

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4328 OF 2010

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Viresh Suresh Mahindrarka .. Petitioner
 Versus
 Rama Sakharam Nikam and ors .. Respondents

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Mr. R.M. Pethe with Mr.S.A. Joshi for the petitioner.
 Ms.Minal Chandnani with Rajesh Ranglani for respondent nos.1
 and 2.
 Mr.Suresh M.Kamble for respondent no.3.
 Mr.Karan S. Thorat 'B' Panel counsel with Mr.M.M. Pable, AGP
 for the State.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ
DATED : 7th SEPTEMBER, 2026

ORAL JUDGMENT (PER BHARATI DANGRE, J):-

1. Heard Mr. Pethe, learned counsel for the petitioner, Ms.Minal Chandnani for Respondent Nos.1 and 2, Mr.Suresh Kamble for Respondent No.3 and the learned AGP for State.
2. The petitioner approached this Court with the following reliefs :-

“(a) Quash and set aside the Certificate of Regularisation at Sr. No.85 dated 28/11/2007 issued by the Designated Authority in respect of the House No. 146, U.No. 79(Part), Chalta No.154 Lal Chakki, Station Road, Ulhasnagar – 4 and the commencement certificate dated 17/08/2009 bearing No.उमपा/नरवि/बां/ 64/07/495 as also the Completion Certificate dated 05/09/2009 bearing No.उमपा/नरवि/जा.क्र/बां/ 64/07/605 by issuing appropriate writs, orders and directions ;

(b) direct the Ulhasnagar Municipal Corporation to demolish the structure and the part of the property which is affected by the Sanctioned Development Plan Road;

(c) Direct the Ulhasnagar Municipal Corporation and the State of Maharashtra to hold an enquiry in the matter and to take appropriate action against the persons responsible for the illegal regularization and building permission and issuance of completion certificate.”

The petition came to be admitted and was directed by us to be listed for final hearing upon the pleadings being completed.

3. It is the contention of Mr.Pethe, that the regularisation of the structure belonging to respondent nos.1 and 2 at the instance of the Municipal Corporation is in violation of the provisions of the Regularisation of Unauthorised Developments in the City of Ulhasnagar Act, 2006 which came into force from 14/1/2006.

By inviting our attention to Section 4, it is his submission that the statute has enumerated the circumstances in which the unauthorised development may or may not be regularised and sub-section (1) of Section 4 provide for a contingency, when an unauthorised development shall not be regularised under sub-section (3) of Section 3, if it is carried on :

(i) land under alignment of existing public roads or an internal road, of approved layout;

Therefore, it is a contention advanced that since this land was indicated as a development road (DP) in 1974 for the city of Ulhasnagar and being so shown in the Development Plan, its regularisation is illegal and therefore, the petitioner seek

quashing and setting aside of the said order along with the necessary permissions that are being granted for construction of the said property.

The prayer in the petition is vehemently opposed by the counsel representing respondent nos.1 and 2 as well as the learned counsel representing the Municipal Corporation.

4. A perusal of the Special Enactment, Maharashtra Act No.IX of 2006 would reveal that the said Act was enacted to regularise unauthorised developments in the City of Ulhasnagar, as it was noted that there has been unauthorised development in the City on large scale and such unauthorised developments were liable to be removed and pulled down by minimising the hardship to be caused to large number of people and in the wake of this, the Statute was enacted.

It defined unauthorised development in Section 2(d) to mean the development carried out without obtaining the permission of the authority competent to give such permission or in contravention of the permission.

5. Section 3 provide for the permissibility of regularisation of unauthorised development and it set out the principles subject to which unauthorised structures would be regularised by setting out the procedure to be followed, which included Constitution of the Committee of Experts, with the knowledge and experience in structural engineering and pursuant to each case being examined on its merits, the regularisation was permitted.

Sub-section (1) of Section 4 however, set out the contingency when the unauthorised development shall not be regularised under sub-section (3) of Section 3, and this is in the following contingencies :-

- (i) land under alignment of existing public roads or an internal road, of approved layout;
- (ii) water courses and water bodies like tank beds, river beds, natural drainage and such other places; and
- (iii) areas earmarked for the purposes of obnoxious and hazardous industrial development.

