

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8243 OF 2017

Bilal Salahuddin ShaikhPetitioner
V/S
The Commissioner, Bhiwandi Nizampur
Municipal Corporation And Ors.Respondents

WITH
WRIT PETITION NO. 2878 OF 2014

Shaikh Zahid Mukhtar ...Petitioner
V/S
Bhiwandi Nizampur City Municipal Corporation
And Ors. ...Respondents

WITH
WRIT PETITION NO. 7227 OF 2017

Arvind Feruram JaiswarPetitioner
V/S
The State Of Maharashtra And Ors.Respondents

WITH
WRIT PETITION NO. 7890 OF 2017

Arvind Feruram JaiswarPetitioner
V/S
The State Of Maharashtra,Through
Chief Secretary And Ors. ...Respondents

WITH
WRIT PETITION NO. 10705 OF 2015

Shri. Nizamuddin Shabbir Ahmed Momin And
Anr.Petitioners
V/S
Municipal Corporation for The City Of
Bhiwandi Nizampur And Ors.Respondents

WITH
WRIT PETITION NO. 11466 OF 2016

Shri.Ishratali Mohmad Naim ShaikhPetitioner
V/S
The Commissioner, Bhiwandi Nizampur
Municipal Corporation And OrsRespondents

WP/8243/2017 a/w CAW/2977/2017 WITH WP/11466/2016

Mr. Amol P. Mhatre for petitioner
Mr. R.S. Apte, Sr. Adv. I/by Mr. N.R. Bubna for R.
Nos.1 and 2
Mr. Manish M. Pabale, A.G.P. for R. No. 3
Mr. Gautam J. Jain A/w Mr. Momin Mohd. Farooque
Nisar for R.No.8

WP/7890/2017 A/W WP/7227/2017

Mr. Rohan Prakash Surve for petitioners
Mr. Manish M. Pabale, A.G.P. for R. Nos. 1 & 2
Mr. R.S. Apte, Sr. Adv. I/by Mr. N.R. Bubna for R.
Nos.3 to 5
Mr. Sandesh Deshpande for R. Nos. 8 to 11 in
WP/2878/2014 A/W CAW/498/2018
Mr. Firoz A. Ansari for petitioner
Mr. Gautam Jasraj Jain for applicant
Mr. R.S. Apte, Sr. Adv. I/by Mr. N.R. Bubna for R.
Nos.1 and 2
Mr. Manish M. Pabale, A.G.P. for R. No. 3

WP/2878/2014 A/W CAW/498/2018

Mr.Firoz A. Ansari for the petitioner
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Nos.1 and 2
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WP/10705/2015 a/w CAW/494/2018

Mr. Somnath Thengal I/by Mr. Sachin Dhakephalkar for
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Mr. R.S. Apte, Sr. Adv. I/by Mr. N.R. Bubna for R.
Nos. 1 to 3

Mr. Sandesh D. Patil I/by Ms. Anusha Pravin Amin for
R.No.5

Mr. Manish M. Pabale, A.G.P. for R. No. 7

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.

DATE : JUNE 4 AND 5, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Before the summer vacation, on 3rd May 2018, the petitions were fully heard. These petitions under Article 226 of the Constitution of India have been essentially filed for seeking a writ of Mandamus against the Municipal Corporation of city of Bhiwandi Nizampur (for short 'the said Corporation') enjoining the said Corporation to demolish the illegal structures. The grievance made in these petitions is that though complaints were regularly filed inviting the attention of the said Corporation to the illegal structures, no action has been taken.

2 A judicial notice will have to be taken of the fact that large number of writ petitions are being filed in this Court complaining about inaction of the said Corporation to take action of demolition in respect of large number of illegal constructions which are coming up in the city of Bhiwandi Nizampur. In fact, the case made out in some of the petitions is that though the Municipal Officers were fully aware about the fact that illegal RCC constructions were in progress, there were no steps

taken by them to stop the illegal constructions and to demolish the same. In Writ Petition No.11466 of 2016 and other connected petitions, some of which are on board, a detailed order was passed by a Division Bench of this Court on 3rd August 2017 wherein a judicial notice is taken of the fact that though large number of illegal constructions have come up in the city, no action has been taken by the said Corporation. This Court noticed that though the citizens have been making complaints about the huge illegal constructions undertaken in the city, no action is being taken by the Municipal Officers. In fact, the said order notes difficulties expressed by the Municipal Corporation as regards the failure to sanction adequate number of posts for dealing with the issue of illegal constructions. By the said order, directions were issued to create grievance redress mechanism. Various other directions were issued. The said directions which are forming part of paragraph 16 being clause(I) to to (XIV) read thus:

