

Shephali

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

REVIEW PETITION (L) NO. 19103 OF 2019

IN

WRIT PETITION NO. 2061 OF 2018

MOHD TALIB HABIB SHAIKH,
Age Adult, Occupation Business,
678/4, Near Auliya Masjid, Gaibi Nagar,
Bhiwandi, Dist. Thane, State of
Maharashtra

... PETITIONER

~ VERSUS ~

- 1. MOHAMMAD SIDDAQI HAJI
MOHAMMAD MOMIN,**
Age Adult, Occupation Business,
Resident of House No. 875, Nagaon-2
Behind Apna Hospital, Taluka
Bhiwandi, District Thane, State of
Maharashtra.
- 2. BHIWANDI NIJAMPUR CITY
MUNICIPAL CORPORATION,**
Address: Bhiwandi Nijampur City,
Municipal Corporation Building,
Taluka Bhiwandi, District Thane,
State of Maharashtra.
- 3. THE COMMISSIONER,**
Bhiwandi Nijampur City Municipal
Corporation, Bhiwandi Nijampur City
Municipal Corporation Building,

Taluka Bhiwandi, District Thane,
State of Maharashtra.

4. **ADDITIONAL COMMISSIONER,**
Bhiwandi Nijampur City Municipal
Corporation, Bhiwandi Nijampur City
Municipal Corporation Building,
Taluka Bhiwandi, District Thane,
State of Maharashtra.

5. **DEPUTY COMMISSIONER,**
Bhiwandi Nijampur City Municipal
Corporation, Bhiwandi Nijampur City
Municipal Corporation Building,
Taluka Bhiwandi, District Thane,
State of Maharashtra.

6. **LAW OFFICER, BHIWANDI
NIJAMPUR CITY MUNICIPAL
CORPORATION,**
Address: Bhiwandi Nijampur City
Municipal Corporation Building,
Taluka Bhiwandi, District Thane,
State of Maharashtra.

7. **ASSISTANT COMMISSIONER,**
Bhiwandi Nijampur City Municipal
Corporation, Bhiwandi Nijampur City
Municipal Corporation Building,
Taluka Bhiwandi, District Thane,
State of Maharashtra.

8. **STATE OF MAHARASHTRA,**
Through Secretary Secretariat,
Mumbai.

... **RESPONDENTS**

APPEARANCES

FOR THE REVIEW PETITIONER	Mr Shahid Anwar, with Mr Jamil
(RESPONDENT NO. 7 IN WP	Khan, Mr Arif Siddique and
2061/2018)	Mr Feroz Ansari

FOR THE PETITIONER IN WP Mr Pandit Kasar
2061/2018

FOR RESPONDENTS NOS. 1 TO Mr RS Apte, Senior Advocate,
6 IN WP/2061/18 AND with Mr NR Bubna
RESPONDENT NO. 1 IN
WP/2659/18

FOR THE RESPONDENT NO. 8 Mr VM Mali, AGP,
(STATE) IN WP/2061/18.

CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 10th July 2019

JUDGMENT *(Per GS Patel J):—*

1. This Review Petition is filed pursuant to a liberty granted by the Supreme Court on 3rd July 2019 in Special Leave Petition (C) No. 14345 of 2019. It seeks a review of our order of 7th June 2019, common in Writ Petition No. 2061 of 2018 and Writ Petition No. 2659 of 2018.

2. In this order we propose to deal with the Review Petition in rather more detail than we would otherwise have done; far more even than the law, at least in our understanding of it, requires us to do. The reason is that we have found, on a careful consideration of the material before us, that this Review Petitioner has for over a year consistently and constantly, and quite deliberately, misled court after court from the Civil Court right up to the Hon'ble Supreme Court itself. As we will demonstrate, statements incorrect

to the knowledge of the Review Petitioner are made in every court — and continue to be so made, even in this very Review Petition. We have not only dismissed the Review Petition, but we have done so with heavy costs. We have held the Review Petition, and all litigations initiated by the Review Petitioner, to be the grossest possible abuse of the process of every single court he has approached.

3. We begin by setting out in full the order of the Supreme Court of 3rd July 2019. We do so for it will shortly be evident that even before the Supreme Court, the Review Petitioner was far less than candid. Indeed, he actively canvassed a position he knew to be factually untrue. The Supreme Court order reads thus:

“ITEM NO. 47 COURT NO. 1 SECTION IX
SUPREME COURT OF INDIA

Petition(s) for Special Leave to Appeal (C) No(s).
14345/2019

(Arising out of impugned final judgment and order dated
07-06-2019 in WP No. 2061/2018 passed by the High
Court of Judicature At Bombay)

MOHD TALIB HABIB SHAIKH Petitioner(s)

VERSUS

MOHAMMED SIDDAQI HAJI
MOHAMMAD MOMIN & ORS Respondent(s)

(with appln(s) for exemption from filing c/c of the
impugned judgment and exemption from filing O.T. and
permission to file additional documents/facts/annexures)

Date : 03-07-2019 This matter was called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Md. Shahid Anwar, AOR
Mr. Zulfiqar Ali Khan, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

ORDER

We are not inclined to interfere in the matter. The special leave petition is, accordingly, dismissed. Pending applications stand disposed of.

However, we grant liberty to the petitioner to move the High Court **for review of this order on the ground that the injunction granted by the Trial Court was pursuant to the order of the High Court dated 4.12.2018.**

It is stated by learned senior counsel appearing on behalf of the petitioner that demolition of the building has started and the top floor has since been demolished. Till 10th of July, 2019, when the matter will be heard by the High Court, we direct that there shall be no further demolition.

(Anand Prakash)
Branch Officer

(Sarita Purohit)
AR-cum-PS

****order be given dasti.”**

(Emphasis added)

4. The Review Petitioner’s submission before the Supreme Court was that the Trial Court granted an injunction ‘*pursuant*’ to a order of 4th December 2018 passed by this Court. That order was by a Division Bench of this Court. As we shall see, this statement was incorrect to the Review Petitioner’s knowledge even at the time he made it to the Supreme Court.

5. In order to appreciate the controversy, it is necessary to set out a few salient facts. In 2018 there came to be filed two Writ Petitions on the Appellate Side of this Court. Writ Petition No. 2061 of 2018 was filed by one Mohammad Siddique Haji Mohammad Momim (“**the Momim Petition**”; His name is wrongly spelt in the cause title of the Review Petition.). The companion Writ Petition No. 2659 of 2018 was filed by one Safeer Ahmed Gulam Dastageer Khan (“**the Dastageer Khan Petition**”).

