

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 73 OF 2023
WITH
INTERIM APPLICATION NO. 925 OF 2023**

Mr. Abdul Rehman Jamadar Shaikh & Anr. ..Appellants
Vs.
The Municipal Corporation of Gr. Mumbai & Anr. ..Respondents

Mr. Nikhil Waje with Mr. Vishesh Srivastav for Appellants.
Ms. Smita Tondwalkar for Respondent/MCGM.

**CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 10, 2023**

ORAL ORDER:

1. Heard learned counsel for the appellants and learned counsel for the Municipal Corporation.
2. This appeal is directed against an order dated 18 January, 2023 passed by the learned Judge, City Civil Court, Mumbai whereby ad-interim reliefs on a draft notice of motion as moved on behalf of the appellant/plaintiff in L.C. Suit (Stamp) No.14622 of 2022 has been dismissed by the following order :-

“

ORDER

1. Ad-interim injunction is refused.
2. Corporation to file reply to draft N/M till next date.
3. Plaintiff is directed to register the suit and N/M till next date.”

L.O.

Adv. for plaintiff tendered application for restraining the defendants not to take any coercive steps in respect of suit premises for further 4 weeks to enable plaintiff's to file an Appeal from order before Hon'ble High Court at Bombay, TOR and marked as **Exh.2**.

O – Other side to say.

Matter is pertains to T-ward. Adv. For defendant/ BMC requested to keep matter tomorrow for filing say on Exh.2. Granted.

Supply authentic copy.

Adjd. To 19/01/2023 for say on Exh.2.”

3. At the outset, it needs to be observed that the order as impugned in the present proceedings is similar to an order passed by the learned Judge of the City Civil Court in the case of **Mohammed Iqbal Abdul Vs. The Municipal Corporation of Greater Mumbai & Anr.** which was subject matter of assail in **Appeal from Order No.85 of 2023** decided by this Court by an order dated 08 February, 2023. Learned counsel for the Municipal Corporation has contended that the contentions as raised on behalf of the appellants/plaintiffs are similar nay identical to the contentions which were raised in the said appeal. In such proceedings, in identical circumstances, this Court, considering the position in law in regard to the action being taken by the MCGM against unauthorized constructions as laid down by the Division Bench of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) Versus Bhiwandi Nizampur Municipal Corporation & Ors.**¹ as also settled principles of law in regard to removal of such unauthorized constructions as laid down by the Supreme Court in the decisions of

¹ 2022 SCC OnLine Bom 386

Friends Colony Development Committee V. State of Orissa (2006)3 SCC 581; Dipak Kumar Mukherjee V. Kolkata Municipal Corporation and Ors. (2013)3 SCC (Civ) 72; Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association and Ors. (2021)10 SCC 1.] as also the orders of the Division Bench of this Court in **Tushar Guru Salien Vs. State of Maharashtra & Ors. (Public Interest Litigation No.67 of 2017 decided on 28 August 2019**, had rejected a similar challenge to the ad-interim orders passed by the City Civil Court, thereby upholding the action of the Municipal Corporation initiated under Section 351 of the Mumbai Municipal Corporation Act.

4. This apart, the facts of the present case would demonstrate as to what extent illegality can perpetrate in not only undertaking illegal constructions of commercial premises but in systematic attempt to save them from actions of demolition.

5. The case of the appellants/plaintiffs is that the suit structure/ premises which appears to be a totally illegal structure in respect of which there is not a single document to show that the Municipal Corporation had granted any permission to put up such structure, is stated to have been purchased by the appellants/ plaintiffs by a purported document of a Sale Deed dated 13 September, 2019 executed

in favour of the appellants/ plaintiffs' mother by Mr. Abdul Rehman Jamadar Shaikh, Mrs. Jameerunnisa Jamadar Shaikh, Mr. Firoj Ahmad Abdul Rajjak Shaikh, Mr. Nasioullah Abdul Rajjak Shaikh, Mr. Abdul Karim Najeer Ahmad Shaikh, Mr. Mohd. Salim Najir Ahmed Shaikh, Mr. Abdul Salam Nazeer Ahmed Shaikh and Mr. Abdul Majeed S/o. Habibullah Sahikh. By the said sale deed, what has been purchased is only the structure which is a commercial structure in which a business in marbles is presently being carried out by the appellants/ plaintiffs. Although such sale deed purportedly transfers an interest in the immovable property, the same is not registered. The sale deed is executed on a Stamp Paper of Rs.100/-. It is on the basis of such document, an assertion is made that the appellants/ plaintiffs are owners of the said structure/premises. The case of the appellants/ plaintiffs is merely on a presumption that the structure in question is legal and is authorized by the Municipal Corporation and also the same has been sanctioned, albeit there being no document whatsoever on record, which would show that any construction permission was obtained from the Municipal Corporation and/or any plan in that regard was sanctioned. There cannot be a greater illegality than this, namely to undertake rank illegal construction.

