

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2009 OF 2021

SUPRIYA
PRAMOD
JAWARE

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1. Indus Towers Limited,
A Company incorporated under
The Companies Act, 1956, having its
Registered office at Building No.10,
Tower A, 4th Floor, DLF Cyber City,
Gurugram 122002
And
Having its Circle Office at
Office No. 2010, 2nd Floor,
'E' Wing, "Marvel Edge", S.No.207,
Hissa No.2A/1, Village Logegaon &
Vadgaonsheri, Taluka Haveli, Nagar Road,
Vimannagar, Pune 411014

Through Authorized Representative
of Petitioner No.1,
Shri. Sandip Ganpat Thakur,
Age-Adult, Occ- Service

2. Shri. Bandu Vishnu Khandagale,
Age-48 years, Occ.: Business,
Ichapurti Building, Belsare Galli,
Datar Aali, Fhanas Dongri, Pen,
Taluka- Pen, District-Raigad.

... Petitioners

V/s.

1. The State of Maharashtra,
Through the In charge Police Officer,
Pen Police Station,
Taluka-Pen
District-Raigad.
2. Pen Nagar Parishad, Pen,
Through the Chief Officer,
Taluka-Pen, Dist-Raigad

... Respondents

Mr. Anil Anturkar, Senior Counsel i/b Adv. Sugandh Deshmukh a/w Mr. Vaibhav Thorve, Adv. Irvin D'souza for the Petitioner.
Mrs. Megha Bajoria, A.P.P. for Respondent -State.
Ms. Priyanka Bhadrashete for Respondent No.2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 9th JULY 2026.

PRONOUNCED ON : 11th SEPTEMBER 2026.

JUDGMENT :-

1) By the present Petition, filed under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973 (for short 'CrPC') (now Section 528 of the BNSS), the Petitioners, seek to quash and set aside the F.I.R. No. 37 of 2020 dated 12th March 2020 registered with the Pen Police Station, Raigad under sections 53(7) of the Maharashtra Regional Town Planning Act, 1966 (for short 'MRTP Act') as also the subsequent chargesheet filed in Summary Case No.159 of 2020.

2) Heard, Mr. Anil Anturkar, learned Senior Advocate for the Petitioners, Ms. Megha Bajoria, A.P.P for Respondent -State and Mr. Priyanka Bhadrashete for Respondent No.2.

3) The brief facts of the case are as under: -

3.1) The Petitioner company is engaged in the business of establishing, maintaining and providing telecommunication infrastructure including mobile towers.

3.2) On 5th January 2020, the Petitioner submitted proposal and requested for permission for installation of telecommunication tower and other equipment on the premises i.e. survey No. 1923(B) within the jurisdiction of the Pen Municipal Council. The request was for installation of a ground base tower.

3.3) On 2nd March 2020, Respondent No.2 directed the Petitioners to resubmit the proposal due to certain changes in the telecom policies and issuance of new government resolution. The Petitioners without any valid permissions, authorisations and in fact contrary to their own proposal, started and continued work of installing the mobile tower on the top of a building. This was contrary to the proposal, without permission and unauthorised.

3.4) On 2nd March 2020, the Respondent issued a notice under Section 189 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 calling upon the Petitioners to remove the unauthorised construction of the mobile tower within a period of 15 days, failing which appropriate legal action would be taken.

3.5) On 3rd March 2020, notice under Section 53(1) read with Section 152 of the MRTP Act was issued contending that the tower amounted to unauthorised development. The Petitioners were called upon to remove the unauthorised construction within a period of 24 hours.

3.6) On 12th March 2020, FIR bearing C.R. No. 37 of 2020 came to be registered with Pen Police Station under Section 53(7) of the MRTP Act. On

14th March 2020, notice under Section 41A (1) of the CrPC was issued. By reply dated 17th March 2020, Petitioner furnished information and replied to the investigating agency.

3.7) On 7th July 2020, Petitioners resubmit the proposal for permission/No Objection Certificate (NOC) for installation of telecommunication tower and other equipment.

3.8) The Petitioners seek to challenge the FIR bearing C.R. No. 37 of 2020 and the consequent chargesheet arising out of C.R. No. 37 of 2020.

4) Mr. Anil Anturkar, learned Senior Advocate appearing for the Petitioners submitted that: -

4.1) The FIR as filed is premature in as much as it is filed before the expiration of time granted to the Petitioners for removal of the tower. That, under Section 53(1) of MRTP Act, when notice is issued in respect of development carried out without permission or in contravention of the permission granted, the Planning Authority is required to grant the noticee, the period specified in the notice for complying with the direction contained in the said notice. That, Respondent No.2 granted 24 hours for removal of the alleged unauthorised construction which is totally unreasonable and inadequate.