6. The Respondents to the Momim Petition were (1) the Bhiwandi Nizampur City Municipal Corporation; (2) The Commissioner, Bhiwandi Nizampur City Municipal Corporation (“**BNCMC**”); (3) The Additional Commissioner, BNCMC; (4) The Deputy Commissioner, BNCMC; (5) The Law Officer, BNCMC; (6) The Assistant Commissioner, Ward Committee No.01, BNCMC; (7) The present Review Petitioner, Mohd Talib Habib Shaikh (“**Shaikh**”); and (8) the State of Maharashtra. The Respondents to the Dastageer Khan Petition were; (1) the BNCMC; (2) Sunil Bhaskar Bhoir, the Designated cum Ward

Officer, Ward Committee No.2, BNCCMC; (3) Sunil Nagesh Bhalerao, also a Designated and Ward Officer, Ward Committee No. 2, BNCCMC; (4) Matlub Afzal Khan Sardar, Municipal Councillor of Ward no.14 of BNCCMC; (5) Shaikh; (6) Tarik Guddu and (7) Naushad Ali Shoukar Ali Sayyed.

7. The dispute in the Momim Petition related to construction at CTS No. 98/20, House No. 2431, Piranipada, Naigaon within BNCCMC limits. The Petition alleged that on this plot there was an illegal building of ground and six upper floors. This was an RCC construction and Shaikh was alleged to have built it. The Petitioner complained about the failure of the BNCCMC to remove or demolish this structure. The Dastageer Khan Petition contained a similar prayer relating to three different buildings but including the building that was the subject matter of the Momim Petition. The Dastageer Khan Petition alleged that as regards the building on Survey No. 98, with which we are concerned, the illegal construction was carried out by Matlub Sardar, a Municipal Councillor (Respondent No. 4 in that Petition) aided by Shaikh.

8. Both Petitions came up before a Division Bench of this Court of AS Oka J (as he then was; now Chief Justice, Karnataka High Court) and RI Chagla J on 4th June 2018. By this time there was already an Affidavit in Reply filed by Sunil Bhoir, the Designated Officer being 2nd Respondent in the Dastageer Khan Petition. There were also Affidavits filed by occupants of the building saying that they had applied for regularisation.

9. We have no option now but to reproduce the order of 4th June 2018 in its entirety. This is how it reads:

“1. Writ petition No.2061 of 2018 makes a grievance about the failure of the Bhiwandi Nijampur City Municipal Corporation (for short ‘the said Corporation’) to demolish the construction of RCC illegal building consisting of ground plus three upper floors. This petition makes a grievance about the failure of the said Corporation to demolish the multi storage RCC building constructed on the land bearing CTS No.98/20, House No.2431, Piranipada, Nagaon. A writ of mandamus is prayed for directing the Municipal Corporation to remove the said building. There is an affidavit in reply filed by Shri Sunil Bhoir, Assistant Commissioner of the said Corporation dealing with the merits of the controversy and referring the adinterim order of the Civil Court.

2. Writ Petition No.2659 of 2018 contains a similar prayer relating to three different buildings including the building subject matter of Writ Petition No.2061 of 2018. In the said writ petition, there is a specific allegation that illegal construction on the land of CTS No.38 Hissa No.1 as well as Survey No.38, Hissa No.1(B) at Nagaon, Bhiwandi have been carried out by the respondent Nos.4, 6 and 7 in the said petition. Respondent No.4 is admittedly an elected Councillor of the said Corporation. **As regards the building constructed on Survey No.98, specific allegation is that the respondent No.4 has carried out illegal construction with the aid of respondent No.5. Exhibit G is the photograph which shows that on the ground floor of one of the three buildings, there was an office of a political party of which 3 respondent No.4 is a member. It is stated that the respondent No.4 occupied a flat in the said building.**

3. There are affidavits filed by the occupants of the building. The affidavits are joint affidavits stating that they have applied for regularization. They have given undertaking to remove the illegal structure in the event the application for regularization is rejected.

4. On the earlier date, the learned counsel for the petitioner tendered a note dated 5th April 2018 which records that on the ground floor of property No.2431 at Nagaon, Piranipada, there was a premises of the respondent No.4 in Writ Petition No.2659 of 2018. On that day, the note was produced for perusal of the Court. In view of the said note, this Bench has directed the learned counsel for the Municipal Corporation to take instructions. Today, an affidavit has been filed by Shri Sunil Bhoir, the Assistant Commissioner. The paragraph 4 of the said affidavit refers to the said note. Paragraph 5 proceeds on the footing that this Court had issued a direction to issue show cause notice to Shri Pramod Jadhav, designated Clerk who has signed the said note. The affidavit states that an enquiry was initiated by him against the said Pramod Jadhav. To the said affidavit, he has annexed the documents signed by him in which one gala in the subject building is shown as closed. Similarly, Premises 4 No.C201 in A wing is shown as closed. The allegation is that this flat was occupied by the respondent No.4 in Writ Petition No.2659 of 2018.

5. Today, the learned counsel for the said Corporation in Writ Petition No.2061 of 2018 has tendered the copy of said note dated 5th April 2018 on record which is marked as 'N1' for identification. The first page of the said note is signed by Shri Pramod Jadhav and on the second page there are signatures of the Office Superintendent as well as Shri Sunil Bhoir. The note records that as per the Bill Book of property No.2431, the premises on the ground floor of A wing was occupied by the respondent No.4 in Writ Petition

No.2659 of 2018. We called upon the learned counsel for the Municipal Corporation to take instructions as to whether Shri Bhoir has signed the said note. On instructions, the submitted that Shri Bhoir accepts that he has signed the note but he stated that the contents of the said note are not correct. On instructions, the learned counsel states that Shri Bhoir claims that he has seen the Bill Book. The learned counsel on instructions states that Shri Bhoir has merely signed it after receiving the same.