6. Be that as it may, the trump card of the appellants'/plaintiffs' case is that the structure falls in a notified slum area, and is protected by a photo-pass which is issued in the name of one of the owner Mr. Shaikh Jamadar. It appears from the sale deed that none of the vendors/transferors of the appellants/plaintiffs is a person known as Shaikh Jamadar, hence, as to how the photo-pass in question is placed into service is itself surprising. A copy of the photo-pass is placed on record in a compilation which is actually not a photo-pass and which is only a photo-pass of a receipt issued in favour of one Shaikh Jamadar to contend that such document be accepted as a photo-pass. It is contended on behalf of the appellants/plaintiffs that the structure in question is not an unauthorized structure or is a legal/tolerated structure for reason that a photo-pass has been issued as the land in question has been notified as a slum. Certainly on such vague plea, such contentions which have no basis in law cannot be accepted.

7. As clearly seen from the record, the notice under Section 351 of the MMC Act as issued by the Municipal Corporation came to be replied by the appellants/plaintiffs by their advocate's letter dated 08 January, 2020, which is nothing but making all kinds of allegations on the municipal officers and/or questioning the authority of the Municipal

Corporation to issue such notice. Each and every contention of the appellants/ plaintiffs in the reply to such notice of the Municipal Corporation in the present facts is clearly untenable, but also appears to be mischievous. In fact, what has been contended in paragraph 15 and more particularly sub-paragraphs (h) and (i) thereof is claiming a protection to undertake any illegal construction which is in the teeth of the provisions of Section 47 of the Slums Act as also the provisions of the MMC Act as held by the Division Bench of this Court in **Jilani Building's** case (supra).

8. From a perusal of the document of what is contended by the appellants/plaintiffs to be a photo-pass, there is a grave doubt as to whether the document (receipt) pertains to the unauthorized structure of the appellants/plaintiffs. Even assuming that the structure in question is issued a photo-pass, however, it appears that the photo-pass has not been issued in the name of subsequent purchasers like the appellants/ plaintiffs who have purchased the premises recently in the year 2019, under an illegal sale deed dated 13 September, 2019. Hence the appellants/plaintiffs cannot be given benefit under any such document or under the slum scheme. It is also not pointed out that there is any provision under the Slums Act or any other law that a slum structure becomes an authorized structure and it becomes transferable

by a sale deed and even the benefit of photo-pass if any issued is available to a transferee of the slum structure. Such contention as urged on behalf of the appellants/ plaintiffs if accepted, in fact, would lead to mockery of the Slums Act and slums scheme. As clearly seen from the provisions of the Slums Act, photo-pass is issued only for dwelling house and not for commercial structure.

9. It is clearly seen from the record that the designated officer of the Municipal Corporation has considered each and every document submitted by the appellants/plaintiffs to come to a conclusion that the structure in question cannot be said to be in any manner authorized as was objected by the notice issued under Section 351 of the MMC Act dated 31 December, 2019.

10. In **Mohammed Iqbal Abdul Vs. The Municipal Corporation of Greater Mumbai** (supra) in identical circumstances, considering the position in law in regard to the obligation on municipal authorities to take action against illegal and unauthorized structure, this Court has observed as under:-

“17. Certainly, the municipal officers are under a solemn duty under the municipal laws to take action against illegal and unauthorized structures, whatever be the nature of such construction. This is clear from the series of orders which are passed by different Benches of this Court and the recent judgment of the Division Bench of this Court of which I was a member in High Court on its own motion (In the matter of Jilani Building at Bhiwandi)

