

Talwalkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10115 OF 2023**

Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra Through Secretary & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 16135 OF 2023
IN**

WRIT PETITION NO. 10115 OF 2023
Ayyub Ibrahim Inamdar ...Applicant/
Intervener

In the matter between
Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra through Secretary & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 16134 OF 2023
IN**

WRIT PETITION NO. 10115 OF 2023
Rafiq Manzoor Shaikh ...Applicant/
Intervener

In the matter between
Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra through Secretary & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 16133 OF 2023
IN**

WRIT PETITION NO. 10115 OF 2023
Anand Mohan Kamble ...Applicant/

Intervener

In the matter between
Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra through Secretary & Ors ...Respondents
WITH
INTERIM APPLICATION NO. 16132 OF 2023
IN

WRIT PETITION NO. 10115 OF 2023

Rasool Abdul Majeed Perampalli ...Applicant/
Intervener

In the matter between
Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra through Secretary & Ors ...Respondents
WITH
INTERIM APPLICATION NO. 16131 OF 2023
IN

WRIT PETITION NO. 10115 OF 2023

Chaudhary Abdul Rahim Abdul Mehboob ...Applicant/
Intervener

In the matter between
Subhash Balu Vaskar ...Petitioner
Versus
State of Maharashtra through Secretary & Ors ...Respondents

Ms Neeta Karnik, *for the Petitioner.*
Mr RS Apte, *Senior Advocate, with Chaitrali Deshmukh, for*
Respondent Nos. 3 to 5.
Mr YD Patil, *for Respondent Nos. 1 & 2.*
Mr Manish Joshi, *Dy. Commissioner, TMC present.*
Mr Azimuddin Kazi, *for Applicants in all IAs.*

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 10th October 2023

PC:-

1. Mr. Apte on behalf of the Thane Municipal Corporation (“TMC”) confirms that both buildings are entirely unauthorised and without permission. One building has been demolished and demolition is going on in respect of the second.

2. He however points out that by an Interim Application No. 16135 of 2023 in Writ Petition No. 10115 of 2023 an individual applicant one Inamdar sought interim relief. Temporary relief was granted on 26th September 2023 when the present Bench was unavailable. That relief was time limited until the application was heard.

3. There is no substance to the application by Inamdar. He is unable to point out how his particular apartment or flat is authorised. Once the Municipal Corporation through Mr. Apte says that the entire structure is unauthorised, there is no question of any individual flat purchaser saying that his possession of a particular flat should be protected. The flat in question is Flat No. A 709. We are told that Inamdar has emptied the flat, but he seeks some time to formally vacate. There can be no such indulgence shown to these parties. This is not new law. It has been emphatically laid down over the last three decades by this Court and even longer by the Supreme Court of India.

4. These are not cases of irregularities. These are cases of wholesale unauthorised illegalities. As the Supreme Court has

repeatedly noted in *K Ramadas Shenoy v/s Chief Officers, Town Municipal Council, Udipi & Ors*,¹ *MI Builders Pvt Ltd vs. Radhye Shyam Sahu & Ors*,² and our Court has noted in *Esha Ekta Apartments Cooperative Housing Society Limited & Ors v Municipal Corporation of Mumbai and Ors*³ this tendency of putting up unauthorised construction subverts not only planning town and balance development town and country planning law but also the rule of law itself. Applications for mercy, and they are nothing more than that, at the instance of individual flat purchasers cannot be countenanced if they result in a perpetuation of the illegality. This has been stated as long ago as 1994 and 1995 by Division Benches of this Court.⁴ No effort is made before us to show how these pronouncements on law by Benches of coordinate strength of this Court and by the Supreme Court can be distinguished or can possibly be said not to be binding on us. If we were to accept what Inamdar says today, our Judgment and Order would be entirely vulnerable as being contrary to law. We are unable to pass any kind of protective order. The order of 26th September 2023 is vacated. The Interim Application is dismissed. There are four other Interim Applications by other individuals. No ad-interim relief is obtained. None can be granted.

1(1974) 2 SCC 506

2(1999) 6 SCC 464

3 (2013) 5 SCC 357

4 *Bombay Environmental Action Group v Bombay Municipal Corporation*, 1994 SCC OnLine Bom 512 : (1995) 2 Bom CR 233, paragraph 12.

5. Interim Application No. 16131 of 2023 is by one Mehboob who claims rights in respect of Unit No. 710. For the same reasons as set out above that Interim Application is also rejected.
6. Interim Application No. 16132 of 2023 is by one Perampalli in respect of the Flat No. 608. That is also dismissed.
7. Interim Application No. 16133 of 2023 is by one Kamble in respect of Flat No. 108. That is also dismissed.
8. Interim Application No. 16134 OF 2023 is by one Rafiq Shaikh in respect of Flat No. 809. That Interim Application is also rejected.
9. Only for the purposes of ensuring that the demolition of the second structure is completed on schedule, we list the matter on 19th October 2023.
10. Indeed, we direct the Thane Municipal Corporation to forthwith chalk out and give us by next Thursday a programme for the demolition of all unauthorised structures within its jurisdiction. If necessary, this will extend to any structure that this Petitioner has put up.

(Kamal Khata, J)

(G. S. Patel, J)