6. **After having perused the 'N1', it is difficult for us to accept that Shri Bhoir has signed the said note without reading it.** Not only the Office Superintendent has signed the said note, but Shri Bhoir has also signed the Note dated 19th April 2018. 5 In the affidavit of Shri Bhoir, as stated earlier, he has proceeded on the footing that this Court has directed him to proceed against Shri Pramod Jadhav who has prepared the said note. In fact, paragraph 5 of the said affidavit, Shri Bhoir states that he has issued a show cause notice to Shri Pramod Jadhav pursuant to the directions of this Court, when in fact, no such directions were issued. **It is very difficult for us to take the statements made by Shri Bhoir as a gospel truth. It is too late in the day now to state that on 19th April 2018, he has signed the said note without making any verification of the correctness of the contents thereof. Before he signed the said note, the Office Superintendent has signed the said note on 17th April 2018. According to Shri Bhoir, he has made no enquiry with the Office Superintendent and he has simply proceeded against the said Shri Jadhav who has signed the said note. We are not at all satisfied with the explanation and the manner in which Shri Bhoir has made statements today. Through his counsel Shri Bhoir made a statement that the contents of the note are not correct.**

7. We direct the Municipal Commissioner to look into all the records and files of affidavit and regarding the role played by the respondent No.4 in Writ Petition No.2659 of 2018. He shall also state whether any record is available to show that the respondent No.4 has occupied any part of the said building but he has vacated it subsequently.

8. Unless aforesaid factual aspect is clear, it is not possible to accept the undertakings of the occupants. The Municipal Commissioner shall file an affidavit on or before 18th June 2018. Place the petition high upon board on 19th June 2018.”

(Emphasis added)

10. The matter was then adjourned from time to time. It was argued finally on 16th August 2018. Judgment was reserved. Final judgment in both Petitions was pronounced on 4th December 2018. A copy of that final Judgment is annexed from pages 35 to 46 at Exhibit “A” to the Review Petition. To avoid all ambiguities we set out that judgment in full even at the cost of adding length to this order.

“1. In these two petitions under Article 226 of the Constitution of India the grievance is about the failure of the first respondent-Bhiwandi Nizampur City Municipal Corporation (for short ‘the said Corporation’) in both the petitions to take action of demolition in respect of multistoried R.C.C buildings. The first respondent-Corporation is constituted under the provisions of the Maharashtra Municipal Corporations Act,1949 (for short “the said Act of 1949”). The first respondent-Corporation is also a Planning Authority within the meaning of the Maharashtra Regional and Town Planning Act,1966 (for short “the said Act of 1966”). It cannot be disputed that it

is the legal obligation of the first respondent-Municipal Corporation to take action of demolition of illegal buildings by exercising the powers under the said Act of 1949 and/or the said Act of 1966.

2. In Writ Petition No.2061 of 2018, the grievance is in respect of the building constructed on Plot No.7 of Survey No.98/20 at Nagaon in Bhiwandi within the limits of first respondent-Corporation. It is pointed out that though the said Municipal Corporation granted permission to the seventh respondent and two others under section 45 of the said Act of 1966 to construct a building consisting of ground plus four floors for residential use, after expiry of the said permission, without obtaining a commencement certificate and plinth certificate, illegal construction was made of ground plus six floors. In fact, criminal law was set in motion by the said Municipal Corporation by taking recourse to section 52 of the said Act of 1966 and even a First Information Report has been registered.

3. The grievance of the petitioner in Writ Petition No.2061 of 2018 is that notwithstanding the registration of the complaint made by the petitioner on 2nd April 2018 with the first respondent-Corporation by taking recourse to the grievance redress mechanism, no action was taken. It is pointed out that not only illegal construction was made but on the ground floor, illegal commercial use was commenced. Moreover the building was illegally occupied.

4. We may note here that the seventh respondent's son had filed Regular Civil Suit No.633 of 2013 in the Court of Civil Judge (J.D.) at Bhiwandi in which ad-interim relief was granted for protecting the building from its demolition. However, under the order dated

3rd August 2018, the Civil Court permitted the said suit to be withdrawn.

5. **It is an admitted position that not only that the building has been illegally constructed but the seventh respondent in his affidavit in reply has stated that he has applied under section 52A of the said Act of 1966 for compounding of the structure of the building and the said application made on 13th March 2018 is pending.** He himself and other occupants of the building have filed separate undertakings stating that they will not create any third party interests in respect of the respective premises in their possession and they will not dispose of their respective premises. They have also given undertakings that in case the application under section 52A of the said Act of 1966 is rejected, within a period of six weeks from the date of rejection, they will vacate the building and demolish the same.

6. In Writ Petition No.2659 of 2018, apart from the building subject matter of the first petition, there is a grievance made about the failure to take action of demolition in respect of a building constructed on Plot No.6 of Survey No.98/20 of village Nagaon of ground plus five floors and an illegal building on the land bearing Survey No.38 Hissa No.1 at Village Nagaon. It is pointed out that the fourth respondent in the said petition is an elected Councillor of the said Corporation. It is alleged that he has actively helped the fifth to seventh respondents in constructing the said illegal buildings. **The fifth respondent in this petition is the seventh respondent in Writ Petition No.2061 of 2018.**

7. In Writ Petition No.2659 of 2018, an affidavit in reply has been filed by the fourth respondent contending that he is not concerned with any building. He has denied that he has incurred a disqualification under clause (D) of

subsection (1) of section 10 of the said Act of 1949. The fifth respondent in this petition has also filed an affidavit in reply in which he has stated that an application for compounding of the building constructed on land bearing Plot No.7 of Survey No.98/20 has been made by invoking section 52A of the said Act of 1966. He has denied that the fourth respondent is concerned in any manner with the said construction. He has given an undertaking for himself and on behalf of co-owners and family members that in case the application under section 52A is rejected, he and his family members will remove the unauthorized construction. In fact, the said respondent has filed a common affidavit in both the petitions to which a copy of the plan in respect of the building on plot No.7 of Survey No.98/20 submitted by his Architect on 4th August 2018 for the purpose of compounding under section 52A of the said Act of 1966 has been annexed.

8. Now coming to the building constructed on land bearing Plot No.7 of Survey No.98/20 at Nagaon within the limits of the first respondent-Municipal Corporation which is stated to be numbered as Municipal house No.2431 **and named as Sahjeeda Apartment**, we must note that all the occupants have filed common undertakings in both the petitions on 3rd April 2018 which have been taken on record. The learned counsel for the first respondent has stated that the officers of the said respondent have perused the said undertakings and have verified that all the occupants of the building have given undertakings. Even the seventh respondent in Writ Petition No.2061 of 2018 has given an undertaking for himself and on behalf of all co-owners and his family members. The undertakings are to the following effect:

- (a) The seventh respondent in Writ Petition No.2061 of 2018 has filed an application for compounding of the structure of the building on 13th March 2018;

- (b) They will not dispose of or part with the premises in their possession in the building;
- (c) In the event of rejection of the application for regularization/compounding, they will remove the construction carried out within a period of six weeks.