6. Since Mr.Pethe would invoke sub-section(1) of Section 4, we have carefully read the said provision to find out that unauthorised development shall not be regularised if it is carried on a land under alignment of “existing public roads or an internal road, of approved layout”.

A plain reading of the aforesaid clause would reveal that if the unauthorised development is on the land which is under the alignment of the existing public roads or approved layout, then it shall not be regularised. It, however, do not contemplate merely a DP Road which is shown in a development plan, as it is merely on paper and physically, there is no existing public road or an internal road.

This is the reason why we fail to entertain the petition, as the regularisation of the respondent nos.1 and 2 at the instance of the Municipal Corporation is opposed on the ground of clause (i) of sub-section (1) of Section 4, but we find that since it was only on paper and the structure or the land was not coming in the way of existing public road or internal road of

approved layout, there was no question of it not being regularised.

In any case, a bare reading of sub-section (1) of Section 4, the stipulation no.(i) would clearly reveal to us that it is not permissible for the Corporation to regularise the unauthorised development, if it was on the existing public road or an internal road of approved layout as it is necessary to have the public road or if there is an internal road of approved layout, regularising such a structure would cause grave hardship to the persons residing in that locality and using the public road or the internal road of the approved layout.

7. In the present case, however, we find that what is being objected to, is the proposed DP road in the development plan which was sanctioned, but the petition being filed in the year 2010, we are informed that the Development Plan of 1976 then stood suitably revised when it was again amended when the revised DP was declared in the year 2017.

Though Mr.Pethe would vehemently submit before us that the provisions of the Act will have to be read with the provisions of MRTP and in specific, Section 46, we do not dispute the proposition that the Planning Authority in considering the application for permission shall definitely have due regard to the provisions of any Draft or Final plan or proposal. However, we must also note that as we find that respondent nos.1 and 2 have preferred an application for regularisation to the Designated Authority, upon an application

being preferred, the regularisation is granted by order dated 28/11/2007 and we find that the Act No. X of 2006 came into force from 14/1/2006 and by taking recourse to the provisions of the said Act, the regularisation is granted and since there is no embargo as contained in sub-section (1) of Section 4, as sought to be pressed into service, the regularisation is granted. In any case, we find that down the line, in the year 2026, when much water has flown with the Development Plan also being revised and definitely, this regularised structure must have been taken into consideration and some other DP road must have been chalked out in the revised Development Plan.

8. Another aspect on which Mr.Pethe would invite our attention by filing an additional affidavit is an order passed in PIL No. 179/2010 which is annexed along with the additional affidavit.

The order at Exhibit-A to the said affidavit would reveal that upon a PIL being filed by one Ashok Bodha, targeting the Town Planner i.e. respondent no.4 who projected before the Court that 12 Development permissions by the Town Planner, and it is in this background, the Division Bench of this Court deemed it appropriate to direct the Principal Secretary, Urban Development Department, Government of Maharashtra as well as Commissioner of the Corporation to consider the grievance of the petitioner and to find out if it is genuine or not, after holding an inquiry. The PIL petition was therefore, disposed of with the aforesaid direction.

It is also brought to our notice that in furtherance thereof, disciplinary proceedings were initiated against respondent no.4 Mr. Gurgule and some orders are placed on record under which he was subjected to some penalty or action at the Departmental level.

We do not find any direction as regards the 12 structures alleged to be unauthorisedly permitted to be constructed/erected, and as far as the departmental proceedings are concerned, they have been concluded by imposition of appropriate penalty. However, we are informed that no action has been directed to be taken against the objectionable structures, and therefore, we do not find any merit in the submission of Mr. Pethe that the structures must be demolished because it was agreed that they were unauthorised.

In absence of any such finding to that effect, merely because the person who granted permission has been subjected to disciplinary proceedings and some penalty has been imposed upon him, unless and until the Corporation declare the structure to be particularly illegal and as on date, when we find that the objection of the petitioner is that the regularisation has been granted in violation of the provisions of the Act, and since we find no merit in the said contention, we do not expect any action at the instance of the Corporation against the structure of the respondent nos.1 and 2, only on the ground that according to the petitioner, it is an unauthorised structure.

Finding no merit and substance, we discharge 'Rule' and dismiss the Writ Petition.

(ASHISH S. CHAVAN, J)

(BHARATI DANGRE, J.)