"I. We request the learned Principal District Judge, Thane to examine whether all suits concerning the illegal structures could be assigned to more than one Civil Judge with a view to ensure that the interim applications and the suits are expeditiously disposed of. We are making this request in the light of the fact that there very large number of illegal structures have come up within the limits of the said Municipal Corporation of the city of Bhiwandi Nizampur. We request the learned Principle District Judge, Thane to decide in what manner the suits and pending

interim application can be given priority for its disposal;

II. We direct that the Deputy Commissioner (Encroachments) on the establishment of the said Corporation shall be responsible for prevention of the illegal structures within the limits of the said Municipal Corporation and for taking prompt action for demolition of the same;

III. We direct the Commissioner of Police, Thane to appoint a Nodal Officer not below the rank of Assistant Commissioner of Police, who shall be responsible for providing adequate police protection to the municipal staff for carrying out the work of survey of illegal structures and for carrying out the work of its demolition. Necessary appointment shall be made by the Commissioner of Police within a period of two weeks from the date on which an authenticated copy of this order is received in his office;

IV. The Nodal Officer so appointed, shall hold weekly or fortnightly meetings with the Deputy Commissioner (Encroachments) of the said Corporation to ensure that the work of demolition of illegal structures is not postponed due to nonavailability of police protection. While providing police protection, the Nodal Officer shall ensure that few police personnel attached to the concerned local police station are a part of the police party;

V. We direct the said Municipal Corporation to undertake a survey of illegal structures in the entire city in a phasewise manner. We direct the Municipal Corporation to complete the work of survey within a period of six months from the date on which an authenticated copy of this order is produced in the office of the Municipal Corporation;

VI. We direct the said Corporation to fill in the posts of 03 Assistant Law Officers and other Class-III posts as provided in the letter dated 8th December, 2015, addressed by the State Government to the Government pleader, which is taken on record and marked

'A1' in Writ Petition No. 2878 of 2014. As stated in the said letter, the posts will have to be filled in on contract basis. The Municipal Corporation will ascertain the number of additional staff members required within a period of one month from today and commence the process of recruitment as provided in the letter dated 8th December, 2015;

VII. Within the period of one month from the date on which an authenticated copy of this order is produced in the office of the Municipal Commissioner, he shall ensure that the Grievance Redress Mechanism is established to enable the citizens to lodge complaints as regards the illegal structures in the city in the following manner:

- a) By complaints in writing, addressed to the Deputy Commissioner (Encroachments) or any officer appointed by him;
- b) On a toll free telephone number provided by the Municipal Corporation;
- c) On cell phone number provided by the Municipal Corporation;
- d) By uploading the complaint and the photographs of the illegal structures on a designated website and
- e) By uploading complaints and photographs of the illegal structures on mobile applications provided by the Municipal Corporation.

VIII. The said Municipal Corporation shall ensure that all the complaints are immediately entered in a Register maintained manually and/or electronically. Each complaint received by aforesaid modes shall be assigned a number. The said Municipal Corporation shall ensure that the complaints are processed as expeditiously as possible and after carrying out site visit, action is initiated within a maximum period of one month from the date of filing of the respective complaints. The Municipal Corporation shall lay down a time bound schedule for dealing with each complaint. The same shall be placed on record of these Petitions within six weeks from today;

IX. The Municipal Corporation shall enter the details of the action taken on the complaints. If the complainant has disclosed his name, postal address or email address, then within a period of 15 days from the date of his lodging the complaint, the complainant shall be informed about the action taken on his complaint. Even anonymous complaints shall be entertained and action shall be taken thereon as directed earlier;

X. Whenever the municipal staff visits the sites of illegal construction, apart from drawing a panchanama, they shall take digital photographs of the illegal constructions which shall be uploaded on a computer. A centralized record of such photographs shall be maintained;

XI. Whenever the illegal construction is in progress, endeavor shall be made to immediately stop the same by issuing a notice. The police shall render all possible assistance for stopping the illegal construction;

XII. Wide publicity shall be given to the availability of the Grievance Redress Mechanism by prominently displaying all the details of the Grievance Redress Mechanism at all the municipal offices including ward offices as well as in the offices of the Revenue Officers. Wide publicity shall be given in Marathi, Hindi, English and Urdu newspapers to the details of the availability of the Grievance Redress Mechanism once in every three months. Wide publicity shall be also given on local

television channels, FM radio Channels etc;

XIII. The Municipal Corporation shall ensure that one or more Law Officers are entrusted with the job of looking after the suits/appeals filed in connection with the action of demolition of the illegal structures;

XIV. The Registrar (Judicial-I) shall provide copies of this order to the learned Principal District Judge, Thane, the Commissioner of Police, Thane and the Municipal Commission of

the said Corporation.