9. **Thus, it is an accepted position that the entire building on the said land bearing Plot No.7, Survey o.98/20 is illegal.** Other issue in Writ Petition No.2061 of 2018 is whether Shri Matlub Afzal Khan Sardar (fourth respondent in Writ Petition No.2659 of 2018) had occupied the premises in the building subject matter of Writ Petition No.2061 of 2018 for his office. We are dealing with the said controversy separately.

10. In Writ Petition No.2659 of 2018, the allegation is that the fourth respondent who is an elected Councillor has played a role in construction of the building subject matter of Writ Petition No.2061 of 2018. The allegation is that fifth to seventh respondents in Writ Petition No.2659 of 2018 have constructed illegal building with the help of the fourth respondent and therefore, he has incurred a disqualification under clause (D) of sub-section (1) of section 10 of the said Act of 1949. As stated earlier, the persons who have constructed the building have accepted that the same is unauthorized and therefore, they have applied for compounding under section 52A of the said Act of 1966. The issue whether the fourth respondent has helped the owners to construct the said building has direct nexus to the applicability of clause (D) of subsection (1) of section 10 of the said Act of 1949.

11. **Whether the fourth respondent has helped the owners to construct the illegal building or buildings is a question which will have to be looked into by the**

Municipal Commissioner. In this context, the contention raised by the petitioner in Writ Petition No.2061 of 2018 is that the said respondent was having his office on the ground floor of the house No.2431 is also relevant. The contention is raised on the basis of the note placed on record on 4th June 2018 which is taken on record and marked “N1” for identification. The note is signed by the four Municipal Officers including the concerned Assistant Commissioner which records that the fourth respondent was occupying a premises in the said building for his office. Pursuant to the orders passed in the said Writ Petition, after verification of the records, the Municipal Commissioner has filed two affidavits in which he has stated that the said note (marked as ‘N1’) is not prepared on the basis of any record and none of the records available with Municipal Corporation show that the fourth respondent in Writ Petition No.2659 of 2018 was occupying the premises on the ground floor of the said building. However, we find that there is a photograph on record showing a board on the said premises which prima facie indicates that the premises on the ground floor was used by the fourth respondent in the said Writ Petition. The contention raised by the said respondent is that it is not the board affixed on the premises but it is a banner displayed during election time. As the Municipal Commissioner has filed two affidavits setting out that there is no record available to show that the said elected Councillor was occupying the premises in the said building, we cannot go into the said disputed question in writ jurisdiction.

12. Now we come to the building on the property subject matter of Writ Petition No.2659 of 2018 which is described in paragraph 5 (land bearing Survey No.38 Hissa No.1 admeasuring 16 acres at Nagaon). The petitioner is relying upon the notice issued by the first

respondent-Corporation under the said Act of 1949 and the said Act of 1966 in which it is alleged that illegal RCC construction of basement plus ground floor has been completed and construction of the first floor is going on. In view of the said notice, we propose to issue directions to the first respondent-Municipal Corporation to take action in accordance with law. As regards the allegation of illegal construction on plot No.6 of Survey No.98/20 made in paragraph 10 of this petition, we propose to direct the designated Officer to visit the site. If he finds that there is an illegal building constructed thereon, he will have to take action of demolition in accordance with law.

13. Hence, we dispose of the petitions by passing the following order:

- (I) As regards the land bearing Survey No.38/1 of village Nagaon situated near Rajdhani Hotel, Khan Compound Road, Nagaon, Bhiwandi and the land bearing Plot No.6 of Survey No.98/20 of Nagaon, we direct the Designated Officer of the first respondent to make site visits within a period of three weeks from today. He will ascertain the extent of illegal construction, if any, carried out thereon, the persons in occupation and the name of the person or persons who have made the illegal construction;
- (II) If the Designated Officer finds that there is an illegal construction of the buildings, he shall immediately initiate action of demolition in accordance with the provisions of the said Act of 1949 and/or the said Act of 1966. He shall ensure that due process of law is followed by issuing notices to all the occupants, if any, of the buildings and all persons likely to be affected by

the demolition. The entire process of demolition shall be completed within a period of three months from today. This period will be subject to prohibitory order, if any, passed by the Competent Court in the proceedings which may be filed for challenging the action of demolition. We make it clear that if there is no prohibitory order, the action of demolition must be completed within a period of three months from today;

- (III) We accept the undertakings of various persons which have taken on record under the order dated 3rd April 2018. We also accept the undertakings given by the seventh respondent in Writ Petition No.2061 of 2018 for himself and on behalf of all the co-owners and family members;
- (IV) The application for compounding/regularization of the building constructed on the Plot No.7 bearing Survey No.98/20 at Village Nagaon, Taluka Bhiwandi, District Thane shall be decided by the first respondent-Municipal Corporation, if not decided till today, as expeditiously as possible and in any event within a period of two months from today;
- (V) If the said application is already decided, the order passed on the said application shall be communicated to the persons who have made application and to the persons who have given undertakings which are taken on record under the order dated 3rd April 2018. If the said application is not yet decided, the same shall be decided as per the directions issued above and the order passed thereon shall be communicated to the persons who have made application for regularization and to the persons who have given aforesaid undertakings;

- (VI) If the application is rejected or partly rejected, the building or any part thereof which is not regularized or compounded shall not be demolished for a period of six weeks from the date on which the order is communicated to the owner/seventh respondent in Writ Petition No.2061/2018 to enable the owner and occupants of the building to comply with their undertakings. On their failure to comply with the undertakings within the said period of six weeks, the first respondent shall immediately demolish the building (or the part thereof which is not regularized) which is the subject matter of the undertakings, if necessary, by forcibly evicting the occupants. On application made by the Municipal Corporation or its Officers, the Officer In-charge of concerned local police station shall provide police force consisting male and female constables for assisting the municipal administration in implementation of the order of this Court and for protecting the Municipal Officer and staff;
- (VII) As regards the allegation in Writ Petition No.2659 of 2018 regarding fourth respondent incurring disqualification under clause (D) of subsection (1) of section 10 of the said Act of 1949, the Commissioner of the first respondent shall look into the material on record and after hearing the petitioners in both the petitions and the fourth respondent in Writ Petition No.2659 of 2018 shall ascertain whether the fourth respondent has played any role in the construction of the illegal structures. If he finds that he has played any role in illegal construction, the Municipal Commissioner shall take action in accordance with law. This exercise shall be completed by the Municipal Commissioner within a period of four months from today. We make

it clear that we have made no adjudication on the question whether the fourth respondent in the Writ Petition No.2659 of 2018 has incurred disqualification as alleged;

