copy of the original had been actually served on the respondent No. 1 accused and whether there was any evidence of acknowledgment of a receipt of the original notice by the Municipal Corporation. In the absence of this basic fact, in my opinion, the question whether respondent No. 1-accused failed to refrain himself from construction work or failed to demolish the construction already carried out or whether he still persisted with in carrying out the work thereon, cannot arise as the question of fact singularly material for determining the liability of the respondent No. 1 accused to any punishment under sub-section (2). On this short point, in my opinion, the prosecution must fail and so is the appeal. It is accordingly dismissed.

5. Appeal dismissed.