

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

**WRIT PETITION NO. 5798 OF 2021**

Mr. Malcom Francis Damel @ Demello ]  
Age : 61 years, Occ: Agriculturist ]  
Residing at : Diwanwadi, Papadi, ]  
Vasai, Taluka: Vasai, District: Palghar ]  
Maharashtra 401207 ].....Petitioner

*Versus*

1. Vasai-Virar Municipal Corporation ]  
Through it Commissioner ]  
Having offices at: ]  
Manvelpada Rd, Opp. Virar police station, ]  
Virar East, Virar, Maharashtra 401305. ]  
]  
2. Assistant Commissioner ]  
Vasai-Virar Municipal Corporation ]  
Standing Committee I ]  
Having office at: ]  
Killa Rd, Parnaka, Koli wada, ]  
Vasai west, Vasai, Maharashtra 401201 ]  
]  
3. Smt. Bridget Baratol Fernandes ]  
Age : Adult, Occupation : Housewife, ]  
Residing at: Diwanwadi, Papadi, ]  
Vasai-West, Taluka: Vasai, District: Palghar ]  
Maharashtra 401207 ].....Respondents

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Ms. Siddh Vidya a/w Ms. Mansi Sahani, Ms. Akshata Morye and Mr. Bhalachandra Kumbhar i/b Siddh Vidya & Associates, for the Petitioner.

Mr. Mayuresh Lagu a/w Mr. Sagar Patil, for the Respondent Nos.1 and 2.

Mr. Laukik Palekar a/w Mr. Laukik Deshmukh i/b Lawfort, for the Respondent No.3.

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CORAM : M. S. KARNIK &  
SANDESH D.PATIL, JJ.

RESERVED ON : 12<sup>th</sup> AUGUST 2026

PRONOUNCED ON : 19<sup>th</sup> AUGUST 2026

**JUDGMENT [PER SANDESH D. PATIL, J.] :-**

1. By the present Writ Petition, the Petitioner is seeking a writ of mandamus directing the Respondents to implement the Order dated 28<sup>th</sup> August, 2019 passed by the Respondent No.2. It is the contention of the Petitioner that, the Petitioner is owner of land bearing old Survey No.265 and new Survey No. 275 Hissa No.9A. It is the further contention of the Petitioner that the Respondent No.3 made illegal constructions on the land of the Petitioner and therefore, made a complaint on 20<sup>th</sup> February, 2018 to the Respondent-Corporation. The Respondent-Corporation acting upon the Complaint of the Petitioner, carried out a survey on 3<sup>rd</sup> April, 2018 and prepared a report. The Respondent-Corporation on the basis of the report issued a Notice dated 4<sup>th</sup> April, 2018. It is further contended by the Petitioner that the Respondent No.3 filed Regular Civil Suit (R.C.S.) No.501 of 2018 for injunction against the Respondent Nos.1 and 2 in respect to the land bearing Survey No.275 Hissa No.33 situated at Village Sandor, Vasai, District Palghar.

It is contended that, the application for temporary injunction was allowed by the learned Civil Court vide Order dated 4<sup>th</sup> July, 2019 with respect to land bearing Survey No.275 Hissa No.33, however, in that application no stay was granted to demolition of illegal construction carried on Survey No.275 Hissa No.9A which is the property of the Petitioner. It is contended that on 28<sup>th</sup> August, 2019, the Respondent No.2 after giving a hearing to the Respondent No.3 passed an Order of demolition of the illegal construction. The Petitioner has approached this Court on the ground that inspite of the Order dated 28<sup>th</sup> August, 2019 no action is taken against the Respondents.

2. The Respondent No.3 appeared pursuant to the Notice issued by this Court and sought dismissal of this Petition. Learned Counsel for the Respondent No.3 contended that the Petitioner had filed R.C.S. No.127 of 2018 seeking injunction against the husband of the Respondent No.3 with respect to old Survey No.265, new Survey No.275 Hissa No.9A. In that suit, the Respondent No.3's husband had filed a counter claim seeking declaration of the ownership. By virtue of an Order dated 23<sup>rd</sup> September, 2021, the R.C.S. No.127 of 2018

