

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

APPEAL FROM ORDER NO.896 OF 2026

Rajan Nanakchand Suri, Age 74 years,
R/o.Shed No.16, Dolarwadi, Final Plot No.1260 (P),
TPS IV, Mahim Division, Prabhadevi,
Mumbai-400025.

Appellant

versus

1. Municipal Corporation of Greater Mumbai
through Municipal Commissioner.
2. The Designated Officer and Executive Officer,
G/South Ward, MCGM, Mumbai.
3. The Assistant Commissioner, G/South Ward,
MCGM, Mumbai.
4. M/s.Lokhandwala Infrastructure Pvt.Ltd.

Respondents

Mr.Akash Rebello with Mr.Nadeem Shama, Mr.Paras Gosar, Ms.Bushra Sayed i/by
Pragya Mishra for Appellant.

Mr.Pradeep Thorat with Mr.Anil Rao for Respondent no.4 (landlord).

Ms.Smita Tondwalkar for Respondents 1 to 3 MCGM.

CORAM : AARTI SATHE, J.

DATE : 8th September 2026

P.C.

1. This Appeal from Order under Order XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 ('CPC') takes exception to the order dated 28th August 2026 passed by the learned Civil Judge, City Civil Court, Greater Bombay (Court No.6) ('Trial Court') in Notice of Motion No.4489 of 2026 in L.C.Suit No.1934 of 2026 (hereinafter referred to as 'the impugned order'), *inter alia*, dismissing the Notice of Motion and refusing to grant temporary

injunction under Order XXXIX, Rules 1 and 2 of the CPC against the Respondents.

2. Briefly the facts are as follows :

(i) The Appellant is a senior citizen aged about 74 years and has been residing with his family in Shed No.16, Dolarwadi standing on Final Plot No.1260 (part), Town Planning Scheme IV of Mahim Division, Old Prabhadevi Road, Prabhadevi, Mumbai-400025 (‘ the suit structure’) for nearly six decades;

(ii) It is the contention of the Appellant that the suit structure is his residence and the seat of his family’s livelihood. It is the Appellant’s contention that the suit structure is an old ground floor structure existing since 1961 and was erected by the Appellant’s predecessor Mr.Ram Harak prior to 17th April 1964, the cut off date recognized by the Municipal Corporation of Greater Mumbai (‘Respondent-MCGM’) as the datum line for old residential structures;

(iii) The Appellant acquired the rights in the said suit structure from Mr.Ram Harak under a writing dated 24th September 1967 and has been residing there with his family continuously since 1971;

(iv) On 23rd November 1989, the Respondent-MCGM issued a notice of even date under Section 351 of Mumbai Municipal Corporation Act, 1888 (‘MMC Act’) followed by a letter dated 23rd November 1990 in respect of the said suit structure. Apprehending demolition of the suit structure, the Appellant instituted L.C.Suit No.271 of 1991 before the Trial Court wherein it was pleaded that the suit structure admeasured 12’x18’ sq. ft. It is the Appellant’s contention that this 12’x18’ sq. ft. suit structure was in respect of a property bearing CTS

No.1206 whereas the suit structure in the present proceedings stands on Final Plot (F.P.) No.1260 of T.P.S. IV of Mahim Division. It is further Appellant's contention that Respondent-MCGM in the proceedings in L.C.Suit No.271 of 1991 led no oral evidence and admitted that its file concerning the alleged unauthorized construction was "missing and not traceable". In view of the aforesaid, the Trial Court after conducting a full fledged trial, decreed the suit on 13th October 1997 in favour of the Appellant and restrained the Respondent-MCGM from acting on the notice dated 23rd November 1989;

(v) The aforesaid judgment and decree dated 13th October 1997 was engrossed on 6th August 2004, and a certified copy of the same was issued on 6th July 2005. It is the Appellant's contention that the Respondent-MCGM has neither preferred any appeal nor sought any review or otherwise challenged the said judgment and decree thereby making the decree final and binding upon Respondent-MCGM and its officers, servants and agents;

(vi) On 27th May 2005, the Catherine Quinny Trust (earlier landlord) conveyed Final Plot No.1206 to Respondent No.4 (current landlord and developer) subject to the rights of the sitting tenants (deed registered at Sr. No.BBE-2-4925-2005). The aforesaid conveyance was subject to all subsisting rights including those of the Appellant in the suit structure and Appellant's name appeared at Sr. No. 1 in the final tenants' list of Catherine Quinny Trust property. It is the Appellant's contention that area of shop structure of the same has been shown admeasuring about 640 sq. ft. situated at F.P. No. 1206;