3 We must note here that even after the said order was passed, large number of writ petitions under Article 226 of the Constitution of India have been filed complaining about the inaction of the said Municipal Corporation to take action against the illegal constructions and especially multi storied illegal RCC buildings.

4 The direction No.(V) requires the Municipal Corporation to undertake a survey of illegal constructions in the city in a phase wise manner. The entire work of survey was to be completed within six months. Though the survey has not been completed, on 12th April 2018, a file containing Survey Report dated 12th April 2018 has been tendered across the bar by the learned counsel for the said Corporation. The Survey Report records that the survey of illegal constructions which have come up after 31st December 2015 up to end of the year 2017 was carried out on the basis of the property tax record. The Survey Report shows that after 31st December 2015, as many as 239 illegal constructions were detected in the limits of the said Corporation. The said survey is not based on actual visits to different parts of the city. Therefore, illegal constructions which have come up after 31st December 2015 must be much more. At this stage, we are not going into the correctness of the survey and other details of the survey carried out. We find from the

file that almost all the illegal constructions are of multi storied RCC buildings. The survey report shows that some of the illegal buildings consist of even ground plus eight floors. The extent of the construction is also mentioned in the reports which are available in the file tendered across the bar. The documents in the file note that due process of law for demolition of the illegal constructions was commenced in respect of the 239 constructions. Though cases are filed in the Courts relating to 110 constructions, action of demolition has been taken only against 29 structures. This survey, even assuming that all the illegal constructions have not been noticed, shows an alarming situation. Large number of multi storied RCC buildings are erected after 1st January 2016. These buildings cannot be erected overnight. Many of the buildings have been illegally occupied as disclosed from the survey. Though action could have been taken in respect of 129 constructions in which there are no pending court cases, actual demolition was carried out only in respect of 29 structures which shows complete failure of the machinery of the said Corporation.

5 The Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") introduces a concept of planned development of the areas within the jurisdiction of different planning authorities. The said Corporation is also a planning authority within the meaning of MRTP Act. As a result of such large

number of illegal constructions, the entire concept of planning under the MRTP Act must have gone haywire. Moreover, such large number of illegal constructions put burden on civic amenities such as water supply, drainage, electricity supply and other amenities such as open spaces, play grounds etc which are planned to be made available for the benefit of the citizens. As a result, the citizens who are legitimately occupying lawfully constructed structures are also adversely affected. Heavy burden is put on the available infrastructure and available civic amenities due to large number of illegal constructions.

6 In paragraphs 4 to 8 of the order dated 3rd August 2017, this Court has observed thus:

4. A Division Bench of this Court, to which one of us (Shri Justice A. S. Oka) was a party, while passing order dated 4th March, 2015 in PIL No. 138 of 2012, has extensively referred to the said decision. The said PIL was concerning the failure of the planning authorities in the city of Navi Mumbai to take action against the illegal structures. Paragraphs 9, 10 and 11 of the interim order dated 4th March, 2015 in PIL No. 138 of 2012 read thus:

“9. At this stage, it will be necessary to make a reference to a well known decision of the Apex Court in the case of Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and others. In Paragraph 2 of the said decision, the Apex Court has summarized the controversies involved in the Petition before it.

Paragraph 2 reads thus:

"2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in K. Ramadas Shenoy v. Town Municipal Council, Udipi, Virender Gaur v. State of Haryana, Pleasant Stay Hotel v. Palani Hills Conservation Council, Cantonment Board. Jablpur v. S.N.Awasthi, Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, G.N. Khajuria v. DDA, Manju Bhatia v. NDMC, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, Friends Colony Development Committee v. State of Orissa, Shanti Sports Club v. Union of India and Priyanka Estates international (P) Ltd. v. State of Assam."

(Underline supplied)

10. Thereafter, the Apex Court dealt with several other decisions dealing with the several other illegal constructions. In Paragraph 29, the Apex Court has held thus:

"29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer."