(VIII) We have made no adjudication on the disputed question whether the fourth respondent in Writ Petition No.2659 of 2018 was occupying the premises in the building subject matter of Writ Petition No.2061 of 2018 and the issue is kept open to be agitated in appropriate proceedings;

(IX) **Affidavit reporting compliance shall be filed by the Municipal Commissioner or by any senior Officer nominated by him on or before 8th April 2019. Though these petitions are disposed of, for considering the compliance, the same shall be listed on 19th April 2019 under the caption of 'Directions'.**

(Emphasis added)

11. As the foregoing two orders clearly show the conduct of the Municipal Officer, Bhoir was deprecated by the Division Bench in its order of 18th June 2018. The final order of 4th December 2018 required in sub-paragraph (IX) of paragraph 13 that an Affidavit recording compliance was to be filed by the Municipal Commissioner or a senior Officer nominated by him on or before 8th April 2019. The 4th December 2018 order made it clear that although the Petition was disposed of it was to be listed for compliance.

12. For the purposes of the present Review Petition, Clause 13(I) emphasized above is also important because it directs a te visit is to be made within three weeks.

13. It was thus that the matters came up before us for the purposes of this compliance on 7th June 2019. Again, we have no option but to reproduce in full our order of 7th June 2019.

“1. The Commissioner of Bhiwandi Nijampur City Municipal Corporation should remain in this Court on the next date. The reason for this is simple according to us.

2. A detailed order was passed by the Division Bench of this Court in its final Judgment and Order dated 4th December 2018. Today, the mater is listed for compliance and directions therein.

3. Mr Bubna submits that there is an Affidavit filed on 20th April 2019 which may be treated as an Affidavit of Compliance.

4. The Affidavit is filed by one Sunil Bhoir, designated officer of Ward Committee No.2 of this Municipal Corporation. He says in the Affidavit that the construction upon Plot No. 7, Survey No. 98/20 being House No. 2431 named Sahjeeda Apartment is the subject matter of this Writ Petition whereas the other concerns Plot No. 6 of Survey No. 98/20.

5. Though they are projected to be distinct constructions, the Deponent says these are same. These are two wings of Sahjeeda Apartment building. The regularisation application submitted by Respondent No. 7 has been decided by the Municipal Corporation on 29th August 2018 and the request had been rejected. The decision was communicated to Respondent No. 7. An

undertaking was given by Respondent No. 7 to this Court pursuant to which the building was to be vacated to enable the Municipal Corporation to demolish the offending structure. That having not been done, the demolition programme was fixed on 9th January 2019.

6. We are surprised that when the demolition was scheduled, the persons concerned promptly approached a Civil Court. The Civil Court in Regular Civil Suit No. 716 of 2018 passed an ex parte ad-interim order dated 31st December 2018. That order was served on the Municipal Corporation. That is taken to be a handicap and an obstacle.

7. We are shocked and surprised firstly at the approach of the Municipal Corporation, which by now through its officials is experienced enough to pre-empt the passing of such ex parte orders. The officials should be aware that those constructing buildings unauthorisedly and illegally are bound to go to every Court right up to the highest Court in the country to stall the inevitable. Therefore, a caveat should have been filed and entered. That was not done. That possibly indicates that the Municipal Corporation is giving its blessing to such construction activity within its limits. If the order of this Court can be neutralised or set at naught and the directions therein set at naught in this manner, then we are equally disturbed by the approach of the Civil Court.

8. The Civil Court which is seized of Regular Civil Suit No. 716 of 2018 and Regular Civil Suit No. 717 of 2018 should now list them peremptorily. They shall be listed on 3rd July 2019, high on board on that day. The applications for interim injunction shall be taken up on a day-to-day basis by that Civil Court. Otherwise we will proceed against the Presiding Officer concerned, as also the supporting staff of that Civil Court. Even if no

Affidavits are filed, the Municipal Corporation should be ready with the official records and public documents and its Advocate should be thoroughly prepare to argue the cases. If he seeks an adjournment, we will haul up all the Municipal officials concerned instructing him including the Municipal Commissioner responsible for frustrating and defeating the orders of this Court. We are shocked and surprised that the Civil Court had the audacity to pass an ex parte ad-interim order in the teeth of a Division Bench Judgment of this Court which ruled upon the legality and validity of the construction activity. That Respondent No.7 requested the Municipal Corporation to postpone the demolition so as to enable him to make a request for regularising the construction or development activity presupposes that this construction and development is without any permission and approval. Still this Civil Court passes an order of this nature.

9. We would only invite the attention of the Civil Court to several judgments of this Court as also of the Supreme Court particularly in the case of *Shiv Kumar Chadha v Municipal Corporation of Delhi* [(1993) 3 SCC 161] wherein the Hon'ble Supreme Court has highlighted the element of public interest which is paramount in matters of this nature and particularly while considering an application for interlocutory orders, including prohibitory directions and injunctions restraining public bodies from demolishing unauthorised constructions or removing obstacles in implementation of a public project. In the said case, the Supreme Court had observed as follows:

“TEMPORARY INJUNCTION

30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such

demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. **It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.** The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — *ex debito justitiae*. **Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.**

31. Under the changed circumstance with so many cases pending in courts, once an interim order of injunction is passed, in many cases, such interim orders continue for months; if not for years. At final hearing while vacating such interim orders of injunction in many cases, it has been discovered that while protecting the plaintiffs from suffering the alleged injury, more serious injury has been caused to the

defendants due to continuance of interim orders of injunction without final hearing. It is a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the final disposal of such applications. The court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. **But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court.**

32. Power to grant injunction is an extraordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case. **The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite-party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil**

Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that “where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay...”.

33. **It has come to our notice that in spite of the aforesaid statutory requirement, the courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders.** It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant.

34

35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. **But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned.** In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:

“Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....

An ex parte injunction should generally be until a certain day, usually the next motion day....”

(Emphasis supplied)

10. If public interest is not to be considered a vital element as highlighted in this judgment, then possibly everything would be subsidiary. The civil court must be mindful that an illegal construction poses a threat to the public at large and that there is good reason for the statutory requirement that every construction has to be authorised so that it conforms inter alia to safety and other

norms. In all these circumstances we will request the Civil Court to adhere to our schedule.