(vii) On 19th November 2014, the Respondent-MCGM issued inspection notice under Section 488 of MMC Act, and further a similar notice was issued on 3rd September 2025. It is the Appellant's contention that the said inspection notice did not refer to any post-decree construction, addition or alteration to the suit structure. On 31st December 2019, the Respondent No.4-Landlord filed an application seeking development permission including the tenant list admitting the Appellant at Sr. No. 1 as occupant of shop of 59.49 sq.meters(640.35 sq.fts);

(viii) On 21st July 2020, the Respondent-MCGM granted Layout Approval No. P-3785/2019(1260)G/South/FP/302 to Respondent No.4-Landlord under Regulation 17(1) and 13(2)(a) of The Development Control and Promotion Regulation 2034 (DCPR 2034) including FSI of the suit structure. It is the Appellant's contention that the alleged unauthorized area of the structure, if any, has already been merged and absorbed into the sanctioned redevelopment scheme and has been duly compounded.

(ix) Sometime around March-2025, the Respondent No.4-Landlord prepared a memorandum of Permanent Alternate Accommodation Agreement (PAAA) in favour of the Appellant offering two residential premises of 375 sq.ft RERA carpet area each, aggregating to 750 sq.ft in the rehab portion of the proposed building on ownership basis free of cost in lieu of the earlier premises. It is Appellant's contention that despite repeated requests, the Respondent No.4-Landlord failed and refused to execute and register the agreement and instead pressured the Appellant to vacate the suit structure for a lumpsum of

Rs.25,00,000/- which is wholly inadequate for comparable accommodation in or around Prabhadevi. The Appellant refused to surrender his lawful entitlement;

(x) It is the Appellant's contention that having failed to pressure the Appellant, the Respondent No.4-Landlord filed complaints with Respondent-MCGM firstly on 30th June 2025 and thereafter through its authorized representative on 4th March 2026 alleging that the Appellant's decades-old residence was an "unauthorized structure". It is further the Appellant's contention that these complaints were never forwarded to the Appellant, and copies were subsequently obtained by the Appellant's daughter under Right to Information Act, 2005;

(xi) On 3rd September 2025, the Respondent-MCGM issued notice under Section 488 of MMC Act to once again inspect the suit structure. However, in the inspection which was held on 8th September 2025 no post-decree construction was found.

(xii) On 26th September 2025 and 5th December 2025, the Respondent No.4-Landlord undertook redevelopment of the plot with Respondent-MCGM approval under file No.P-3785/2019 (1260)/G/SOUTH/FP/302, pursuant to Regulations 17(1) and 13(2)(a) of DCPR 2034 with a permissible FSI of 3.00 as recorded in the layout reports dated 26th September 2025 and 5th December 2025;

(xiii) On 8th May 2026, the Respondent-MCGM acting on the complaints of Respondent No.4-Landlord, inspected the suit premises and issued a notice on the same day under Section 351(1A) of the MMC Act. On 9th May

2026, the said notice was served on the Appellant asking him to show cause within seven days from the date of receipt of the aforesaid notice. It is Appellant's contention that the notice dated 8th May 2026 describes the suit structure (hereinafter referred to as 'notice structure' as given in the notice dated 8th May 2026) of the same dimensions as pleaded by the Appellant before the Trial Court on 14th January 1991 in L.C.Suit No.271 of 1991. It is, therefore, Appellant's contention that the Respondent-MCGM itself has identified the structure which was proposed to be demolished as the very structure that was the subject matter of earlier suit and is protected by the judgment and decree dated 13th October 1997. It is also the Appellant's contention that the notice dated 8th May 2026 contains no allegations whatsoever of any construction, addition or alteration having been carried out after the said judgment and decree;

(xiv) Thereafter between 14th May 2026 to 30th June 2026, replies were filed by the Appellant through his advocate and also by Respondent No.4-Landlord, which culminated in personal hearing on 30th June 2026 before the Respondent-MCGM;

(xv) On 9th July 2026, the minutes of personal hearing were issued vide letter of even date directing the Appellants to submit additional documents within five days. It is the Appellant's contention that, however, the said minutes failed to record material submissions made on behalf of the Appellant including the effect of the development permissions granted by Respondent-MCGM and the statutory protection under Section 53(3) of the Maharashtra Regional & Town Planning Act, 1966 ('MRTP Act');

(xvi) On 17th July 2026, the Assistant Assessor and Collector, G/South Ward, furnished the assessment remarks and assessed the notice structure for property tax purposes with effect from 1st April 1989, as an A.C. Shed admeasuring 25.50 sq. metres, and recorded the same as being occupied by the Appellant.

(xvii) On 10th August 2026, a speaking order has been passed by the Respondent-MCGM rejecting 33 documents submitted by the Appellant and directing removal of the notice structure beyond 12'x18' sq. ft. within fifteen days. By speaking order, the Respondent-MCGM held that the Appellant had failed to establish that the notice structure was authorized and declared as removable within fifteen days of receipt of the order, failing which the Respondent-MCGM would demolish the same at Appellant's risk and cost.