(Underline supplied)

11. Thus, the Apex Court held that it is a duty of the public authorities concerned not only to demolish such illegal constructions but also impose an adequate penalty on the wrong

doers”.

(emphasis added)

5. A Division Bench of this Court had an occasion to deal with the issue of large number of illegal constructions in the city of Pimpri Chinchwad. The said issue is dealt with by the Division Bench of this Court and an order was passed on 4th October, 2013 in PIL No. 207 of 2010. This Court noted that as many as 66,231 illegal structures were in existence in the city of Pimpri Chinchwad. The Division Bench directed the Commissioner of Pimpri Chinchwad Municipal Corporation to take steps to demolish all the unauthorized constructions.

6. Municipal Corporations have been constituted for larger urban areas. **If the law laid down by the Apex Court and this Court on the aspect of illegal constructions is summarized, the following position emerges :**

a) The unauthorized constructions destroy the very concept of town planning under the provisions of Maharashtra Regional And Town Planning Act, 1966;

b) The unauthorized constructions in such large numbers put burden on the basic civic amenities such as water supply, electricity supply, drainage etc;

c) Allowing unauthorized constructions to grow and continue in large numbers would mean depriving the law abiding citizens who occupy lawful constructions,

houses and buildings the basic civic amenities;

d) The construction of illegal buildings becomes hazardous for the public in several ways and creates traffic congestion.

7. Coming back to the orders passed in PIL No. 138 of 2012 and PIL No. 80 of 2013, by order dated 28th, 29th and 30th July, 2015, this Court directed creation of a grievance redress mechanism. We propose to direct the said Municipal Corporation to create Grievance Redress Mechanism on similar lines.

8. At this stage, we may note a decision of the Apex Court in the case of Subhash Krishna Kanitkar vs The Bhiwandi Nizampura Municipal Council & Ors.2. This decision arises out of a Writ Petition filed by a citizen

of the same city of Bhiwandi Nizampur who had applied for grant of copies of the sanctioned plan of a building constructed on a land with which he was not directly concerned. He sought for copies of the sanctioned plan on the ground that illegal construction has been carried out. The said decision was rendered even before the Right to Information Act, 2005 came into force. The Division Bench held that if a citizen is prepared to pay the requisite fees and if he is asking for requisite copies of public documents, he is entitled to inspection of such documents and for certified copies thereof on payment of necessary amount. The Division Bench upheld the right to know even before the Right to Information Act, 2005 came into force. **It follows that the a citizen has right to seek information as to whether a construction of a building is being carried out with permission or without permission. If he finds that illegal construction is proceeding and no action is being taken, a citizen, as a tax payer of the municipal corporation, has a right to make a grievance about the illegal construction.**

(Emphasis added)

7 In paragraph 6, this Court has noted the drastic consequences of allowing such illegal constructions to come up. At this stage, it may be necessary to make a useful reference to a decision of the Apex Court in the case of Friends Colony Development vs State Of Orissa¹. In paragraph 22, the Apex Court has emphasized the advantages of a planned development of the cities. Paragraphs 22 to 24 are material which read thus:

“22 In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such

1 2004 (8) SCC 733

planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. **The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.**

23 The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the

streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24 Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.] "

(emphasis added)

8 Apart from the fact that we have taken a judicial notice of the fact that large number of illegal constructions have come up in the city, the survey carried out by the Municipal Corporation of the illegal constructions made after 31st December 2015 shows the extent of illegalities going on in the city.

9 Therefore, in our view, it is the obligation of the said Corporation to take a prompt action of preventing illegal constructions and to take action

of demolition against the illegal constructions. As stated earlier, the said Corporation is also a planning authority within the meaning of the MRTP Act and therefore, it is the duty of the said Corporation to ensure that there is a planned development of the city as contemplated by the provisions of the MRTP Act. For discharging the obligation of demolishing illegal structures, there are abundant powers conferred on the said Corporation both under the MRTP Act as well as under the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"). The provisions which have been incorporated under the MRTP Act are from section 52 onwards. There are adequate provisions in the form of section 260 of the said Act of 1949 apart from section 478 of the said Act.

10 Every citizen who is a tax payer residing in the said city has a right to make a grievance about the failure on the part of Municipal Authorities/Planning Authorities to take action of demolition of illegal constructions in the city in as much as every taxpayer of the said Corporation can be said to be affected by such illegal constructions which put heavy burden on the existing civic amenities which are required to be provided by the Municipal Authorities within its jurisdiction.

