

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5354 OF 2022

Harakchand Jain .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 570 OF 2022

Shankar Shrirangrao Bhise .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 568 OF 2022

E. Ravendiran .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 594 OF 2022

Raghuvir Ramrao Shelke & Ors. .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 567 OF 2022

Govind M. Bodke .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

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- Mr. Drupad Sopan Patil, Advocate for Petitioners in WP 5354/22 & 594/22
 - Mr. A.S. Rao, Advocate for Petitioners in WP 567/22, 568/22 & 570/22
 - Ms. Anuja S. Gota, APP for State
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 17, 2026

P.C.:

- 1.** Heard learned Advocates appearing for the parties.
- 2.** This is a group of 5 Writ Petitions seeking quashing of criminal proceedings on merits. They all pertain to one single FIR No.11 of 2022 dated 27.01.2022 (for short "**FIR**"). Respondent No.2 is common in all 5 Petitions as he is the complainant. Respondent No.2 filed complaint accusing Petitioners, who are arrayed as accused in the FIR, for offences punishable under Sections 420, 418, 415, 467, 448, 120B and 34 of Indian Penal Code, 1860 and Sections 9 and 13 of Prevention of Corruption Act, 1988 with regard to a redevelopment project. Complainant is the ex-Corporator of Kalyan Dombivili Municipal Corporation (for short "**KDMC**"). Accused Nos.1 - 5 are the Municipal Commissioners of KDMC during the period 2004 to 2021. Accused Nos. 6 - 8 were working as Assistant Town Planners of KDMC whereas Accused Nos.9 - 16 were working as Assistant Town Planners and Engineers. Accused No.17 is the Developer and Accused No.18 is the architect. All 5 Petitions are decided by this common judgment.
- 3.** Writ Petition No.5354 of 2022 is filed by Developer, he seeks quashing of the FIR on the principal ground that order dated 18.01.2022 passed by the Magistrate directing investigation under Section 156(3) of Code of Criminal Procedure, 1973 (for short "**CrPC**")

in Criminal Miscellaneous Application No.327 of 2021 has been set aside by the Sessions Judge in Criminal Revision Application No.11 of 2022 vide order dated 21.05.2022. Both these orders are appended at Exhibit "O" and "Q" in Writ Petition No.5354 of 2022. His principal contention is that since the Complaint is quashed and set aside by virtue of the Revision order, FIR dated 27.01.2022 which is based on the complaint should be quashed and set aside since merits have been considered by the learned Sessions Judge.

4. Writ Petition No.594 of 2022 is filed by 8 Petitioners, Petitioner Nos. 1-7 still working with KDMC and Petitioner No.8 is retired. Their challenge is to the order dated 18.01.2022 passed by the Magistrate directing investigation under Section 156(3) of CrPC in Criminal Application No.327 of 2021.

5. Writ Petition No.570 of 2022 is filed by 1 Petitioner who was the then Chairman of Maharashtra Housing Development Corporation and named as accused in the offence. He challenges order dated 18.01.2022 and FIR dated 27.01.2022 registered thereupon.

6. Writ Petition No.568 of 2022 is filed by the then Municipal Commisisoner who worked from 13.07.2015 to 25.05.2017. He challenges the order dated 18.01.2022 and the FIR dated 27.01.2022 registered thereupon.

7. Writ Petition No.567 is filed by the then Municipal Commisisoner who worked from 18.03.2018 to 14.02.2020. He challenges the order dated 18.01.2022 and the FIR dated 27.01.2022 registered thereupon.

8. All facts are common and challenges are also identical in all 5 Petitions.

9. Briefly stated, redevelopment of Manik Colony was undertaken by the tenants and owner thereof sometime in the year 2004 onwards. It is admitted position on record that there were 137 tenants and between 2004 and 2010 there were several litigations, some of which went right upto the Supreme Court and many of them were filed in this Court where various orders came to be passed. In 2010, demolition of all dilapidated structures in Manik Colony took place and redevelopment commenced, after a few years part Commencement Certificate was issued by KDMC and this went on upto 2021 when Respondent No.2 - Complainant who is an ex - Corporator of KDMC filed a complaint dated 18.01.2022 with the Superintendant of Police, Divisional Commissioner and Police Inspector Bazarpeth Police Station on 24.07.2021 alleging that KDMC officials along with the Developer redeveloped Manik Colony property by playing fraud upon the tenants as well as the Municipal Corporation and obtained demolition permissions without following

the due process of law and without having the requisite majority consent of the tenants. Further allegation in the complaint was that the new construction put up by the developer was not in accordance with the MOU and the Minutes of the Meetings dated 24.11.2010, *inter alia*, alleging that tenants were kept in the dark, that there was active connivance of Developer with the high officials of KDMC in granting FSI sanction without verifying details of tenants, that sanction of construction permissions was contrary to the mandatory provisions of DCPR and the Developer carried out illegal works contrary to the provisions of MRTP Act, 1966.

10. It is seen that redevelopment has taken place, several rounds of proceedings have been heard by KDMC, tenants were given an opportunity by this Court to raise their objections which they did before KDMC and which KDMC rejected by order dated 20.07.2016 which was challenged in Writ Petition No.11484 of 2018 wherein no interim relief was granted by order dated 17.10.2016. It is seen that this Court clarified that because part Commencement Certificate was already granted, Occupancy Certificate of the constructed buildings shall be subject to the outcome of the Petition. It is only thereafter the present complaint was filed in the year 2021 by Respondent No.2. Subsequently the above Writ Petition has been dismissed as withdrawn by the tenants.

