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Court : Mumbai Aurangabad

Decided On : Jul-24-2014

Judge : S.S. Shinde &Amp; P.R. Bora

Appeal No. : Criminal Application No. 2256 of 2007, 2257 of 2007, 2277 of 2007 & 1600 of 2007

Appellant : Devakibai

Respondent : State of Maharashtra and Another

Judgement :

Oral Judgment: (S.S. Shinde, J.)

1. Heard learned Counsel appearing for the applicants and learned APP for State.

2. Since all these criminal applications raise a common question of law, they are being disposed of by this common Judgment and Order.

3. Learned Counsel appearing for the applicants, inviting our attention to ground No.3, raised in the application, submits that in the light of provisions contained in Section 142 of the Maharashtra Regional Town Planning Act (for short, the MRTP Act), no prosecution can be instituted without obtaining prior sanction from the competent authority. In support of this contention, learned Counsel invited our attention to the judgment of this court in the matter of Mahesh Shivram Puthran Vs. Commissioner of Police, Thane and Ors. reported in 2011(3) Mh.L.J. (Cri.) 383

and submits that in the instant cases since no previous sanction was obtained before initiation of the subject prosecution, all these criminal applications deserve to be allowed.

4. Learned Counsel appearing for Respondent no.2, invited our attention to the averments raised in the affidavit in reply filed by one Prabjakar s/o Ramchandra Patki, then working as Chief Officer of Municipal Council, Kinwat, and submits that the criminal applications devoid of any merits and same may be rejected.

5. We have heard learned Counsel appearing for the applicants; learned APP for State and learned Counsel appearing for Respondent No.2. With their able assistance, we have perused the grounds raised in the criminal applications, annexures thereto and the contents of affidavit in reply filed by Respondent no.2.

6. Since, learned Counsel appearing for the applicants has pressed into service only ground No.3 raised in the applications and restricted his arguments to the extent of said ground, we do not feel it necessary to deal with any other grounds raised in the application.

7. Ground No.(III) raised in the application, is reproduced as under,-

"(III) No previous sanction of the competent authority has been taken by the complainant prior to institution the prosecution against the applicants at police, as it is mandatory as per Section 142 of the M.R.T.P. Act, if at the time of prior sanction, the competent authority would have applied its mind, then it would have been clear that no offence can be registered against the applicant U/s 52(1) of the M.R.T.P. Act."

8. Provision contained in Section 142 of MRTP Act, which is relevant for the purpose, is reproduced as under,-

"142. Sanction of prosecution:- No prosecution for any offence punishable under this Act or rules made there under shall be instituted or no prosecution instituted shall be withdrawn, except with the previous sanction of the Regional Board, Planning Authority, or as the case may be, a Development Authority or any officer authorised by such Board or Authorised in this behalf."

9. In the facts of the present case, it is an admitted position that no previous sanction was taken from the competent authority before instituting the subject prosecution. In that view of the matter, the issue raised in these matters is no more res integra in view of the pronouncement and observations made in para Nos.9 to 11 by this Court in the case of Mahesh Shivram (cited supra), which read thus,-

"9. From the scheme of the provisions of the Act, it is obvious that the prosecution for offences punishable under the Act of 1966 is instituted and pursued by the Planning Authority. This position is reinforced by Section 142 of the Act, which reads thus:-*

"Sanction of prosecution.- No prosecution for any offence punishable under this Act or rules made there under shall be instituted or no prosecution instituted shall be withdrawn, except with the previous sanction of the Regional Board, Planning Authority, or as the case may be, a Development Authority or any officer authorised by such Board or Authority in this behalf."

"The language of this provision leaves no manner of doubt that the pre-condition for even "institution of prosecution", is with the previous sanction of the specified Authority. As aforesaid, on noticing unauthorised development or use, it is the Planning Authority who has to first issue notice under Section 53(1) of the Act to enable the noticee (owner) to remedy the objectionable unauthorised development or use; and it is only upon failure to do so within the specified time, and, in absence of permission granted under Section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, the Planning Authority may proceed to prosecute the noticee/owner by virtue of Section 53(6) of the Act. The prosecution, however, can be instituted only after previous sanction of the Regional Board or Planning Authority or, as the case may be, a Development Authority or any officer authorised by such Board or authority in that behalf."

"10. A priori, the Act, being a special enactment, provides mechanism for institution of prosecution against the noticee/owner. In the scheme of things, registration of F.I.R. by the police officer under Section 154 of the Code in relation to offence punishable under the provisions of the said Act cannot be

countenanced. More so, the local police officer, on his own, even if he notices any unauthorised development or use, cannot proceed to register the F.I.R.under Section 154 of the Code. He has no authority to do so, especially in the face of mandate of Section 142 of the Code that no prosecution for any offence punishable under the said Act or Rules made there under shall be instituted, except with the previous sanction of the specified authority."

"11. The incidental question that needs to be addressed is whether the offence on account of contravention of Sections 43 and 52 of the Act would be a cognizable or non-cognizable offence. In that, if the said offences are non-cognizable, the question of registering F.I.R. under Section 154 of the Code would not arise at all. For, F.I.R. under Section 154 of the Code can be registered only in relation to cognizable offences, on the basis of which, the local police can proceed with the investigation and file report in the concerned Court under Section 173(2) of the Code."

10. In view of the law laid down by this court, as aforesaid, and in view of the fact that admittedly no prior sanction of the competent authority has been obtained by the complainant before instituting the subject prosecution against the present applicants, as envisaged under Section 142 of MRTP Act, these criminal applications deserve to be allowed. Accordingly, the criminal applications are allowed in terms of prayer clause (B). Rule made absolute on above terms with no order as to costs.

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