4.2) The prosecution could have been initiated only upon the failure of the Petitioner to comply with the said notice. In the present case, notice was issued on 2nd March 2020 and 15 days period was given for compliance

thereof. In respect of the notice dated 3rd March 2020, a period of 24 hours was given to dismantle the tower.

4.3) Even according to the allegations mentioned in the FIR, the period of 15 days which was granted would have expired only on 17th March 2020. However, the FIR has been registered on 12th March 2020 much prior to the expiry of the notice period. Therefore, FIR is premature.

4.4) The complainant has no authority to lodge the prosecution. The MRTP Act clearly provides that, the competent person to file the complaint was the Chief Officer of the Pen Nagar Parishad. That, powers delegated under Section 152 of the MRTP Act, cannot be further sub-delegated in the absence of any authorization. The Assistant Town Planner had no authority to institute the prosecution. The compliance of Section 142 of the MRTP Act has not been done. Initiation of prosecution without the statutory sanction and authorization as contemplated under Section 142 of the MRTP Act is untenable in law. Therefore, the FIR is unsustainable.

4.5) The MRTP Act is a special enactment. Under Section 142 of the MRTP Act, no prosecution for any offences punishable under the Act, or the Rules 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 authorized by such Board or Authority in his behalf. That, the said sanction as required under Section 142 of the Act has not been taken.

4.6) That, the Respondent No.2 was issued notice dated 2nd March 2020 relied upon the notification dated 4th March 2014, which was superseded by the Telecom Infrastructure Policy dated 17th February 2018. That, actions of Respondent No.2 are illegal and contrary to the Telecom Infrastructure Policy of 2018. That, the installation of the telecommunication towers being governed by the telecom Infrastructure Policy 2018 and DoT guidelines, the provisions of the MRTP Act would not be applicable.

5) Ms. Priyanka Badrashete, the learned Advocate appearing for the Respondent No.2 submitted that: -

5.1) Under Section 2(20) of the Maharashtra Municipal Councils Nagar Panchayat and Industrial Township Act, 1965 read with Section 2(19) of the MRTP Act, the Respondent No.2 was authorised through its authorised officer to file the present FIR.

5.2) The Petitioners Application for permission/NOC for installation of the telecommunication tower in City Survey No. 1923(B) situated at Fanasdongri was for 'Tower Type- Ground Based Tower'. That, Respondent No.2 inspected the site on 26th February 2020 and found that, the pillars were already erected and the tower work was been carried out on the terrace of a building without permissions. By letter dated 2nd March 2020, Respondent No.2 informed the Petitioner to comply with the requirements and submit all documents. That, on 2nd March 2020, notice was given to remove the illegal work within a period of 15 days. Again, on 3rd March 2020, a notice under

Section 53(1) and 152 of the MRTP Act, was issued to the Petitioner and the owner of the land, calling upon them to remove the construction within a period of 24 hours. It was submitted that, though a permission was sought for 'Ground based Tower' the construction was carried out on the terrace of the building therefore, the construction was completely illegal and unauthorized. The Application seeking permission was itself misleading.

5.3) Under Section 77 (2) of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965, the Authority can delegate the power to file complaint.

5.4) After the FIR was filed on 12th March 2020, the Petitioner submitted a fresh Application for permission on 7th July 2020. This indicates that, the initial erection of the mobile tower was unauthorised and illegal. All the documents were not submitted with the initial Application dated 5th January 2020, therefore, by letter dated 2nd March 2020, the Petitioners were requested to submit all documents. It is for this reason that, the Application was pending. That, notice dated 2nd March 2020 is given under Section 189 of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 in view of the inspection which was carried out on 26th February 2020. That, the work was commenced and continued without taking any kind of permission.

5.5) As work was continued without permission, a fresh notice was issued on 3rd March 2020. On, 7th July 2020, a fresh Application was

submitted for permission of “Tower Type- Roof Type Poll”. That, the work of installation of the tower was without permission, documents required in compliance were not submitted. That, the Petitioners on the purported ground of permission continued the work on the roof top when permission was sought for ‘Tower Type-Ground Based Tower’.

5.6) The Respondent No.2, i.e. Pen Municipal Council is a local authority and Planning Authority as defined under Section 2(19) of the MRTP Act. Under Section 152 of the MRTP Act, powers and functions of the Planning Authority under, inter alia, Sections 51, 53, 126(1)(b) shall be exercised and performed by Officers in the case of Municipal Council Towers.

6) Ms. Megha Bajoria, learned APP appearing for the State adopted the arguments advanced by Ms. Priyanka Bhadrashete, learned Advocate for the Respondent No.2.

7) Before proceeding to consider the matter on merits it would be necessary to refer to the legal provisions and certain Judgments which are relevant for the issues in the present matter.