3. Being aggrieved by the aforesaid speaking order, the Appellant filed L.C.Suit No.1934 of 2026 and filed Notice of Motion No.4489 of 2026, which has been dismissed, giving rise to the present Appeal from Order.

4. Heard Mr.Akash Rebello with Mr.Nadeem Shama, Mr.Paras Gosar, Ms.Bushra Sayed i/by Pragya Mishra for Appellant, Mr.Pradeep Thorat with Mr.Anil Rao for Respondent No.4-Landlord and Ms.Smita Tondwalkar for Respondents 1 to 3 MCGM.

5. Learned counsel on behalf of the Appellant submitted that the Trial Court has erred in passing the impugned order and particularly not considered the compounding of the notice structure as a consequence of an application filed by Respondent No.4-Landlord under Section 44 of MRTP Act covering the said

notice structure thereby rendering the impugned order liable to be set aside. He also submitted that the said non consideration is contrary to the directions issued by Supreme Court in **Directions in the Matter of Demolition of Structures, In Re**¹ issued to all Municipal Corporations. He further submitted that the Trial Court has failed to appreciate that the Respondent-MCGM has approved the development plan of Respondent No.4-Landlord, and hence the notice structure stands protected under Section 53(3) of MRTP Act and the same cannot be demolished by recourse to general law under Section 51 of MMC Act. He further submitted that Appellant has been a tenant of the notice structure of the earlier landlord and Respondent No.4 who is the present landlord, cannot oust the Appellant from the notice structure under the guise of redevelopment. He further submitted that the Respondent-MCGM issued notice under Section 351 of MMC Act only on the complaints made by Respondent No.4-Landlord. He further submitted that by the judgment and decree dated 13th October 1997 in L.C.Suit No.271 of 1991, the Trial Court declared the present suit structure in its present form within the legal parameters of tolerance and restrained its demolition and the said order has attained finality, as the same has not been challenged by the Respondent-MCGM. He also submitted that the notice structure is a protected structure and the Appellant is a recognized and protected tenant of the notice structure as evidenced by the Charity Commissioner in its tenants' list and the documents which were placed on record, which showed that the erstwhile landlord constructed the notice structure and inducted the Appellant as a tenant having area equivalent to the

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current area. He also submitted that even at the inspection carried out by the Respondent-MCGM, there was no post-decree unauthorized construction, as alleged by the Respondent-MCGM and hence non consideration of the aforesaid vital facts by the Trial Court rendered the impugned order liable to be quashed. He further submitted that the MRTP Act is a complete code and the same provides for redevelopment, development, which includes demolition and hence action of demolition cannot be initiated under Section 351 of MMC Act. He lastly submitted that the Trial Court failed to consider that in redevelopment, the landlord is bound to provide to the tenant being a protected tenant, a rehab shop of equal area with rehab fungible area, if any. He, therefore, submitted that the Trial Court had not exercised its jurisdiction correctly while refusing to grant an injunction under Order XXXIX, Rules 1 and 2 of CPC and had not formed a prima facie opinion on the basis of the facts and documents on record. He submitted that balance of convenience squarely lies in favour of the Appellant in the present case.

6. *Per contra*, learned counsel on behalf of Respondent No.4-Landlord submitted that the impugned order of the Trial Court is a well reasoned order and ought not to be interfered with. He submitted that in the present case the Appellant has not produced any document on record to show the authorization for construction of the notice structure which is the vertical and horizontal extension to the original structure admeasuring 12'x18' sq. ft. He further submitted that there was no document produced on record to show existence of the notice structure prior to the datum line of 17th April 1964. He also submitted that the

assessment bill produced by the Appellant shows first date of assessment as 1st April 1989, which clearly shows that the assessment of the structure was for 25.50 sq.mtrs area in the year 1989. He also submitted that the notice dated 8th May 2026 was issued under Section 351 of MMC Act, which is subject matter of challenge in the present proceedings, consists of three portions :

- a. Portion adm.4.10 mtr x 10.20 mtr (13'5"x33'6")=452.25 sq.ft;
- b. Portion adm.4.3 mtr x 5.4 mtr (14'1"x17'9")=252 sq.ft.
- c. Mezzanine floor adm.6.8 mtr x 4.5 mtr (22'4"x14'9")=329 sq.ft.

