

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 24 OF 2020**

Harishchandra Shantaram Mhatre ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 781 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 24 OF 2020**

Mr. Shriram Kulkarni i/by Nitesh Mohite for Petitioner.

Mr. P. P. Kakade, GP a/w O. A. Chandurkar, Addl. GP and R. A. Salunkhe, Addl. GP for Respondent Nos. 1 and 2.

Mr. A. S. Rao for Respondent Nos.3 to 7.

Mr. Jagdish G. Aradwad (Reddy) for Applicant in IA/781/2024.

Dr. Indu Rani Jakhar, Commissioner, Kalyan Dombivili Municipal Corporation is present.

Mr. Vishwas Gujar, Sub Divisional Officer, Kalyan is present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATED : 24th JANUARY, 2024.

P.C. :

1. Pursuant to our order dated 3rd January, 2024, Dr. Indu Rani Jakhar, Commissioner of Kalyan-Dombivili Municipal

Corporation and Mr. Vishwas Gujar, Sub Divisional Officer, Kalyan are present.

2. An affidavit duly sworn in by the Municipal Commissioner of Kalyan-Dombivali Municipal Corporation has been filed, which is taken on record. In the affidavit, the steps which are said to have been taken by the Respondent-Corporation for removal of illegal constructions and encroachments have been narrated. The affidavit further states the steps which will be taken by the Respondent-Corporation for demolition of illegal constructions and removal of encroachments. It also states how such action is to be prioritized. Paragraph No.5(d) of the affidavit is extracted hereinbelow;

"5. So far as removal of existing unauthorised constructions are concerned, the Respondent has taken the following steps -

- a) ...*
- b) ...*
- c) ...*

d) After following due process of law and declaring constructions as illegal, the Respondent will demolish them according to the following priority.

PRIORITY-

(1) All types of the unoccupied and occupied illegal structures on the Respondent land.

(2) Illegal structures on public properties like roads, footpaths etc.

(3) Illegal buildings having RERA certificates obtained fraudulently.

(4) New/ recent/ ongoing constructions particularly multistoried structures & chawls on any type of land.

(5) All sorts of unoccupied and occupied illegal structures on private land affected by DP Reservations/DP Road/Green Zone/Hilltop/slope/Blue Line/Red Line etc.

(6) Commercial or industrial illegal structures on private land.

(7) Residential unoccupied and thereafter occupied structures on private land.

(8) Additional illegal/ irregular/ unauthorized constructions constructed on existing legal structures.

This priority can be changed by the Respondent for the sake of the convenience of demolition drive."

3. Paragraph No.6 of the affidavit also spells out the steps proposed by the Respondent-Corporation to be taken for mitigating the problem caused by illegally constructed and occupied buildings. The affidavit further states that the Corporation shall make a survey of entire list of properties and identify the constructions which are illegal and thereafter take

appropriate action in accordance with provisions contained in the Maharashtra Municipal Corporation Act, 1949 and the Maharashtra Regional and Town Planning Act, 1966. Further averment made in the affidavit is that Corporation shall start taking action in respect of the unauthorised properties which have been assessed for the last three years as per the said priority and thereafter the action of demolition which may be warranted under law shall be taken. In Paragraph No.11 of the affidavit filed by the Municipal Commissioner, it has been stated that there are chances that the actual number of existing unauthorised constructions may vary and that the Corporation shall take all the necessary steps to find out the exact number and thereafter appropriate action shall be taken. In the affidavit, the Municipal Commissioner has also stated that for taking up the demolition and removal of illegal encroachments and trespass, police help is needed and at the time of demolition, employees of the Respondent-Corporation need the police protection to maintain the law and order situation.

4. We hope and expect that the measures suggested in the affidavit filed today by the Municipal Commissioner shall be

acted upon in all seriousness. We, thus, direct that wherever the employees of the Corporation need any police help, it shall be the duty of the local in-charge of the police station concerned to extend cooperation and provide the requisite police force to carry out the duties by the officials/employees of the Corporation, specially when any action involving removal or demolition of any encroachment or illegal construction is to be taken. As regards the submission made by the Municipal Commissioner for issuing direction to Maharashtra State Electricity Distribution Company, we provide that the issue shall be taken up by the Municipal Commissioner with the authorities of the Maharashtra State Electricity Distribution Company at the highest level and both, the Corporation and the DISCOM, shall work in tandem with each other to find some workable solution so that the Corporation is able to work effectively while removing the encroachments and the illegal constructions.

5. It appears from the averment made in Paragraph No.11 of the affidavit filed today by the Municipal Commissioner that the Corporation is not having the exact data of the existing unauthorised constructions as also the

encroachments. We thus direct that the Corporation shall take necessary exercise to ascertain the exact number of existing unauthorised constructions and encroachments as well and once such exercise is complete, necessary action which may be permissible in law shall be taken by the authorities of the Corporation for removal of such illegal constructions and encroachments as well. Apart from removing the existing illegal encroachments and constructions, one of the duty statutorily cast upon the Corporation is to ensure that no such fresh encroachment and illegal construction comes up. The Corporation is vested with adequate authority and power under law, specially under the provisions of Maharashtra Municipal Corporation Act to take preventive steps so that the illegal encroachments and constructions do not crop up. We thus direct that needful shall be done by the authorities of the Corporation to take adequate, effective and proper steps so that no fresh unauthorised construction or encroachment on the land of the Corporation or the State takes place.

6. We have also perused the affidavit filed by the Sub Divisional Officer, Kalyan wherein the details of the actions

taken in respect of certain illegal constructions have been given.

7. The Sub Divisional Officer present today before us has assured the Court that a thorough survey of the entire land falling within the municipal limits of the Respondent-Corporation will be undertaken by the Government authorities to ascertain the area of land under encroachment or illegal possession as also the illegal construction. He also assures that once such a survey is conducted, appropriate steps shall be taken as per law for removal of the encroachments and illegal possession as also for removal of illegal constructions. The Sub Divisional Officer further stated that the survey shall take two months time to be completed. We thus direct that such a survey be conducted and a report be prepared accordingly, which shall be placed before the Court by the next date of the proceeding.

8. Stand over to 26th March, 2024 for directions.

9. The officers present today need not appear again

unless called for. We however express our expectation and depose our confidence and trust in the officers present today that they shall take all possible and permissible steps, not only for ensuring that the illegal constructions and encroachments are removed but also for ensuring that no fresh encroachment or illegal construction takes place.

10. An affidavit on behalf of the Corporation shall also be furnished giving details of the action which may be taken during this period for ensuring compliance of this order.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)