Versus Bhiwandi Nizampur Municipal Corporation & Ors.¹ wherein the Division Bench had observed that there are substantive powers conferred on the different municipal officers as also on the government officers under the provisions of law as observed in the said decision, which includes Mumbai Municipal Corporation Act as also under other laws and various Government directives to take timely steps to remove unauthorized and illegal constructions. It was also observed that in so far as the City of Bombay is concerned, the Mumbai Municipal Corporation is the custodian in regard to all affairs in relation to planning of the areas within its municipal jurisdiction, which includes its powers to grant requisite statutory permissions for construction, reconstruction, addition or extension, so as to bring about a regime that unauthorized and illegal structures are not put up and are removed. It was observed that granting of such construction permissions are matters which are required to be dealt with by the planning authority and in the event unauthorized structures are put up, it becomes not only an obligation of the MCGM (planning authority) but also of the competent authority under the provisions of Section 3Z-1 and 3Z-2 of the Slums Act to take action, including lodging of prosecution against such persons who have put up the illegal construction and even against the competent authority or any officer who has aided or abetted the construction of illegal and unauthorized structures and had failed to demolish such structures as provided in sub-section (5) of Section 3Z-2 without any sufficient reason. The Division Bench has held that there is an obligation on the municipal authorities to exercise powers even in respect of slum areas to initiate action of demolition if the structures are not authorized and/or are illegal. Thus the contention of Mr.Thorat that the moment the structure is a slum structure, in that event there is a carte blanche for slum dwellers to put up any unauthorized construction of any nature, is totally untenable and would be contrary to the law laid down as held by the Division Bench in the above said decision. The relevant observations of the Division Bench read thus:-

“70. As discussed above, there are provisions under the MMC Act as also under the MRTP Act and the MLRC which confer several powers on the authorities to take action against illegal constructions. We may, however, clarify that a protection which has been conferred by Section 3Z of the Slums Act, to the protected occupiers, cannot be confused or interpreted to mean that the protected occupier enjoys and is granted a complete immunity from putting up unauthorized construction or structure and/or can make illegal additions or alterations. The protection which is granted is to a basic slum structure as may be recognized in the photo-pass. If mere issuance of a photopass is interpreted to be a blanket and an unfettered permission to put up any illegal construction, additions or alterations, it would lead to an abuse of the provisions of Section 3Z read with Section 3X-(a)(b)(c). Such

can never be the intention of the legislature that the municipal authorities cannot take any action against the unauthorized structures merely because a photo- pass is issued.

... ..

74. We are, thus, of the clear opinion that the MCGM being a Planning Authority for the entire Greater Mumbai area (excluding those areas in which by law other planning authorities are appointed), the MCGM has jurisdiction to exercise all powers under the MMC Act as also the MRTP Act and the Slums Act, to take action against illegal structures as permissible in law, not only in regard to all such areas within its jurisdiction, but also the slum areas falling under the Slums Act, except when a demolition order has been made under the Slums Act. We find that even Section 4 of the Slums Act would cast no embargo on the MCGM to take appropriate action in regard to any buildings which are unauthorized and/or dilapidated. Per se, Section 4 does not prohibit the planning authority to exercise any of its authority in regard to the structures of the nature Section 4 would contemplate either before the area is declared as a “slum area” or after it is declared as a “slum area”. It is nobody’s case that prior to an area being declared as slum, the planning authority namely the MCGM would not have any authority under the MMC Act and the MRTP Act to take action against unauthorized construction in such areas in regard to structures in these areas. From a holistic reading of the provisions of the Slums Act as discussed above, it is difficult to conceive that merely because an area is declared to be a slum under Section 4, the planning authority would lose its control and authority to regulate the structure by implementing the provisions of the MMC Act and the MRTP Act in the event the structures are dilapidated and/or in any manner unauthorized.

... ..

77. Be that as it may, it is never too late. It is high time that the concerned officials from the MCGM as also the Collectorate become conscious and immediately start taking action on illegal structures and restore a regime of only lawful construction prevailing in the city. In taking such action, the Municipal Officers ought to overcome any extraneous pressures and other obstructive considerations which may be created by certain undesirable elements preventing them from discharging public duties of taking action against such constructions. The iron hands of the Municipal Officers cannot be tied down by such pressures and they need to work relentlessly, as the law would mandate.”