7. He, therefore, submitted that the above mentioned horizontal and vertical extensions are beyond the original structure admeasuring 12'x18' sq. ft. equivalent to 216 sq.ft and the total extension on the ground floor is 704.25 sq.ft beyond the original area of 216 sq.ft. He also submitted that the assessment record shows that the structure of area admeasuring 25.50 sq.mtrs and the mezzanine floor has been recently constructed by the Appellant. He, therefore, submitted that the Appellant's contention that since the Trial Court by its order dated 13th October 1997 had already granted protection to the suit structure, the same cannot be demolished is an erroneous submission, inasmuch as, admittedly the subject matter of L.C.Suit No.271 of 1991 was a structure admeasuring 12'x18' sq. ft. which is equivalent to 216 sq.ft. He therefore submitted that the present notice dated 8th May 2026 issued under Section 351 of MMC Act was in respect of completely new structure and the Appellant cannot take protection of the order dated 13th October 1997 to contend that the notice structure was a protected structure. He also submitted, insofar as, the submission regarding

compounding/regularization of the notice structure is concerned, the same cannot be permitted for the reason that the Appellant is not the owner of the structure and he further sought to place reliance on the decision in **Feroz Talukdar Khan Vs. Municipal Commissioner, Thane Municipal Corporation and another²** to contend that regularization cannot be a matter of right and unauthorized structures cannot be permitted to be regularized in a routine manner. He, therefore, submitted that the Appeal from Order deserves to be dismissed.

ANALYSIS AND FINDINGS

8. I have heard learned counsel on behalf of the parties and perused the impugned order along with the relevant documents. The primary dispute in the facts of the present case is with regard to the demolition of the notice structure which the Appellant contends cannot be done by Respondent-MCGM, inasmuch as, in respect of the said notice structure an earlier order dated 13th October 1997 passed by the Trial Court restraining the Respondent-MCGM from carrying out demolition has attained finality. Much emphasis has been laid on the judgement and decree dated 13th October 1997 passed by the Trial Court in L.C. Suit No. 271 of 1991 restraining the Respondent-MCGM from carrying out demolition to contend that the present notice structure is a protected structure. I do not find substance in the aforesaid contention as the Trial Court has very meticulously gone through the documents placed on record and come to a reasoned finding that the judgment and decree dated 13th October 1997 does not cover the present notice structure and the protection given to that suit structure cannot be extended to the

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present notice structure. I am of the view that this finding rendered by the Trial Court is a correct finding, inasmuch as, the description of the notice structure in the present case has been given as follows by the Trial Court: -

16. Before analyzing and scrutinizing the material on record, it would be worthwhile to mention the description of the suit premises as stated in plaint i.e.

"Structure known as Shed No.16, Dolarwadi, an old ground floor structure standing since at least the year 1961 on Final Plot No.1260 (part) of Town Planning Scheme IV of Mahim Division, Next to Riddhi Siddhi Apartment, Old Prabhadevi Road, Prabhadevi, Mumbai-400 025, assessed to property tax by the Assessment Department of the G/South Ward as an A.C. Shed of area 25.50 sq. mtrs. under Property Sac No.G/10-0366-01-3-0000".

9. However, the description as given in the L.C. Suit No. 271 of 1991 in respect of which the judgment and decree dated 13th October 1997 has been passed is admittedly in respect of suit structure admeasuring (12' x 18'). Further, in the notice dated 8th May 2026 issued by Respondent-MCGM which is relevant for the present proceedings, the schedule of the notice structure is described as below:

"SCHEDULE

Unauthorized horizontal & vertical extension to the existing ground structure adm.3.65m X 5.40m (12'X18') as per plaintiff i.e. Rajan Hanakchand Suri claimed on 14/01/1991 before Hon'ble Bombay City Civil Court in L.C. Suit No.271 of 1991 by (1/2 X4.10m X10.20m)+(4.30m X5.40m) having height 2.60m horizontally at Ground Floor & Mezzanine Noor structure adm. 6.80m X 4.50m having height 1.70m vertically as shown in sketch below made by using Brick Masonry Walls, Ladi Coba Slab, M.S. Angles, A.C. Sheet Roofing at above mentioned address."

10. Considering the aforesaid different descriptions of the suit structure in the plaint, notice structure and the structure described in L.C. Suit No. 271 of 1991 in which judgment and decree dated 13th October 1997 has been passed , I am in complete agreement with findings of the Trial Court which holds that only because protection was granted by judgment and decree dated 13th October 1997 to the

(12' x 18' sq. ft.) structure, the same should not be extended to the notice structure as there was no protection granted to any structure found post the judgment and decree dated 13th October 1997 over and above the area measuring (12' x 18' sq. ft.). I therefore find much substance in the argument made by Respondent No.4-Landlord that the present notice dated 8th May 2026 has been issued in respect of the portions as reproduced in paragraph (6) above.

11. The said portions are definitely an extension which are much more than the original structure admeasuring (12' x 18' sq. ft.) equal to 260 sq. ft. and therefore the Trial Court has rightly come to the conclusion that the injunction against Respondent-MCGM cannot be granted.