11. We are disturbed by the fact that the officials of the Municipal Corporation never bothered to apply for vacating this order. Such orders by the very nature and by the clear wording of Order 39 Rule 3 could not be operative beyond the period of 30 days unless there are specific reasons assigned for extending the same as the foregoing extract also lays down.

12. We are also disturbed to note that the so-called compliance affidavit is filed by none other than Sunil Bhoir, the very person whose conduct a previous Division Bench of this Court censured in strong terms in paragraphs 4 to 7 of the order dated 18th June 2018. It is no answer at all to say that this Bhoir is the designated officer concerned. The Municipal Corporation cannot be so utterly unmindful of orders of this Court nor can it assume that our orders censuring its officials are inconsequential or irrelevant. The previous Division Bench found Bhoir to be untruthful and said in terms that his statements could not be believed. In these circumstances, we fail to appreciate how the Municipal Corporation could ever have thought it to be appropriate to have a compliance affidavit made by the very officer, Sunil Bhoir, whose conduct was so thoroughly deprecated by this Court.

13. We post this matter for complete compliance on 10th July 2019 on which date the Municipal Commissioner and the said Sunil Bhoir will both remain personally present in Court.”

(Emphasis added)

14. In this order, we noted two distinct things. First, that after the order of 4th December 2018, Shaikh had obtained an ex parte

ad-interim order from the Civil Court (on 31st December 2018). We expressed our dismay at this and we passed directions. We also expressed our displeasure that the compliance affidavit called for by this Court and which was to have been filed by the Municipal Commissioner or a senior officer was in fact put in by the very same officer, Bhoir who had been disbelieved and whose conduct had been deprecated in the order of 4th June 2018.

15. As we noted the construction is House No. 2431. It is called Sahjeeda Apartment. The two Petitions taken together make out that these are in fact two wings of a single building namely Sahjeeda Apartment. We noted that regularisation application had been rejected.

16. Before us, Mr Jamil Khan for Shaikh, the Review Petitioner, seriously argued that there was 'non-compliance' by the BNCCMC with the Division Bench order of 4th December 2018 because no site visit had in fact being made. He submits that it is because of this alleged failure that Shaikh approached the Civil Court and obtained an ex parte ad-interim injunction on 31st December 2018. He therefore maintains his position that the Trial Court's ex parte ad-interim injunction against demolition was 'pursuant to' the Division Bench order of 4th December 2018.

17. This turns out to be wholly untrue. First of all the Trial Court order, a copy of which is at Exhibit "L" from pages 111 to 113 makes no mention of the two Writ Petitions or of the orders of 18th June 2018 and 4th December 2018 at all. There is no mention that despite the directions for a site visit no such site visit was made and

that a demolition notice was abruptly issued. We are pained to note that the Municipal Corporation had in fact filed a Caveat and despite this Caveat having been filed and served the 4th Judicial Magistrate, First Class, nonetheless granted this sort of a ex parte ad-interim injunction. This is what prompted our order of 7th June 2019. This is how the order of 31st December 2018 reads:

“Regular Civil Suit No. 716/2018

Temporary Order Under Exh-5

1. Heard submission of Advocate Shri. Faeem Ansari on behalf of plaintiff. The copy of plaint, Interim Application and other documents annexed thereto are perused. The contention raised by advocate on behalf of the plaintiff is that, the plaintiffs is the Co-owner and partner in respect of the property bearing property No. 2431/0 plot No. 7 from S.No. 98/20 at village Nagaon. The plaintiffs had made application dated 13/12/200__ to Defendant for building construction by Plaintiff upon completing all legal requirement. Despite the same the defendant had attended the site on 20.12.2018 for demolition of the same.

2. The plaintiff had in support of his contention along with Exh-3 has produce village form No. 7/12 extract, building construction commencement permission issued by Defendants, property receipts for payment Development Charges, building plan are produce. The plaintiff has filed affidavit along with application. Upon perusing 7/12 extract it is noticed that the name of the plaintiff is appearing along with other Kabjedars in respect of survey no.98/20. On perusal of building construction permission / commencement certificate it appear to be in respect of survey no. 98/20 and as per approved plan the construction appear to be for ground floor to Fourth floor it

appear that apart from the plaintiff has paid taxes and development charge. The suit property is used for residential purpose it is also contended by the plaintiff that the defendant co-operation have not issued any statutory notice to the plaintiff. Primary from the photograph of the building produced by the plaintiff the said building is prima facie appear to be consist of the ground floor plus fourth floor.

3. From the document produced by the plaintiff it appear that he is co-owner and kabjedar of the suit property. The co-owner have right to protect his share in the property the plaintiff have prima facie case on his side. The balance of convenience in favour of plaintiff. The said property is use by plaintiff for residential purpose of the plaintiff and as such ex party order is not granted, the defendants may demolish the suit property and thereby irreparable loss may cause to the plaintiff. Further it is contended by the plaintiff that he has not receive any written notice. In the circumstance aforesaid and considering the aforesaid submissions I am of the opinion that, the suit property is even for the temporary period shall required to be protected. The plaintiffs have prima facie case to grant ex party order in the said matter. Considering the submission of the Plaintiff, documents available and considering the affidavit annexed there to the balanced of law is that at least temporary on the side of the plaintiff. In the said circumstances if ex party order is not passed and no protection is given to the property, irreparable loss shall be caused to the plaintiff. If there is delay in passing the order in the said matter, the purpose of giving the stay order may turn futile. Hence, consider aforesaid reason I am passing the following order.