7.1) Section 53 of the MRTP Act reads as under: -

“53. Power to require removal of unauthorised development.

[(1) (a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve one months' notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.]

(2) In particular, such notice may, for purposes of sub-section (1), require-

(a)the demolition or alteration of any building or works;

(b)the carrying out on land of any building or other operations; or

(c)the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission 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, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4)The foregoing provisions of this Chapter shall, so far as may be applicable apply to an application made under sub-section (2).

(5)If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be, and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6)If within the period specified in the notice or within the same period after the disposal of the application under sub-section' (4), the notice or so much of it as stand is not complied with, the planning Authority may-

(a)prosecute the owner for not complying with the notice; and where the notice requires the discontinuance of any use of land

any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of and revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, [be punished with imprisonment for a term [which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] [These words were substituted for the words 'be punished with fine which may extend to five thousand rupees' by Maharashtra 31 of 1983, Section 4(b).] for every day during which such offence continues after conviction for the first commission of the offence.

(8) [The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas.] [Sub-section (8) was inserted by Maharashtra 2 of 2012, Section 30 (w.e.f. 4-8-2012).]

7.2) Section 142 of the MRTP Act reads as under: -

“142. Sanction of prosecution. — No prosecution for any offence punishable under this Act or rules made thereunder 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:

¹*[Provided that, no sanction shall be necessary where unauthorised development has been carried out on the plot having area more than 1000 square meters.]”*

7.3) Section 77(2) of the Maharashtra Municipal Councils Nagar Panchayat and Industrial Township Act, 1965 reads as under: -

“77. Powers and duties of Chief Officer

“.....

(2) The Chief Officer may, ³[* *] delegate any of the powers or duties or functions conferred or imposed upon or allotted to him by or under this Act, to any municipal officer or servant:*

⁴[Provided that, such delegation shall be subject to the control and revision by the Chief Officer.]”

7.4) Section 189 of the Maharashtra Municipal Councils Nagar Panchayat and Industrial Township Act, 1965 reads as under: -

“.....

(8) If any person begins any construction of a building of which notice is required to be given under sub-section (2)

(i) without the permission of the Chief Officer under sub-section (4) or of the Council under sub-section (5), save as otherwise provided under subsection (6); or

(ii) having received permission under clause (a) of sub-section (4), contrary to the plans and information furnished under sub-section (2) and (3); or

(iii) having received permission under clause (b) of sub-section (4), contrary to the conditions imposed under that clause or contrary to the plans and information submitted under sub-sections (2) and (3) in so far as such plans and information are nor modified by such conditions; or

(iv) contrary to the provisions of sub-section (6), when construction is begun under that sub-section, the Chief Officer may, by a written notice, require such person to stop such construction and to alter or demolish any construction already made as specified in the notice. If, within fifteen days, from the service of such notice for demolishing any such construction, the work of demolishing it is not commenced, the Chief Officer may

*cause such work to be done and the expenses incurred therefore shall be recoverable from the person concerned in the same manner as an amount due on account of a property tax.
....”*

7.5) This Court in the case of *Mahesh Shivram Puthran Vs. Commissioner of Police, Thane* reported in 2011 SCC OnLine Bom 389 has observed that: -:

“9. From the scheme of the provisions of the Act, it is obvious that the prosecution for offences punishable under the Act of 1966 instituted and pursued by the Planning Authority. This position 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 thereunder 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."*

(emphasis supplied)

10. The language of this provision leaves no manner of doubt that the precondition 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 and, 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.

11. 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 thereunder shall be instituted, except with the previous sanction of the specified authority.”

7.6) This Court in the case of *Bharati Airtel Limited Vs. State of Maharashtra and Anr.* reported in 2016 SCC OnLine Bom 14348 has observed that: -

“6. The Division Bench of this Court in the case of Mahesh Puthran (supra) has considered the various provisions of the MRTP Act and also the relevant provisions of Cr.PC. namely sections 4 and 5 and after having examined all those provisions came to the conclusion that an F.I.R. could not be registered by the police and if it is so registered, it is without authority of law. There is no material on record to show that prior sanction has been taken under section 142 of the MRTP Act before filing the complaints.”

8) Perused the entire record. FIR indicates that, the FIR has been filed by the Assistant Town Planner on 12th March 2020. In the present case, Sub-section (6) of Section 53 of the MRTP Act clearly provides that, if within the period specified in the notice, the notice or so much of it as stands is not complied with, the planning authority may prosecute the owner for not complying with the notice or take steps to restore the land to its condition before the development took place. The notice dated 2nd March 2020 under Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 clearly stipulates that, the unauthorized construction is to be removed within a period of 15 days. As per the notice dated 2nd March 2020, the period of 15 days would expire only on 17th March 2020. The FIR is

dated 12th March 2020. In my opinion, considering the provisions of Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965, the said FIR is in fact premature.