11 In the case of ***Mahendra Baburao Mahadik & Ors vs Subhash Krishna Kanitkar & Ors.***², the Apex

2 AIR 2005 SCC 1794

Court dealt with an Appeal arising out of a decision of the Division Bench of this Court. In its judgment, the Division Bench had held that the Writ Petitioner before this Court was entitled to seek inspection of the documents on record of a Municipal Council with a view to find out whether a particular construction has been permitted under a permission granted. The said view was taken by the Division Bench of this Court in a case decided on 31 July 2000 when the Right to Information Act, 2005 was not in force. The Apex Court by the aforesaid decision confirmed the view taken by this Court and confirmed the judgment and order of this Court while placing reliance on the aforesaid decision in the case of ***Friends Colony Development Committee*** (Supra).

12 That is the reason why under the interim order, this Court directed the said Corporation to set up a Grievance Redress Mechanism for receiving complaints. Mere setting up of such mechanism is not sufficient. The Deputy Municipal Commissioner (Encroachment) who has been held to be responsible for taking prompt action of demolition of the illegal structures will have to ensure that the complaints are processed and immediate action is taken. Considering the fact that large number of multi storied illegal RCC constructions have come up in the City, identity of the complainants will have to be kept confidential. It was directed that even anonymous complaints should be entertained.

13 In some of the matters in this group, it is pointed out that firstly, there is a delay in taking action of demolition even after due process of law is completed. Secondly, civil suits for injunction filed in the Trial Court are not defended properly by the said Corporation by filing a written statement and/or a Reply to the Application for temporary injunction. It is for this reason that in many cases where there are *ad-interim* orders passed by the Civil Court, the same are extended from time to time. Therefore, the Municipal Commissioner will have to take a policy decision laying down the limit within which a Reply to the Application for interim relief should be filed and Written Statement should be filed to the main Suit from the date of service of notice/summons of the Suits.

14 Under the orders of this Court, three posts of Assistant Law Officers have been created on the establishment of the said Corporation. The Municipal Commissioner will have to issue the necessary directions to the Law Officers to monitor the progress of the Suits challenging the action of demolition with a view to ascertain whether the Suits are being properly contested.

15 It is only because of the inaction of the Corporation to deal with the complaints filed by the citizens that the Writ Court is flooded with several

Petitions complaining about the inaction on the part of the said Municipal Corporation. The inaction, as stated earlier, is very clear from the fact that out of 239 illegal structures constructed after 31 December 2015, action of demolition is taken only in respect of 29 illegal structures though legal proceedings are pending only in case of 110 structures. This shows complete negligence on the part of the administration of the said Corporation.

16 Therefore, in addition to the interim directions, we propose to issue additional directions. We may note here that it is only because of the delay on the part of the Municipal Authorities in taking action against the illegal constructions that unscrupulous builders/developers are selling/transferring the flats and premises in such unauthorisedly constructed buildings. If the buildings are allowed to be occupied, it creates complications in the way of demolition of the buildings. In several cases, this Court has appointed a Court Receiver to ensure that the possession of the premises in the illegal buildings is not parted with.

17 Now we turn to the individual cases. In Writ Petition No. 11466 of 2016, when the hearing was concluded before the Summer Vacation, the learned Counsel appearing for the Corporation made a statement that in Regular Civil Suit No. 508 of

2017, the application for temporary injunction was rejected in April 2018. It was also pointed out that though an appeal preferred by the Plaintiff is pending, there is no *ad-interim* relief granted in the appeal. Therefore, a statement was made that in the first week of May that, an action of demolition will taken, if there is no *ad-interim* relief granted in the Appeal.

18 In Writ Petition No. 8243 of 2017, there is no dispute between the parties that the building subject matter of the Petition has been completely demolished.