ORDER

1. Ex-party order is given against the defendant that the defendant should not demolish the property no. 2431/0 in survey no. 98/20.
2. Show cause notice issued to plaintiff as to why the ex-party order should not be confirmed.
3. Next date is fixed on 22/01/2019

Place: Bhiwandi Sd/-

31.12.2018

(R.A. Sawant)

4th Judicial Magistrate First Class

Bhiwandi

Date: 31/12/2018”

18. It is true that the 4th December 2018 Division Bench order spoke of the demolition being subject to a prohibitory order of a competent Court in proceedings filed to challenge the demolition. But that does not mean that an ex parte ad interim order could have been obtained without notice or service of a summons, especially when a caveat had been filed, or that it could have been obtained by suppressing the 4th December 2018 order, and without hearing the other side, let alone that it could have been allowed to continue for months together. The 4th December 2018 is, in our view, clear that the demolition had to be in accordance with law, and it is only if it was not in accordance with law, and shown to be so, that the competent civil court could have passed an order staying demolition. In no case could it have done so in this ex parte ad interim fashion. Further, the 4th December 2018 in clearest terms

concluded that the entire structure was illegal. Therefore, the illegality was no longer *res integra* or open to decision before the Civil Court. It is not as if the petitions were dismissed on the ground of disputed questions of fact. As we have seen, the Civil Court's order of 31st December 2018 does not even address this. It does not anywhere even mention the 4th December 2018 order. It proceeds on the basis that the structure is *prima facie legal*, and this is in the teeth of the 4th December 2018 High Court Division Bench order that held that it was an *admitted position that the entire structure was illegal*. Moreover, in paragraph 4 of this Court's order dated 4th December 2018, there is a reference to the earlier Suit No. 633 of 2013 filed in that very Court (by Shaikh's son) where Shaikh filed the subsequent suit in which an *ex parte ad interim* injunction was granted on 31st December 2018. Suit No. 633 of 2013 was unconditionally withdrawn on 3rd August 2018. This court's order of 4th December 2018 notes this fact. Consequently, all interim and ad interim orders passed in Suit No. 633 of 2013 were vacated. How, then, this Court in its order of 4th December 2018 could be said to have allegedly 'permitted the filing of a fresh suit on the same cause of action', i.e. alleged illegal demolition, remains unexplained. Thus, the filing of Regular Civil Suit 716 of 2018 could not have been 'pursuant' to the order of this Court passed on 4th December 2018. This fact is apparent from our findings in the subsequent paragraphs.

19. What the Review Petitioner has not pointed out is that the 4th December 2018 order has attained finality. It has never been challenged. In the guise of seeking a review of our order of 7th June 2019, Shaikh is seeking to re-argue the Writ Petitions and pretends

that the order of 4th December 2018 was never passed. It therefore follows that the finding that it is an admitted position that the subject structure is wholly illegal has never been challenged and cannot be challenged. The question of whether the structure is illegal or not is concluded and that question or issue is not open for review even before us and it was most emphatically not open for scrutiny by the Civil Court under any circumstances.

20. The second problem with Mr Khan's submission is that it completely overlooks the fact that there was in fact a Compliance Affidavit dated 20th April 2019. We made specific mention of this Affidavit in paragraphs 3, 4 and 12 of our order of 7th June 2019. Clearly, this Affidavit was not disclosed to the Hon'ble Supreme Court. It is certainly not a part of the Review Petition. Shaikh and his Advocate could well have obtained this Affidavit. It was part of this Court's record. The Affidavit in Reply without its annexures is reproduced below in full.

“I, Sunil Bhoir, Age:- 48 years, Designated Officer of Ward Committee No. 2 of Bhiwandi Nizampur City Municipal Corporation, having place of work at, Kap Ali, Bhiwandi, Dist. Thane, do hereby state on solemn affirmation as under:

1. I say that I am filing this affidavit pursuant to order dated 4/12/2018 passed in above matter along with Writ Petition No. 2659 of 2019. I tender my apology for delay caused in filing present affidavit so also for taking steps for complying with the directions issued by this Hon'ble Court.

2. I say that construction upon plot no. 7 of Survey no. 98/20, Nagaon, Bhiwandi, bearing House No. 2431, named

“Sanjeeda Apartments” is subject matter of Writ Petition No. 2061 of 2018. I say that though construction upon plot no. 6 of Survey no. 98/20, Nagaon, Bhiwandi, which is subject matter of Writ Petition No. 2659 of 2019 is projected to be distinct construction, the aforesaid two constructions are same. I say that construction Sanjeeda Apartments has two wings and both wings are jointly given house no. 2431. I say that regularization application dated 12/03/2018 submitted by respondent no. 7 has been decided by Municipal Corporation on 29/08/2018 whereby request of regularization has been rejected. I say that aforesaid decision has been communicated to respondent no. 7 on 29/08/2018. **I say that pursuant to undertaking given to this Hon’ble Court, respondent no. 7 and other concerned persons were required to vacate and demolish the offending structure within period of six weeks. I say that concerned persons not having done the same, demolition program was fixed on 09/01/2019 through letter dated 31/12/2018 and police protection also was requested for said date. I submit that prior to date fixed for demolition, Municipal Corporation was informed of ex-parte ad-interim order dated 31/12/2018 passed in R.C.S. No. 716 of 2018 without the service of summons.** I say that action of demolition could not be taken on account of ad-interim order passed in R.C.S. No. 716 of 2018. I say that corporation was also served with ad-interim order passed in another suit bearing R.C.S. No. 717 of 2018. I say that reply has been filed and steps are being taken to ensure expeditious disposal of application Exh.5 in aforesaid suits. Hereto annexed and marked **Exh.”A”** is the copy of decision dated 29.08.2018 passed on regularization application submitted by respondent no. 7, ad-interim order dated 31/12/2018 passed in R.C.S. No. 716 of 2018 and ad-interim order dated 7/1/2019 passed in R.C.S. No. 717 of 2018.

3. I say that pursuant to court's order, I visited the construction at plot no. 6 of Survey no. 98/20, Nagaon, Bhiwandi on 13.12.2018 when I noted that the concerned construction and construction at plot no. 7 of Survey no. 98/20 were same. I say that in view thereof, no separate action was taken in respect of construction at plot no. 6. Hereto annexed and marked Exh."B" is the copy of inspection report dated 13.12.2018

4. I say that pursuant to directions issued by this Hon'ble Court, I visited the construction at Survey no. 38, Hissa no. 1, Nagaon, Bhiwandi on 12/12/2018, I found that a unauthorized construction was in existence. Pursuant to enquiry it was found Shir Naushad Ali Shaukat Ali Sayyed had carried out aforesaid construction. I say that after issuing notice and granting opportunity of hearing, demolition order had already been passed on dated 18/12/2017. I say that already R.C.S. No. 160 of 2018 had been filed in respect of aforesaid construction and ad-interim order is in force since 22/3/2018. I say that action of demolition could not be taken on account of ad-interim order passed by civil court. I say that reply has already been filed and steps are being taken to ensure expeditious disposal of application Exh.5 in aforesaid suit. Hereto annexed and marked Exh."C" is the copy of inspection report dated 12/12/2018, demolition order passed on dated 18/12/2017 and ad-interim order dated 22/03/2018 passed in R.C.S. No. 160 of 2018.