11. Submissions on behalf of the learned Advocates for Petitioners are common and identical. Mr. Patil, learned Advocate for the Developer would heavily rely upon the order of the Sessions Judge dated 21.05.2022 by virtue of which the Magistrate order dated 18.01.2022 was set aside and quashed on several legal and factual grounds. Apart from the Developer, other Petitioners are all admittedly public servants, all other learned advocates appearing for other Petitioners would jointly echo the fact that in the complaint that is filed, there is no averment of sanction having been obtained in accordance with the provisions of Section 197(1)(b) of CrPC to seek prosecution of the public servants. It is seen that out of 18 accused persons, Accused Nos. 1 - 16 are public servants and Complaint is on the basis that while discharging their duties as public servants, the alleged aberrations were committed. Fact that there is no sanction obtained is one of the strongest circumstance for setting aside not only the order dated 18.01.2022 passed by the Magistrate but also the subsequent FIR which was registered on 21.07.2022 and this, deserves to be accepted. What is intriguing is the fact that such an important circumstance is given a complete go – by by the concerned Magistrate while passing the order dated 18.01.2022 and therefore there is complete non – application of mind.

12. The next crucial submission made by the Petitioners deserve attention. Prosecution's case of Petitioners having committed excessess contrary to law over a period of 18 years is not at all specific and based on specific facts and role attributed to any of the 18 accused persons for they not having complied with the provisions of law. It is seen that an omnibus and general statement is made alleging non – compliance of statutory provisions by the officers of the Corporation and they being hand in glove with the Developer and his Architect without specifying any factual circumstance.

13. The complaint as can be seen is generic and omnibus in its nature, it does not give any particulars of facts so as to attribute cheating, breach of trust and forgery to any of the Petitioners before the Court. It clearly emanates from the record that after the tenants were unsuccessful in getting interim relief in their Writ Petition from this Court and this Court having specifically clarified in its order dated 22.06.2017 that the Final Occupnacy Certificate of the building shall be subject to outcome of the Petition, the Complaint has thereafter been filed by Respondent No.2 as a complete counterblast and after thought for reasons best known to the Complainant. It is borne out of the record that every iota of doubt and suspicison expressed by the Complainant is already agitated in a series of Writ Petitions filed before this Court between 2007 and 2017 by the Developer as well as

the tenants and therefore continuation of the civil *lis* in this fashion by filing criminal proceedings cannot be accepted and countenanced. It is *prima facie* seen that the learned Magistrate has acted mechanically without application of mind to the contents of the Complaint and the previous history of litigation.

14. Undoubtedly if there is any violation of statutory provisions in redevelopment process, the law will take its own course. Criminal prosecution to indict the officers of KDMC namely Assistant Directors of Town Planning, Municipal Commissioners, Managing Director of Maharashtra Housing Developing Corporation and Engineers without attributing incriminating material to any of their acts in a generic sense cannot be allowed to sustain.

15. It is *prima facie* seen that while setting aside the order dated 18.01.2022 passed by the Magistrate allowing the Complaint of Respondent No.2, learned Sessions Court has rightly observed that there is no mention of compliance of the provisions of Section 154(3) of CrPC in paragraph No.16, that is it was mandatory for the Magistrate to see if sanction was obtained to prosecute the Accused Nos. 1 - 16 and the Investigation Officer is silent about any such sanction having been obtained as stated in paragraph No. 17 and most importantly, since Complaint is filed under the PC Act 1988, learned Magistrate does not have jurisdiction to hear and prosecute

such a complaint under the PC Act and he ought to have referred the said complaint to the Special Judge as observed in paragraph No. 18.

16. It is further borne out from the record that on 12.04.2024, Writ Petition No. 11484 of 2018 filed by the tenants was dismissed and further challenge thereto was also dismissed by the Supreme Court. Further it is also seen that challenge to the order dated 21.05.2022 in Writ Petition Nos.2517 of 2022, Writ Petition No.2518 of 2022, Writ Petition No.2519 of 2022 and Writ Petition No.2520 of 2022 filed by the Complainant was withdrawn by the Respondent No.2 - Complainant.

17. Hence in view of the aforesaid strong circumstance which are prima facie borne out from the record, I am inclined to accept the submissions made by the learned Advocates for the Petitioners before me and the Petitions deserve to succeed. Hence the following order:-

(i) Writ Petition No.5354 of 2022 stands allowed in terms of prayer clause (a); (ii) Writ Petition No.594 of 2022 stands allowed in terms of prayer clauses (a) and (b); (iii) Writ Petition No.570 of 2022 stands allowed in terms of prayer clauses (b) and (c); (iv) Writ Petition No.568 of 2022 stands allowed in terms of prayer clauses (b) and (c); (v) Writ Petition No.567 of 2022 stands allowed in terms of prayer clause (b) and (c).

18. No order as to costs. All 5 Writ Petitions are allowed and disposed in the above terms.

Amerkar

[MILIND N. JADHAV, J.]