19 In Writ Petition No. 2878 of 2014, there is an Application for intervention filed by a third party who claims to have constructed the subject building consisting of ground plus four floors. In the same Civil Application, there are separate Affidavits/Undertakings on oath filed by all the owners/occupants of the premises in the building. The Applicant in the said civil Application has also filed an Affidavit dated 13 March 2018 in which he has stated that he has filed an Application for regularization and for seeking a declaration that the structure is compounded structure. The said Application is made on 21 February 2018. He has also undertaken not to proceed with the further construction and not to dispose of any of the flats in the said building or to create any third party

interests therein. He along with all the occupants/purchasers of the premises in the building have given undertaking to remove the construction carried out within a period of six weeks from the date of rejection of the regularization application. The very fact that the Applicant in the said Civil Application and the occupants of the building have accepted the need to file an Application for regularization shows that they have accepted that the entire building is illegal. It is only in the light of the undertakings that we propose to protect the building from demolition till the regularization application is decided and for a limited period thereafter to enable them to comply with their undertakings.

20 In Writ Petition No. 7227 of 2017, it is not in dispute that the building subject matter of this Petition has been substantially demolished except the plinth.

21 In Writ Petition No. 7890 of 2017, when the hearing was concluded earlier, the learned Counsel appearing for the said Corporation made a statement that demolition of the illegal building consisting of ground plus three floors has commenced and a part demolition of upper floors was carried out. He further stated that however, the demolition could not be carried out in view of an *ad-interim* order dated 11 January 2017 passed by the Civil Court in

Regular Civil Suit No. 2009 of 2017. He further stated that *ad-interim* order was vacated in April 2018 and on 7 May 2018, demolition will be undertaken. The learned Counsel appearing for the Petitioners states that no such demolition has been undertaken.

22 In Writ Petition No. 10705 of 2015, Civil Application No. 494 of 2018 has been filed by the third party Applicant on behalf of the 138 occupants of the flats in the subject building. The Applicant and all the occupants of the flats have filed the undertakings on oath stating that on 23 February 2018, they have applied for regularization and that the application is pending. They have given an undertaking that in the event the Application for regularization is rejected, within eight weeks from the date of receiving intimation of rejection of the application, they will vacate the premises respectively occupied by them to enable the said Corporation to demolish the building. The very fact that such applications for regularizations have been made and the undertakings have been filed shows that all the persons concerned have accepted that the entire structure is illegal. Only in the light of the undertakings that we propose to protect the building from demolition till disposal of the application for regularization and for a reasonable time thereafter, to enable concerned parties to make compliance with the undertakings.

23 Hence, we dispose of these Petitions by passing the following order:-

(i) The interim directions contained in clauses II to XIII in paragraph 16 of the order dated 3 August 2017 will continue to operate as final directions;

(ii) We direct that the Deputy Commissioner (Encroachment) on the establishment of the said Corporation shall be responsible for dealing with the complaints received through the Grievance Redress Mechanism and for initiating action thereon within a time bound period. The Municipal Commissioner shall issue the necessary directions in that behalf fixing the time schedule for attending to the complaints and for taking actions on the basis of the complaints. Time fixed shall not exceed what is provided in the order dated 3rd August 2017. Appropriate directions shall be issued by the Municipal Commissioner within one month from the date of which this judgment and order uploaded;

(iii) We direct the said the Municipal

Corporation to ensure that whenever in a complaint, the name of the complainant is disclosed, the same shall be kept confidential and that the identity of the complainant shall not be disclosed to the persons who are concerned in any manner with the illegal constructions;

- (iv) We hold that the complainants who lodge complaints through the Grievance Redress Mechanism regarding inaction to take action of demolition in respect of the illegal construction have right to know the nature and extent of action taken on the basis of their complaints. Therefore, as directed in clause (IX) of the interim order, the complainants shall be informed about the action taken on the basis of their complaints within the period of 15 days from the date of the complaints shall be communicated to the complainants provided the complainants have disclosed their name, postal or e-mail address or cell phone number;
- (v) The Municipal Commissioner shall issue directions laying down the time schedule for filing a reply to the

application for interim injunction in suits filed for challenging the action of demolition and for filing the Written Statement in such suits. The Municipal Commissioner shall also issue directions to the Law Officers to monitor the progress of the suits/appeals/petitions concerning the action of demolition of the illegal buildings with a view to ensure that the said proceedings are promptly and effectively defended or prosecuted, as the case may be, by the said Municipal Corporation;

(vi) Compliance with the interim directions already issued which are adopted as final directions as well as additional directions under this judgment and order shall be reported by the Municipal Commissioner himself by filing his own Affidavit on or before 25 July 2018. For considering the compliance Affidavit, the Petition shall be listed on 26 July 2018;