5. I say that pursuant to directions issued by this Hon'ble Court, hearing was granted to petitioners in both Writ Petition No. 2061 of 2018 and Writ Petition No. 2659 of 2018 as well as respondent no. 4 on 31/12/2018, 3/1/2019, 16/1/2019 and 24/1/2019. I say that though petitioners in both the petitions alleged that respondent no. 4 played role in aforesaid unauthorized construction, they could not place on record any material to corroborate

aforesaid contention. I say that in any case issue involved a factual controversy which was required to be decided by civil court. I submit that Hon'ble Municipal Commissioner, in the circumstances, passed order dated 18/4/2019 thereby taking decision to submit proposal to General Body of the Corporation in accordance with provisions of section 12 of Maharashtra Municipal Corporation Act 1949. I say that further steps will be taken in accordance with decision to be taken by General Body of the corporation. Hereto annexed and marked **Exh. "D"** is the copy of order dated 18/4/2019 passed by Hon'ble Municipal Commissioner.

6. I say that what is stated hereinabove is true and correct to the best of my knowledge, information and belief."

(Emphasis added)

21. Paragraphs 2 and 3 make it clear that *in compliance with the directions of the Division Bench issued on 4th December 2018 there was in fact a site inspection carried out*. Consequently, the representation made to the Civil Court on 31st December 2018 and later to the Supreme Court is demonstrably untrue and was untrue to Shaikh's knowledge, viz., that there was alleged 'non-compliance' with the 4th December 2018 order. Nowhere in the 31st December 2018 ex parte ad interim order of the Civil Court is there any discussion about any municipal action being not in compliance with the High Court order of 4th December 2018.

22. We also find that more than one Civil Suit is being filed. Shaikh's wife and his son all claim to be co-owners and they allege that the notice to one co-owner is insufficient as notice to the

others. Whenever a notice is given in respect of a construction, the other co-owner files a suit. The Review Petition itself contains statements that are false on the face of it. There is a ground taken at page 17 in paragraph 3C which reads thus:

“3C. Because this Hon’ble High Court failed to appreciate that the son of the petitioner who is also co owner in the suit land filed Regular Civil Suit No. 663 of 2013 on 03.04.2013 before the Ld. Civil Judge Bhiwandi to grant perpetual injunction from the demolishing of the “suit building” on the apprehension of demolishing as the officers of the respondent without any notice suddenly on 29.04.2013 came to the suit property and tried to demolish the same by saying that the construction is illegal and vide order dated 13.10.2014 in Regular Civil Suit No. 663/2013 the Ld. Civil Court has passed direction to the respondent corporation restraining them from demolition of the suit structure standing over survey 98/20 plot no. 7 till the disposal of the suit.”

(Emphasis added)

23. This gives the impression that there was a pending Regular Civil Suit No. 663 of 2013. What this conveniently overlooks is the specific finding returned in the order of 4th December 2018 in paragraph 4, and which we have noted above, that this Suit was unconditionally withdrawn on 3rd August 2018.

24. In any case, we fail to understand how this could be made a ground for review of our order of 7th June 2019.

25. Mr Khan for Shaikh then takes us to a document at page 114 which is said to be an Appeal and a Miscellaneous Application therein filed to the Minister against the order of 29th August 2018. What is sought to be papered over is that this Appeal was filed in June 2019, i.e. after our order of 7th June 2019. It makes no reference whatsoever to the final order of the Division Bench of 4th December 2018. It makes a false statement in paragraph 3 at page 116 of the Review Petition which reads thus:

“3. The appellant state that though the impugned order has been passed on 29.08.2018 came to be passed. However, the same was never communicated till 07.06.2019. Hence there is no wilful and deliberate delay and laches in filing the above appeal. However if this Hon’ble Court have come to opinion that there is delay in filing the above appeal by 104 days, considering the fact and circumstance of the case, the delay of 104 days of filing on the filing the above appeal may be condone and the said appeal may be taken on file and may be decided on it’s own merits.”

(Emphasis added)

26. This is therefore yet another untruth. The order in question of 29th August 2018 was known to Shaikh.

27. We do not see how any ground for appeal against the 4th December 2018 order can be a ground for review of our order of 7th June 2019.

28. The ambit of a Review Petition under Section 114 and under Order 47 (which Mr Khan is careful not to read) is indeed

circumscribed.¹ It is well settled in law that a ground for an appeal is not necessarily a sufficient ground for review. Secondly, the Review Petition completely overlooks the statutory provisions. A plea that Review Petitioner might and ought to have taken cannot be canvassed as a ground for review: a review cannot be made on a ground urged during an appeal.² A roving inquiry or a de novo hearing in the guise of a review petition is impermissible.³ A review petition is not to be lightly entertained. It is not a rehearing of the original matter.⁴

29. It is our considered view that the Review Petition is not only mischievous but deliberately so. We have no hesitation in rejecting it.

30. Noticing our strong displeasure expressed in open Court, the Counsel for the Review Petitioner first sought leave to withdraw it, but after speaking to his client, he turned around and insisted on a hearing of the Review Petition. The brazenness in making such an oral request and then withdrawing it stunned all present in Court. Therefore, having regard to the utterly dishonest conduct of the Review Petitioner we equally have no hesitation in saying that this Review Petition is the grossest possible abuse of the process of this Court and in fact this Review Petitioner has abused the process of every single Court right up to the Supreme Court. Therefore while dismissing this Review Petition, we impose costs on Shaikh in the

1 *State of West Bengal & Ors Kamal Sengupta & Anr*, (2008) 8 SCC 612.

2 *Vikram Singh & Anr v State of Punjab & Anr*, (2017) 8 SCC 518.

3 *Haryana State Industrial Development Corporation Ltd v Mawasi & Ors*, (2012) 7 SCC 200.

4 *Vinay Sharma & Anr v State (NCT of Delhi) & Ors*, (2018) 8 SCC 186.

amount of Rs. 10 Lakhs. Since he has chosen to abuse the process of this Court, it is only fitting that these costs be paid to the Maharashtra State Legal Services Authority. The Municipal Corporation will ensure a recovery of these costs within three weeks and if not, will proceed to recover them as arrears of land revenue. To do otherwise would be to encourage a continued subversion not only of the Rule of Law in any understanding of the expression, but also of the authority of binding orders of this court that have attained finality.

31. The request to continue a stay on demolition is rejected. The Municipal Corporation is now directed to proceed forthwith to remove the offending structure.

(G. S. PATEL, J)

(S. C. DHARMADHIKARI, J)