was withdrawn by the Petitioner, however the counter claim is still continuing. Learned Counsel for the Respondent No.3 contended that, the Respondent No.3 also had filed R.C.S. No.501 of 2018 challenging the illegal action of the Respondent No.2 threatening to demolish the residential house No.167 situated at old Survey No.265, new Survey No.275 Hissa No.36 and 33. The learned Trial Court allowed the application for temporary injunction and thus, the House No.167 is protected. Learned Counsel for the Respondent No.3 further contended that, since the Petitioner approached the office of the Lokayukta inspite of pendency of aforesaid Civil Suits, the office of the Lokayukta directed the Corporation to give hearing to the Petitioner and Respondent No.3 and accordingly, the Municipal Commissioner vide Order dated 17<sup>th</sup> August, 2021 heard the parties to this Writ Petition and observed that, there are suits pending between the parties and hence, the complaint of the Petitioner cannot be entertained.

3. The Respondent-Corporation has filed an affidavit through Mr. Subodh Thanekar, Assistant Municipal Commissioner, I-Ward of the Respondent No.2 who stated that due to pendency of Civil Suits they

were unable to take any action against the alleged offending structure. There is an additional affidavit filed by the Municipal Commissioner of the Respondent No.1-Corporation who has also stated on oath that there are proceedings pending before the Civil Court. The said affidavit further states that the deponent had given the instruction to the Advocate on record in the learned Civil Court to file an application for vacating the interim Order passed by the learned Civil Court and accordingly, an application is filed. The said affidavit further lays much stress upon the fact that the matter is pending before the Civil Court. There is also a affidavit in rejoinder filed by the Petitioner to the affidavits filed by the Respondent Nos.1 and 2.

4. We have heard the learned Counsels appearing for the parties. At the outset we must mention that, the Order of which implementation is sought is an Order dated 1<sup>st</sup> August, 2019 and 28<sup>th</sup> August, 2019. Learned Counsel appearing for the Petitioner has although vaguely tried to contend that the said Order is dated 28<sup>th</sup> August, 2019 however, on reading of line No.5 of the said Order, it is clear that, the Order is passed on 1<sup>st</sup> August, 2019. Be that as it may, this would not affect the merits of the said Order. We have also

perused the interim Orders dated 4<sup>th</sup> July, 2019 passed in R.C.S. No.501 of 2018. That Order was only in respect of Survey No.275 Hissa No.33 and that Hissa No.9A was not mentioned in the said order. The Respondent No.3 therefore, sought correction of the Order dated 4<sup>th</sup> July, 2019. The learned Civil Judge, Junior Division was pleased to correct the Order on 28<sup>th</sup> April, 2026 and the Order is corrected as under:

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***Order***

1. *The application (Exh. 05) is allowed.*
2. *The defendant through themselves or through their agents, representative or the any other person authorized on their behalf are temporarily restrained from demolishing the suit property i.e. structure bearing house no. 167, admeasuring about 12.5 x 8.60 sq. meters, consisting ground plus two upper floors, standing on the portion of land bearing old survey no.265, corresponding new survey no.275, hissa no.36 and old survey no.265 corresponding new survey no.275, hissa no.33 situated at village Sandor, Divanwadi, Vasai (W), Taluka Vasai, Dist. Palghar, now within the limits of Vasai Virar Municipal Corporation till the decision of the suit.*
3. *Parties to bear their own costs. ”*

5. Upon considering the entire conspectus of the matter, it is clear that, it is for the Municipal Corporation to decide about the legality of the structure. The property which is described by the Petitioner in the Writ Petition namely Survey No.275 Hissa No.9A does not appear

to be the property mentioned in the Orders dated 28<sup>th</sup> April, 2019 or 4<sup>th</sup> July, 2019 in R.C.S. No.501 of 2018. It is for the Municipal Commissioner to consider whether the property mentioned by the Petitioner namely Survey No.275 Hissa No. 9A is the same property which is subject matter of R.C.S. No.501 of 2018. The Municipal Commissioner will have to consider all these aspects.

6. If the structure is illegal and is not protected by any Order of the learned Civil Court then the Municipal Commissioner can proceed to take appropriate steps against the offending structure. It is made clear that, we have not gone into the issue of title of the parties. Thus, the issue of title is expressly kept open. The Municipal Commissioner shall carry out the exercise as mentioned above within a period of 12 weeks from today and then take appropriate action in accordance with law.

7. With the aforesaid observations, Writ Petition No.5798 of 2021 is disposed of.

**(SANDESH D.PATIL, J.)**

**(M. S. KARNIK, J.)**