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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 9255 OF 2019**

|                                                                     |                |
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| Balaram Ambo Jadhav & Anr                                           | ...Petitioners |
| <i>Versus</i>                                                       |                |
| State of Maharashtra, through Urban<br>Development Department & Ors | ...Respondents |

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**Mr RS Kadam**, *for the Petitioners.*  
**Ms Reena Salunkhe**, *AGP, for Respondent No. 1- State.*  
**Mr Sandeep Shinde**, *for Respondents Nos. 2 & 3.*

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**CORAM: S. C. DHARMADHIKARI &**  
**G.S. PATEL, JJ**  
**DATED: 22nd August 2019**

**PC:-**

1. The petitioner before us has challenged the proposed demolition of a building/structure that is the subject matter of the notices commencing from 12th September 2018 to 7th August 2019.
  
2. In all these notices, copies of which have been annexed to the petition, the petitioner who is styled as owner and equally a director/manager of Moraya Shikshan Sanstha, accepts that the construction made of a school building (Vishwas Vidyalaya New English School) is wholly unauthorized and will have to be proceeded against. He accepts that he holds no development or

building permission. That such a construction is within the Kalyan Dombivli Municipal Corporation limits is also conceded before us. That such a construction can be proceeded against by invoking Sections 260 and 267(1) of the Maharashtra Municipal Corporations Act 1949 is also conceded.

3. The notice has been issued calling upon the petitioner to furnish *inter alia* the non-agricultural permission, the measurement map, the title documents and pertinently copy of a development permission in the form of a commencement certificate by this Municipal Corporation together with the copies of the sanctioned and approved plans, and finally a copy of completion certificate. It is conceded before us that the petitioner possesses none of these documents. Yet a school building has been constructed and made operational. The educational institution has not bothered to comply with the mandate of the Maharashtra Regional & Town Planning Act 1966, the Maharashtra Municipal Corporations Act 1949, the building regulations and bye-laws framed thereunder. That prior development permission in the form of commencement certificate is required cannot be disputed and that it is not granted is equally undisputed.

4. A commencement certificate refers to the plans for construction and those plans have to be sanctioned prior to commencement of construction activities. This is the mandate flowing from the provisions of the above laws. This Petitioner complies with no part of any law. He only relies on the reservation or designation in the development plan for the subject period reserving this plot for school. His petition projects that once there is

such a reservation and designation, that dispenses with all building permissions and regulations, and permits the construction of a school building without prior development permission or sanctioned and approved plans. This is an assertion impossible to accept. There is no support for such a proposition or assertion in law. Once that is also conceded, then, in the writ jurisdiction we cannot allow the school building to stand and permit a post-facto approval of the same. What is illegal from inception cannot be regularized by such post-facto exercise. It would mean that the planning authorities sets at naught the planning laws by allowing and tolerating such activities. These are from inception illegal and unauthorized and there is no question of regularizing them. It is settled law that an illegality cannot be cured.<sup>1</sup> An illegality is not an irregularity.

5. We are not in agreement with Mr Kadam that the impugned notices can be interfered with on the ground that even otherwise a school building can be constructed on the subject plot on account of reservation/ designation in the development plan. The application for regularization cannot be allowed to be filed nor can it be allowed to be considered. In our extraordinary, discretionary and equitable jurisdiction under Article 226 of the Constitution of India, no writ can be issued contrary to law or in subversion of the law.

6. There is also no room for any plea based on equity here, or of citing the so-called plight of students. It is the petitioner which has put these students at risk, and it is the petitioner who will answer to the students and their parents or legal guardians, including as to all

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<sup>1</sup> See: *K Ramdas Shenoy v Chief Officer, Town Municipal Council, Udipi & Ors*, AIR 1974 SC 2177.

legal liability. Indeed, we cannot help wondering what principles or values such an institution can possibly inculcate or impart to young, receptive and impressionable minds if its entire existence is predicated on a rank illegality, a flouting of the law and a brazen subversion of the rule of law. If the so-called 'education' being imparted is perfectly all right for anyone to do anything in total disregard of the law, and that one can always get post-facto legalisation, ratification or the blessings of some writ court, then it is perhaps in the interest of all that the school be demolished without a moment's delay. This school is a monument to illegality, and to a deliberate, wilful and conscious defiance and snubbing of law. Every day it continues to stand perpetuates the offence. Under no circumstances will we countenance this.

7. The writ petition is without a shred of merit. It is dismissed.

**(S. C. DHARMADHIKARI, J)**

**(G. S. PATEL, J)**