12. Further, the Trial Court has rightly taken into consideration the remarks which are elaborated in point no. 5 of the speaking order dated 10th August 2026 wherein once again after giving due consideration to the judgment and decree dated 13th October 1997, a speaking order has been passed whereby only the protection has been restricted to structure admeasuring 12' x 18' sq. ft. and not the area which is the part of the notice structure. It is therefore my view that the Trial Court has rightly taken into consideration all the documents on record and has come to a prima facie view that injunction cannot be granted against Respondent-MCGM.

13. Further on perusal of the assessment records, it cannot be established that the Appellant had obtained any permission with regard to the notice structure or that the said notice structure existed prior to the datum line of 17th April 1964. In fact, the assessment bill produced by the Appellant shows the assessment as on 1st

April 1989 and specifies that the assessment of structure admeasured only 25.50 sqm mtrs. in the year 1989. This to my mind does not show that the notice structure was an authorized structure and requisite permission had been granted/taken in respect of the same. The reliance by learned counsel on behalf of the Respondent No.4-Landlord on **Shah constructions Co. Ltd. Vs. Municipal Corporation of Greater Mumbai and Ors.**³ is apposite to the facts of the present case wherein it has been held that mere entry on assessment bill in the later years stating that the structure pre-dates the datum line, does not by itself lend credibility to either nature or size of the structure. The relevant paras of the aforesaid judgment are reproduced below: -

“11) The Petitioner, who claims to be a landowner and a law-abiding citizen, has not conducted himself as one. It is a blatantly false assertion. He has failed to produce any sanctioned plan for the constructions held to be unauthorised. A closer examination of the documents on record reveal that the issuance of licence by the B.M.C. in 1961 in favour of the Petitioner, permitting stone cutting, does not prove the existence of any structure, nor does it specify the nature and size of the structure. Consequently, the reliance on such licence to support the contention of existence of any structure(s), or as to its nature and size, is wholly unsubstantiated. At most, it would reveal authorization of stone-cutting activity on the subject property. Moreover, the permit dated 21st September 1961 was valid only up to 31st March 1963. The unauthorised structure/s certainly cannot be deemed to be authorised by virtue of issue of licence.

12) The letter dated 19th January, 1978, purportedly granting repair permission, does not establish that the original structure was authorised, nor its nature or size. Importantly, though the notice annexed separately in both Petitions – suggesting that separate Notices were issued for the structures in each Petition – it is, in fact, the same Notice. It appears that, the Petitioner by annexing it in both Petitions attempted to mislead the Court into believing that two separate Notices were issued for the Petitioned structures. A closer examination of the Notice reveals that, it attempts to create evidence of structure/s which probably never existed. The permission reads as under:

- “(I) To subdivides the existing structure No. IV into three (3) separate portions by erecting portions comprising partly B.M. Walls and partly G1 sheets as shown in the annexed sketch.
- (II) To repair & re-plaster the existing B.M. Walls internally and externally in all four (4) structures.
- (III) To replace the damaged flooring in all four (4) structures.
- (IV) To repair and replace the rusted and damages GI Sheets roof of

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all four (4) structures. Note: All four (4) structures are constructed partly B.M. Walls and partly GI Sheets.”

13) Similarly, the Notice dated 26th July, 1983 issued by the B.M.C. under Section 351 of the B.M.C. Act is a single Notice for four unauthorised structures, though annexed in both Petitions. No averments are made in either Petition to suggest that it was only for the four structures in one Petition. Thus, this is clearly an attempt to mislead the Court into believing that they were issued for the unauthorised structures mentioned in each of the two Petitions.

14) The reliance placed on the letter dated 18th November, 1983 prima facie reveals that it is a procured document. The contents of the relevant paragraph are reproduced hereinbelow for ready reference:

“....As per the documents you provided specifically, Repair Permission No. WOK/W/900/Bldg. & Fact dated 19/01/1978 and further Repair permission No. KW/347/AEB/JR dated 12/05/82 with reference to structures under reference and other relevant documents – it is evident that the notice structures are old and as per the permissions granted through the above mentioned Repair Permissions. Hence, the structures are protected as per the policy of the B.M.C., therefore by direction, I have to inform you that the notice issued to you is considered favourably and the notice is hereby dropped”.

15) In our view, this letter could not have been granted, as the datum line has always been 1st April, 1962. It does not refer to any document to suggest that the structure/s existed prior to the datum line.

16) The letter dated 12th May, 1982 reveals that five porta cabins having dimensions 8ft x 40ft x 16.40ft were sought to be repaired. It obviously does not substantiate the existence of structures prior to 1st April, 1962.

17) Apart from a bare claim that the structures existed prior to 1st April, 1962, the Petitioner has failed to produce any document demonstrating the nature and size of the structure as originally constructed. The Petitioner has failed to show that any steps were taken to regularise the structure over the decade and more that has since elapsed.

