

Jvs.

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

**INTERIM APPLICATION NO. 13538 OF 2024
IN
PUBLIC INTEREST LITIGATION NO. 19 OF 2013**

**WITH
PUBLIC INTEREST LITIGATION NO. 19 OF 2013**

Mr. Lekhraj Tilokchand Manyar & Ors. }	Applicants
In the matter between	
Mr. Hardas Hazarimal Tharwani }	Petitioner
Versus	
The State of Maharashtra & Ors. }	Respondents

Mr. Mateen Shaikh with Ms. Muskan Shaikh, Mr. Arahad Shaikh and Mr. Raziq Shaikh for applicants in IA/13538/2024.

Ms. Minal Chandnani (through VC) with Ms. Urusah M. I. for petitioner.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi for respondent no. 1.

Mr. Suresh M. Kamble for respondent no. 2.

Mr. Anish Khandekar for respondents 3 to 10.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE: OCTOBER 9, 2024

P.C.:

IA/13538/2024: -

1. Heard learned counsel for the applicants.

2. This interim application has been moved by eight applicants in the backdrop of certain notices issued to them under section 260 and 267(1) of the Mumbai Provincial Municipal Corporation Act, 1949, whereby they have been required to vacate the houses/shops. One such notice has been enclosed at page 208 of this interim application, issued to applicant no. 2-Mr. Munilal Chajuram Sharma.

3. It has been argued by learned counsel representing the applicants that the notices have been issued on account of some orders passed by this Court in Public Interest Litigation No. 19 of 2013 and accordingly, they are the necessary parties to the proceedings of the PIL petition. It has been, thus, prayed that the applicants may be permitted to be impleaded as party respondents in the PIL petition.

4. Having perused the notice dated 10th September 2024 issued under section 260 and 267(1) of the Mumbai Provincial Municipal Corporation Act, 1949 which has been enclosed at page 208 of this interim application, we do not find any mention either of pendency of the PIL petition or any order passed therein. Under the relevant statute, the applicants must be having some statutory mechanism to take recourse to the statutory remedies either against the notice or against the order passed in respect of the houses/shops which may be in possession of the applicants. In our opinion, the applicants are neither necessary nor proper parties to the PIL petition.

5. The application is, thus, dismissed.

PIL/19/2013: -

6. This Court on 18th June 2024 passed the following order: -

1. *This Court, vide its order dated 29th April 2024 directed the competent authority to take final decision on the application seeking regularization of certain constructions.*

2. *Pursuant to the said direction, a decision has now been taken by the competent authority of Ulhasnagar Municipal Corporation which is embodied in its order dated 24th May 2024, whereby the application seeking regularization has been rejected.*

3. *Thus, the constructions have been found to be illegal/irregular to the extent as pointed out in the order dated 24th May 2024.*

4. *Once the application seeking regularization has been rejected, we do not see any reason why the Municipal authorities have not initiated any action against respondent No.3 and other responsible respondents for removal of illegal/irregular constructions. We, thus, observe that the action which may be permissible under law having regard to the order dated 24th May 2024, shall be initiated and taken to its logical end within the shortest possible time.*

5. *Stand over to **10th July 2024**, by which date, the learned Counsel representing the Municipal Corporation shall file an affidavit giving details of the action which may be taken during this period in view of the order dated 24th May 2024."*

7. An affidavit on behalf of respondent no. 2 has been filed stating therein that after rejection of the prayer for regularization of the irregular/illegal constructions, a notice was issued on 5th August 2024 for vacation of the construction in question and for its demolition.

8. However, no action of demolition has taken place in respect of the irregular/illegal construction.

9. Learned counsel representing respondents 3 to 10 has submitted that the application seeking regularization has been rejected on 24th May 2024 and against the said order dated 24th

May 2024, an appeal has been preferred under section 6(1) of the Regularization of Unauthorized Developments in the City of Ulhasnagar Act, 2006 before the Appellate Officer, where the Appellate Officer has passed an order on 19th September 2024 staying the operation of the order dated 24th May 2024.

10. The order dated 19th September 2024 staying the operation of the order dated 24th May 2024 has been tendered to the Court, which is taken on record. According to the said order, the next date fixed before the Appellate Officer in the appeal is 17th October 2024.

11. If we peruse the order dated 24th May 2024, what we find is that the competent authority in the said order has clearly observed that two bridges on first floor and one bridge on second floor cannot be regularized. The Appellate Officer, while passing the order dated 19th September 2024 has not observed anything on the merit of the claim of the respondents 3 to 10. He has only observed that since a notice has been issued and hearing of the appeal is likely to take some time and therefore, the order dated 24th May 2024 is stayed.

12. We may note that the order dated 24th May 2024 is not an executable order; rather, it is an order rejecting the prayer made by the respondents 3 to 10 for regularization of irregular/illegal construction. Learned counsel representing respondents 3 to 10 has failed to show any provision where pendency of appeal under section 6(1) of the aforesaid Act acts as a stay on vacation/demolition of irregular/illegal construction.

13. This petition is pending since the year 2013 with the simple prayer seeking a direction for removal of irregular/illegal

structure. Once regularization has been sought by respondents 3 to 10 of such structure, it is an acknowledgment on their part that the irregular or illegal structure exists which has not been found to be liable for regularization vide order dated 24th May 2024. On one count or the other, no concrete action appears to be in sight for removal of such irregular/illegal construction.

14. However, having regard to the fact that the appeal before the Appellate Officer under section 6(1) is pending, we direct that the said appeal shall be decided on the next date, i.e., 17th October 2024. We also direct that in case for some reason the appeal is not decided on 17th October 2024 by the Appellate Officer, the same shall be decided within next three days thereafter. The respondent-Corporation shall extend all cooperation in disposal of the appeal and no adjournment in the proceedings before the Appellate Officer shall be permissible except in very exceptional circumstances.

15. Stand over to **24th October 2024 (High on Board)**.

16. The learned Additional Government Pleader shall apprise the Appellate Officer of this order forthwith.

JAYANT
VISHWANATH
SALUNKE

Digitally signed
by JAYANT
VISHWANATH
SALUNKE
Date: 2024.10.10
10:46:15 +0530

(AMIT BORKAR, J.)

(CHIEF JUSTICE)