18. In so far as the role of the Civil Court is concerned, the Division Bench has observed that the Civil Court needs to be extremely cautious and needs to have a well considered approach in dealing with the applications for temporary injunction, when any action being taken by the municipal officers on unauthorized/illegal constructions is assailed. In such context, the relevant observations of the Division Bench read thus:

“ROLE OF THE CIVIL COURT :

78. We also caution the Civil Courts which might be approached with civil suits/proceedings when the Municipal Corporations/ Planning Authority/ Competent Authority commence action against illegal and unauthorized constructions or actions being taken against dilapidated buildings. The Civil Court needs to be extremely cautious and ought to have a well considered approach in dealing with such suits. When applications for temporary injunction are moved in civil suits which are filed assailing any action being taken by the municipal officers on unauthorized/illegal constructions or actions being taken against dilapidated buildings, the injunction applications ought to be decided without any delay and not later than one week from the date of its presentation, so that in legitimate cases, the actions against illegal structures being taken by the Municipal Officers, are not delayed by any undeserving judicial intervention. In this context, we may usefully refer to a decision of the Division Bench of this Court in Mohd. Talib Habib Shaikh v. Mohammad Siddaqui Haji and Others (2019 SCC OnLine Bom 1265). Justice G.S.Patel speaking for the Bench, made the following observations on the role of the Civil Courts in considering matters arising from unauthorized and illegal construction, also referring to the previous orders passed by the Division Bench: -

“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.

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.

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."

19. Now coming to the facts of the case, I am of the clear opinion that the action of the municipal corporation is in consonance with what has been observed by the Division Bench in paragraph 81 of the said decision, wherein it has been observed that the illegal encroachments and unauthorized structures are a menace and a potential danger to the city of Mumbai, which is being ruined by encroachments and illegal constructions. In the present case, the entire structure of the appellant/plaintiff is unauthorised, albeit action is taken only in regard to part of the structure. Once the entire structure is illegal, it is surprising as to how the appellant/plaintiff can complain in regard to the action being taken against the part of the illegal addition or extension as carried by the appellant. The Division Bench in paragraph 81 and 83 in such context has observed thus:-

"81. Illegal encroachments and unauthorized structures are a menace and a potential danger not only to the city of Mumbai, which is being ruined by encroachments and

illegal constructions, but also to the other bigger cities. These factors also depict a picture of absolute lawlessness in implementation of the municipal laws. This for more than one reason. Firstly, as seen from the State policies, it creates two categories of citizens, the first category is of those citizens who are law abiding, who would put up lawful construction and possess buildings/ structures which are lawfully constructed thereby enjoying only the legitimate and permissible benefits therefrom. The second category is of those persons who brazenly violate law and put up illegal and unlawful constructions and enjoy with impunity such illegal structures, under the blessings of municipal and government officers. There is yet another category of persons, who illegally enter and encroach on public lands, construct unauthorized structures, they continue to reside in such structures for long periods with the blessings of all the authorities, and yet get rewarded under the government policies which offer them a premium on such illegality of encroachment, in entitling them with a free of cost accommodation, under the garb of slum redevelopment as made permissible under the State policies as discussed above. There cannot be a bigger unconstitutionality and breach of the public trust doctrine in such mechanism, under which valuable public largess is siphoned off from the pool of public assets to reward encroachers as also for private benefits.

... ..

83. In our opinion, a scrupulous and determined implementation of the above provision(s) would achieve two fold objects; firstly that it would deter persons from putting up unlawful, illegal and unauthorized constructions; secondly, the machinery of the municipal corporations to take action against the unlawful and unauthorized constructions would get activated, so as to recover maximum revenue for the municipal corporation, which would certainly be a step in larger public interest. We are not informed by the municipal corporations as to whether so far any action has been initiated under these provisions, so that the legislative object and intent in incorporating such provision, is achieved. If the municipal corporations are not effectively utilizing these provisions and no action is being taken, it is high time that the municipal corporations implement these provisions with full diligence and rigour. This would certainly aid and assist the municipal corporations in reducing the menace of unauthorized constructions, which has engulfed the important cities in the State. Today, it is seen that the municipal corporations and its officers are struggling with

the evil of illegal and unauthorized constructions, despite the law providing wide ranging powers to deal with such menace. An undeterred and bonafide will in these public officials to take stern actions as per law, is the need of the hour.”