18) A mere entry in the assessment bills of later years, stating that the structure predates 1st April, 1962 (the datum line), does not by itself lend credibility to either the nature or the size of the structure built. A closer examination of the same reveals that, it concerns only three units and not to all the nine unauthorised structures for which notices have been issued. In the absence of any plans, sanctioned or otherwise, or any document proving the nature and area of the structure, no protection can be claimed as of right, or granted by this Court. To claim a lawful right, a citizen must first have discharged his own duty; otherwise a Court is not bound to protect or grant any relief. In the present case, the Petitioner, who claims to be a law-abiding citizen, has conducted himself entirely to the contrary. Apart from the extensive illegal construction, he has admittedly put up a portable cabins without any permissions from the B.M.C.

19) The legal position is no longer res integra. In *Ashok Tukaram Ramugade vs. M.C.G.M.* reported in 2026 SCC OnLine Bom 5080, this Court held that an unauthorised structure being subsequently assessed to property tax by the B.M.C. would not change the unauthorised character of the structure nor would it make the structure authorised from the date of assessment. In *Sidharam M. Yanagandul vs. State of Maharashtra* reported in 2026 SCC OnLine Bom 971, affirmed by the Division Bench in *Laxmi Gopinath Shetye vs. MHADA* in Civil Writ Petition No.1546 of 1996 dated 13th March, 2024, it has been authoritatively held that assessment of an unauthorised structure to

property tax neither alters its unauthorised character nor amounts to regularisation. In the present case the Petitioners have relied precisely upon such documents which reliance cannot be countenanced.

20) Besides the Assessment bills, electricity bills, shop and establishment licence or any other licence issued by the B.M.C. or any authority, cannot have the effect of rendering an unauthorised structure legal or authorised. The reliance placed on assessment bills, repair permissions, property tax receipts, electricity bills and licence issued by B.M.C. is wholly misplaced and cannot be used to prove the structure to be authorised.

21) We find that, in several Petitions, Petitioners have claimed protection on the strength of repair permissions. Such pleas are baseless and cannot be countenanced. The B.M.C. has, over the years, failed the lawabiding citizens by granting such repair permissions without verifying whether the structures were lawfully constructed, for reasons not too far to seek. In the absence of verification by the B.M.C. as to whether the structures were authorized, it is impossible for the Courts to accept that the structure/s existed prior to the datum line.

22) Unfortunately, having dealt with several cases, it is evident that the public mindset is to carry out construction first and seek regularisation only if, and when, the concerned authority ever acts. There are only negligible instances where the authority has taken prompt action. Most constructions are being carried out overnight and later expanded as required over a period of time. Later, under the garb of repair permissions, such constructions are expanded further. As a matter of record, the B.M.C. has, over the years, miserably failed to take any action against numerous such unauthorised constructions, whether residential or commercial, despite being duty-bound to do so. The reasons are obvious though best left unsaid. The elected representatives are equally liable, if not more so; having been elected by the people, they were duty bound to control it.

23) From time to time, the concerned Officers have taken advantage of their positions and issued such letters granting permissions, under the garb of which structures have been unscrupulously and illegally constructed across the city. It is rather disturbing that, citing decisions of the Supreme Court, water and electricity connections are granted to these illegal structures. The whole purpose of setting up the B.M.C. was to oversee planned growth in the city. However, by misusing, misreading and misapplying the law, the B.M.C. has permitted illegal structures to be inhabited.

24) Be that as it may, we are bound by the mandate and directions issued by the Supreme Court in their Judgment of *Rajendra Kumar Barjatya & Anr. vs. U.P. Avas Evam Vikas Parishad & Ors.* reported in 2024 SCC OnLine SC 3767, and followed by *Kaniz Ahmed vs. Sabuddin & Ors.* reported in 2025 SCC OnLine SC 995. We accordingly dismiss the two Petitions.

25) Before parting, we note that the learned senior counsel had filed an Undertaking from the Petitioner to remove such unauthorized constructions as were, according to them, unauthorized for want of permissions. Although we appreciate the offer to voluntarily remove those illegalities, in our view, this is nothing but an attempt to retain what is entirely unauthorized. The constructed areas admeasure approximately thirty-four thousand (34,000) square feet and the Petitioner has volunteered to remove almost eighteen thousand (18,000) square feet. There is not even an iota of evidence about the original area of the structure assuming there was one constructed prior to the datum line. Presently old structures cannot be identified from the new ones. Permitting its continuance would send out a wrong message that illegalities are pardoned if backed by money. This would send a wrong signal to all the law-

abiding citizens, who strive hard to follow the law of the land. Thriving lawlessness not only discourages the law-abiding citizen but also encourages him to turn into a law-breaker. The Court is duty bound to uphold the truth and values. The wrongdoers must be brought to justice, thereby upholding the values and the principles enshrined in the Constitution of India.”