(vii) We direct that a copy of this judgment and order shall be supplied by the Registrar Judicial I to the learned Principal District Judge, Thane, with a

view to enable the learned Principal District Judge, Thane, to examine whether the suits challenging action of demolition of illegal structures could be assigned to one or more Courts, with a view to ensure that the interim applications and suits are expeditiously disposed of. However, we leave the matter to the discretion of the learned Principal District Judge, Thane;

(viii) In Writ Petition No. 11466 of 2016, we direct that if as of today, there is no *ad-interim* relief which restrains the Corporation from demolishing the subject building, the said Corporation shall take action of demolition as expeditiously as possible and in any event within one month from today. If the building is protected by an *ad-interim* or *interim* relief, an action of demolition shall be taken within one month from the date on which the *ad-interim* or *interim* relief is vacated;

(ix) As the subject building of Writ Petition No. 8243 of 2017 has already been demolished, the Petition as well as the Civil Application made therein

shall stands disposed of;

- (x) In Writ Petition No. 2878 of 2014, the Applicant in Civil Application No. 498 of 2018 and other occupants have given undertakings which are on record of the said Civil Application. We accept the said undertakings. In view of the said undertakings, we direct that the Application for regularization made on 21 February 2018 shall be decided as expeditiously as possible and in any event, within a period of 60 days from today. The order passed on the said Application be served on the Applicant in Civil Application No.498 of 2018 and copies thereof be forwarded to the other persons who have filed the undertakings. Till the date of communication of the decision taken on the application to the Applicant in the Civil Application No. 498 of 2018, an action of demolition in respect of the building shall not be taken. If the application is rejected, for a period of six weeks from the date on which the order of rejection is communicated to the Applicant in the said Civil Application, the building shall not be demolished. If the Applicant and

occupants fail to remove and demolish the building within a period of six weeks from the date of communication of the order to the Applicant, the Municipal Corporation shall proceed to demolish the said building. In the such a case, no further notice is required to be served to the Applicant or the occupants. Writ Petition No.2878 of 2014 and Civil Application No. 498 of 2018 are accordingly disposed of. The disposed of Writ Petition shall be placed for directions on 24 August 2018 for reporting compliance;

(xi) As far as Writ Petition No.7227 of 2017 is concerned, the entire building except the plinth has been already demolished. In view of the substantial demolition, nothing survives in the said Writ Petition and the same stands disposed of;

(xii) In Writ Petition No. 7890 of 2017, we direct the said Corporation to take action of demolition within a period of one month from today. If there is a restraint order passed by the Court of law prohibiting the said Corporation from demolishing the structure, the

period of one month shall be computed from the date on which the restraint order is vacated. With these directions, the Petition stands disposed of. For reporting compliance, the Petition shall be listed on 24 August 2018 under the caption of "Directions". The compliance Affidavit shall be filed by the Municipal Corporation before the next date;

(xiii) In Writ Petition No. 10705 of 2015, the Applicants and other occupants of the building have filed the undertakings which are referred earlier. We accept the said undertakings. We direct the said Corporation to decide the Application for regularization made on 23 February 2018 within a period of sixty days from today. The order passed in the Application for regularization shall be communicated to the Applicants in the Civil Application No. 494 of 2018. Till the date of communication of the order to the Applicants in the said Civil Application, the action of demolition shall not be taken in respect of the subject building. Simultaneously, the copies of the order passed on the

Application shall be forwarded to all those who have given the undertakings to this Court. If the Application is rejected, the action of demolition shall not be taken for a period of six weeks from the date of communication of the order to the Applicants in the said Civil Application to enable the Applicants and other persons who have given the undertakings to remove themselves and to demolish of the building. If they fail to do so within the stipulated period of six weeks, we direct the said Corporation to immediately demolish the said building without serving any further notice. Writ Petition No.10705 of 2015 and Civil Application No.494 of 2018 stand disposed of accordingly;

(xiv) We make it clear that we have made no adjudication on the merits of the pending regularization application;

(xv) Survey of all the illegal structures as directed earlier shall be carried out and completed within a maximum period of six months from the date on which this judgment and order is uploaded;

(xvi) While filing the compliance report, the Municipal Corporation shall also state as to how many out of 239 illegal structures found in the first survey have been demolished;

(xvii) In the event, the said Corporation finds that the Police Authorities are not co-operating by giving the police assistance, the said Corporation can always to move this Court for issuing necessary directions;

(xviii) All concerned to act upon an authenticated copy of this judgment and order.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)

Shubhashri
Shridhar
Pathak

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signed by
Shubhashri
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