8.1) Perusal of the FIR indicates that, there is also a reference to notice dated 3rd March 2020 issued under Section 53(1) and Section 152 of the MRTP Act requiring the Petitioners to remove the unauthorized work within a period of 24 hours. Once a notice under Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 is given calling upon the Petitioners to remove the unauthorized construction within a period of 15 days, in my opinion, the FIR could not have been lodged before the period of 15 days.

8.2) Once the notice under Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 is issued, it is necessary that the owner is permitted to exercise the available options mentioned therein. It would be incumbent on the authorities to follow and strictly comply with the provisions of Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965. Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 deals with notice issued in respect of construction of building. Under Section 189(4), the Chief Officer within 60 days, may either grant permission to construct according to the plans or impose conditions in accordance with the Act or direct that the work shall not be proceeded with until all questions are

decided to his satisfaction or refuse permission. If no order is issued under clause (c) and (d) of sub-section 4 within the prescribed period, the person applying under sub-section (2) shall be entitled to proceed with the work after the expiry of the prescribed period. Sub-section (8) of Section 189 provides that, a period of 15 days is required to be granted to the noticee to rectify the unauthorised work, failing which the authority can take action. Sub-section (9) of Section 189 provides for action, if steps are not taken in the 15 day period as prescribed in Section 189(8). In the present matter none of the prescribed procedure is followed. The prosecution pursuant to a notice under Section 53 of MRTP Act can be initiated only as per the provisions of Sub-section (6) of Section 53 of the MRTP Act. It is not the case that the notice dated 2nd March 2020 was withdrawn. In fact, once the notice under Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 is issued, the time provided in the notice ought to have been given to the Petitioner to remove the structure. Filing of the FIR before the expiry of the period of 15 days, in my opinion, would be premature.

8.3) The record further indicates that, the FIR has been filed by the Assistant Town Planner for a violation of Section 53 of MRTP Act. Section 142 of the MRTP Act specifically provides that, no prosecution shall be instituted except with the previous sanction of the Regional Board, the Planning Board, or as the case may be, the Development Authority or any Officer of Authority in that behalf. On record there is no Authority letter shown which authorized

the Assistant Town Planner to file the present complaint. In fact, the present complaint ought to have been filed by the Chief Officer.

8.4) The contention of the learned Advocate for Respondent No.2 that, Respondent No.2 was authorized to file the complaint under Section 77(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and that the Chief Officer had delegated the powers to the Respondent No.2 is misplaced and misconceived. Perusal of the 77(2) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 would indicate that, the power which can be delegated under Section 77(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 are restricted to matters relating to violation under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and not under the MRTP Act. The FIR is specifically filed under Section 53(6) of the MRTP Act. One has to be conscious of the fact that, the MRTP Act is a special statute. Section 142 specifically provides the manner in which sanction for prosecution is required to be obtained and the procedure to be followed in that regard. It is settled law that, a special statute takes precedence over the general law, where a procedure is specifically prescribed therein.

8.5) The decision of this Court in the case of *Mahesh Shivram Puthran Vs. Commissioner of Police, Thane, Dist Thane and Ors.* (Supra) and in the case of *Bharti Airtel Limited Vs. State of Maharashtra & Anr* (Supra) are

squarely applicable to the facts of the present case. The FIR has been filed without obtaining the requisite sanction as contemplated under Section 142 of the MRTP Act. Even the provisions of Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 have not been followed. Whether Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965 can be invoked in regard to an erection of an unauthorised mobile cell phone tower is also a debatable question, which this Court has not gone into in the present matter. I am of the view that, the criminal prosecution is totally untenable and misconceived therefore, it cannot be sustained. On the aforementioned ground i.e. non-compliance of Section 142 of the MRTP Act. Even otherwise the FIR is filed prior to the expiry of the period of 15 days as required under Section 189 of the Maharashtra Councils, Nagar Panchayats and Industrial Township Act, 1965.

9) In view of the above facts, I am of the considered opinion that the facts of the present case warrant the exercise of the inherent powers of this Court under Section 482 of the CrPC. A prima facie case of quashing has been made out so as to enable this Court to exercise the inherent powers under Section 482 of the CrPC (Now Section 528 of BNSS), to prevent the abuse of the process of the Court and to secure the ends of justice. Allowing the FIR, to continue in the present form and with the present allegations would amount to abuse of the process of law. In my considered view, it will be in the interest

of justice and to secure the ends of justice, the present criminal proceedings are quashed.

10) Hence, I pass the following Order: -

- i) Petition is allowed in terms of prayer clause (A) and (AA).

(RANJITSINHA RAJA BHONSALE, J.)