(emphasis supplied)

14. Further, the reliance placed on **Feroz Talukdar Khan Vs. Municipal Commissioner, Thane Municipal Corporation & Anr.**⁴ by Respondent No.4-Landlord also is apposite to the facts of the present case, wherein this Court heavily came down on illegal constructions and has held that regularizing illegal constructions is a plea which outright needs to be rejected with a clear finding that it was no Rule of Law that a person with impunity would breach law by undertaking defiant illegal construction and thereafter take recourse to regularization. This Court has held that regularization can never be of an illegal and/or of rank unauthorized constructions. The relevant paragraphs of the aforesaid decisions are reproduced below: -

“15. Insofar as the contentions as urged on behalf of Respondent No. 3 are concerned, that Respondent No. 3 intends to regularize the construction is a plea which outrightly needs to be rejected. Such a plea as urged is on a complete misunderstanding and misreading of the provisions of law and the settled principles which are laid down in a catena of decision on the principles of regularization.

16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest

4 2025 SCC OnLine Bom 2423

unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.

17. We may refer to the decision of the Supreme Court in *Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar* rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

“37. The Municipal Council is a ‘local authority’ as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTP Act.”

(emphasis supplied)

18. In *Kaalkaa Real Estates Pvt. Ltd. v. Municipal Corporation of Greater Mumbai*, in the context of regularization of unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed that this is not the intention of the legislature that in making the regularization provisions under the MRTP Act, including the penal provisions

(referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve condonation of the illegality.

19. In a recent decision of the Supreme Court in *Rajendra Kumar Barjaty v. U.P. Avas Evam Vikas Parishad*⁹, the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

20. In a recent decision of the Supreme Court in *Kaniz Ahmed v. Sabuddin* deprecating regularization of illegal construction, the Supreme Court made the following observations:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society. [See : *Ashok Malhotra v. Municipal Corporation of Delhi*, W.P. (c) No. 10233 of 2024 (Delhi High Court)]”

21. Adverting to the aforesaid settled principles of law, the proposition on regularization as urged on behalf of Respondent No. 3, if accepted, would also bring about the situation of creating two categories of citizens as observed by the Division Bench of this Court in the proceedings of *High Court on its own motion (In the matter of Jilani Building at Bhiwandi)* (Supra) i.e. firstly, a category of citizens who would intend to adhere to the rule of law; who would approach the planning authority by applying for a planning/development permission by putting up plans through their architects and to undertake legal and authorized constructions; and on the other hand a category of citizens who have no regard for law and merely because they have large resources (possibly not legitimate) at their disposal to undertake unauthorized construction. What would be these resources is only to be imagined, being utilized in connivance with the official machinery in putting up illegal constructions.

(emphasis supplied)

15. I am therefore of the view that the submission made on behalf of the Appellant that the said structure was a protected structure and hence relying on the

decisions of **Vadilal Maganlal Trevadia Vs. Bombay Municipal Corporation**⁵ the onus was on the authority to show that the structure was illegal has not been discharged in the present case is incorrect, inasmuch as, in the present case the said onus has been discharged by the Respondent-MCGM by issuing notice under Section 351 of the MMC Act wherein the notice structure clearly specifies the dimensions of the unauthorised structure which were over and above the protected structure of 12'x18' sq. ft. . Further, said decision has been considered by this Court in the case of **Maqsood Ahmed Jamaluddin Khan & Ors. Vs. Municipal Corporation of Greater Mumbai & Anr.**⁶. The relevant paragraphs of the aforesaid decision are reproduced below:-

15. The judgment relied upon by the learned counsel for the appellants in the case of *Vadilal Maganlal Trevadia* (supra) in support of his contention that burden of proving the assertion about unauthorized structure would lie on the authority alleging that structure is unauthorized, the same has been already considered by this Court in para 16 of the case *Sandesh Sonu Gawalkar* (supra) which reads as under:

“16. Mr Saraogi has also placed reliance on judgment of this Court in *Vadilal Maganlal Trevadia* (supra) in support of his contention that the burden of proving the assertion about unauthorized nature of the structure would lie on authority alleging that the structure is unauthorized. However the facts in *Vadilal Masanlal Trevadia* were entirely different. In that case, the structure was illegally demolished and the Court had directed restoration of status-quo ante. In pursuance of the directions issue by the Court, the petitioner therein had reconstructed structure. The Municipal Corporation alleged that the reconstructed structure was bigger in size than the demolished structure. It is in the light of these facts of the case, burden was shifted on Municipal Corporation to prove that the size of reconstructed structure was more than the demolished structure. Therefore, the judgment in *Vadilal Maganlal Trevadia* cannot be cited in support of a proposition that in every case Municipal Corporation must prove that the structure is unauthorized. On the contrary, provisions of Section 354-A of the Act would require the person indulging unauthorized work to produce development permission issued for execution of such work. Therefore, the judgment in *Vadilal Maganlal Trevadia* would have no application to the

⁵ (2021) 1 Mah. L.J. 157

⁶ 2025 (2) Mh.L.J. 613

present case.”