20. It may be observed that once a construction is unauthorised and illegal, the course of law to be taken in that regard is well settled by the catena of decisions of the Supreme Court [See: Friends Colony Development Committee V. State of Orissa (2006)3 SCC 581; Dipak Kumar Mukherjee V. Kolkata Municipal Corporation and Ors. (2013)3 SCC (Civ) 72; Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association and Ors. (2021)10 SCC 1.] In Jilani Building at Bhiwandi (supra), the Division Bench has considered such mandate of law as laid down by the Supreme Court in paragraphs 85 to 87 which reads thus:-

“85. In Friends Colony Development Committee V/s State of Orissa (2006)3 SCC 581, the Court was concerned with an unauthorized construction being undertaken by the builder, as instead of sanction of a four storeyed building, he had constructed a 5 th floor and for which an action came to be initiated against him. On the plea of the builder being accepted by the High Court that he be permitted to make a fresh application and submit a revised plan for approval qua the construction he had already undertaken, the appellant had moved the Supreme Court. It is in such context the Supreme Court made significant observations in regard to the threat to the society, illegal and unauthorized constructions pose. These observations are important not only in the context of unauthorized and illegal constructions but also in the context of the plight of those who purchase premises in unauthorized buildings. The relevant observations are required to be noted, which reads thus:

“20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often

thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

22. 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.” (emphasis supplied)

86. Apart from the above observations, what is significant is that the Supreme Court also observed that if the High Court feels that the illegal/unauthorized building activities are so rampant, so as to be noticed judicially, it

may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability. Such observations are required to be noted, which reads thus:

“(7) The High Court, if it feels that illegal/unauthorized building activities in Cuttack are so rampant as to be noticed judicially, may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.”
(emphasis supplied)

87. In *Dipak Kumar Mukherjee v Kolkata Municipal Corporation and Ors.* (2013)3SCC(Civ.)72, again the Supreme Court was concerned with an illegal and unauthorized construction of buildings and other structures put up by respondent no. 7 in the said proceedings, who had undertaken construction in violation of the sanctioned plans. An order was passed by the Municipal Corporation ordering demolition of the disputed construction. Respondent no. 7 having approached the High Court, an order came to be passed by the High Court directing the competent authority to pass an appropriate order after giving an opportunity of a hearing to respondent no. 7. The Supreme Court held that such an order could not be sustained, as the construction undertaken by respondent no. 7 was in clear violation of the sanctioned plans and for which a notice was issued by the competent authority of the Corporation and more so because an application for regularization was made by respondent no. 7 after completion of the construction. It is in such context, the Supreme Court considering the position in law as laid down in the earlier decisions emphasized that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. It was observed that the common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. In commenting on the menace of illegal and unauthorized constructions, the Supreme Court considering its decisions in *K. Ramadas Shenoy V. Town Municipal Council, Udipi* (1974)2 SCC 506, *Pratibha Coop. Housing Society Ltd. v. State of Maharashtra*

(1991)3 SCC 341, Friends Colony Development Committee v. State of Orissa (supra), Shanti Sports Club v. Union of India (2009)15 SCC 705 and Priyanka Estates International (P) Ltd. v. State of Assam (2010)2 SCC 27. the Supreme Court made the following observations:

“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. Unauthorized 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 concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.” (emphasis supplied)”

21. Learned Counsel for the municipal corporation would also be correct in placing reliance on the orders of the Division Bench of this Court in Tushar Guru Salien Vs. State of Maharashtra & Ors. (supra) wherein the Division Bench in similar circumstances had observed thus:-

5] Concerning a property, a suit to enforce of protect an interest in the property which is governed by a Municipal Statute, the interest protected has to be with respect to a plea that prim facie. the structure which is being targeted is an authorized structure. Meaning thereby, the plaint must make an averment of the sanction obtained from the Corporation and must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing the notice is neither here nor there. Thus, the sine qua non of such kinds of suits is a positive assertion made with reference to the sanctioned building plans.”

22. The contention of Mr.Thorat referring to the Kurar pattern, would not assist the appellant/plaintiff inasmuch as there is nothing on record to show that even applying such pattern any inherent legal right is created in the owner of the structure to put up a vertical construction as objected by the municipal corporation, and that too

without permission of the municipal corporation. In fact such argument squarely militates against the law laid down by the Division Bench in Tushar Guru Salien Vs. State of Maharashtra & Ors. (supra) as also the decision of the Division Bench in Jilani Building at Bhiwandi (supra).”

11. For the aforesaid reasons, no interference is called for. The appeal in fact is an abuse of process of law. It cannot be entertained. It is accordingly rejected.

12. The concerned Municipal officers are accordingly directed to take further appropriate action as may be permissible in law.

13. After the judgment is pronounced, learned counsel for the appellants/ plaintiffs seeks leave to withdraw this appeal. However, as the parties were heard and substantial judicial time has been spent on this appeal and in dictating the order in the open Court, it is not possible to accept such request.

14. In view of the dismissal of the appeal, interim application would not survive. It is accordingly disposed of.

15. No costs.

[G.S. KULKARNI, J.]