(emphasis supplied)

The facts of the present case are also completely different as compared to the case in *Vadilal Maganlal Trevadia* (supra). Therefore, the said judgment cannot be cited in support of the proposition that in every case, the respondent/Municipal Corporation must prove that the structure is unauthorized.

(emphasis supplied)

16. Further the contention of learned counsel on behalf of the Appellant that the notice dated 8th May 2026 under Section 351 and the speaking order dated 10th August 2026 have been passed in breach of the directions of paragraph 94 as laid by the Supreme Court in **Directions in the Matter of Demolition of Structures, In Re** (supra) ought to be rejected, inasmuch as, only after following due process of law the Respondent-MCGM has issued notice and passed the speaking order. The relevant extracts of the aforesaid decision are reproduced below: -

“94. At the outset, we clarify that these directions will not be applicable if there is an unauthorised structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a court of law.

A. Notice

94.1. No demolition should be carried out without a prior show-cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

94.2. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

94.3. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

94.4. To prevent any allegation of backdating, we direct that as soon as the show-cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a Nodal Officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

94.5. The notice shall contain the details regarding:

- (a) The nature of the unauthorised construction.
- (b) The details of the specific violation and the grounds of demolition.
- (c) A list of documents that the noticee is required to furnish along with his reply.
- (d) The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place.

94.6. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show-cause notice and the order passed thereon would be available.

B. Personal hearing

94.7. The designated authority shall give an opportunity of personal hearing to the person concerned.

94.8. The minutes of such a hearing shall also be recorded.

C. Final order

94.9. Upon hearing, the designated authority shall pass a final order.

94.10. The final order shall contain:

- (a) The contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof.
- (b) As to whether the unauthorised construction is compoundable, if it is not so, the reasons therefor.
- (c) If the designated authority finds that only part of the construction is unauthorised/non-compoundable, then the details thereof.
- (d) As to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. An opportunity of appellate and judicial scrutiny of the final order

94.11. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

94.12. An opportunity should be given to the owner/occupier to remove the unauthorised construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorised construction, and if the same is not stayed by any appellate authority or a court, the authority concerned shall take steps to demolish the same. It is only such construction which is found to be unauthorised and not compoundable shall be demolished.

94.13. Before demolition, a detailed inspection report shall be prepared by the authority concerned signed by two panchas.

E. Proceedings of demolition

94.14. The proceedings of demolition shall be videographed, and the authority concerned shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

94.15. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.”

17. There is no irregularity insofar as, the issuance of notice and passing of speaking order by MCGM is concerned. I am further of the view that once the Appellant themselves have not been able to give any cogent reasons as to why the description of the notice structure has varied from time to time, it would be incorrect for the Appellant to contend that, upon grant of permission under the MRTP Act to the layout submitted by Respondent No. 4–Landlord, the notice structure stood merged with the sanctioned layout and, consequently, continued to enjoy protection. Such a contention is wholly misconceived and deserves to be rejected at the threshold. This in view of the fact that the notice structure and the suit structure which was protected by the judgment and decree dated 13th October 1997, and the description as given by the Appellants themselves in the pleadings and the description in the assessment records of 1989 all differ and hence, the notice structure cannot be deemed to be protected or merged on account of the layout approval under the MRTP Act to Respondent No.4-Landlord. I am further of the view that even the speaking order dated 10th August 2026 has taken into consideration that the notice structure is substantially larger than the structure, which is protected by judgment and decree dated 13th October 1997. This speaking

order in my view has also been considered by the Trial Court before passing the impugned order and hence no fault can be found with the order of the Trial Court. Once that being the case, the contention of learned counsel on behalf of the Appellant that the MRTP Act would govern the demolition of the present suit structure as opposed to the MMC Act is a proposition/argument which requires to be rejected.

18. I am further of the view that applying the principles of **Wander Ltd. v. Antox India (P) Ltd.**⁷, while considering an application under Order XXXIX Rules 1 and 2 of the CPC, the Appellate Court would not ordinarily interfere with the exercise of discretion by the court of first instance or substitute its own discretion, except where such discretion has been exercised or has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, and the facts of the present case do not warrant any interference with the impugned order of the Trial Court as the impugned order is a well-reasoned and well-considered order. It has been passed after due consideration of all the documents and after forming a prima facie view on the same.

19. Considering the aforesaid facts and the settled position of law, I am of the view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

20. In view thereof, the Appeal from Order fails and is accordingly dismissed.

⁷ 1990 Supp SCC 727

The Trial Court is directed to dispose of suit expeditiously. There shall be no order as to costs.

21. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any do not survive and are accordingly disposed of.

(AARTI SATHE, J.)