

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO. 90 OF 2024  
IN  
WRIT PETITION NO. 2601 OF 2018**

Solitaire Builders & Developers,  
a partnership firm having its address at  
1/11, Takshila Apartments, Mahakali  
Caves Road, Andheri (East),  
Mumbai- 400093.

... Petitioner.

**V/s.**

1. Municipal Corporation of Greater Mumbai,  
through the Commissioner,  
Iqbal Singh Chahal.
2. Asst. Municipal Commissioner,  
L Ward, Mahadev Shinde,  
Municipal Corporation of Greater Mumbai.
3. The Commissioner of Police,  
Vivek Phansalkar,  
Dr. D.N. Road, Opp. Crawford Market,  
Fort, Mumbai-400001.
4. Sr. Inspector,  
Budhan Sawant, Powai Police Station,  
7, Police Line, MHADA Colony,  
Chandivali, Powai, Mumbai-400072.

... Respondents.

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Mr. Manish Gala a/w Mr. Amir Naje, Mr. Ankit Shah i/by Law Square for the  
Petitioner.

Mr. Anoop Patil a/w Ms. R.M.Hajare i/by Ms. Komal Punjabi for BMC.

Ms. Vrushali Kabre, AGP, for the Respondent-State.

Mr. Herlekar, Asst. Commissioner 'L Ward & Mr. Sanjay Dudhbhate, AEC  
(B&F) L-Ward-present.

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CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.

DATE : 21<sup>st</sup> November 2024.

**ORDER (Per Kamal Khata, J.):**

1) This Contempt Petition is one amongst several other Contempt Petitions against the Brihanmumbai Municipal Corporation (BMC), which this Court routinely deals with.

**Brief facts:**

2) The Petitioner undertook the development of land bearing CTS No.125 (part) of Village Tungwa, Taluka Kurla of MSD situated at Saki Vihar Road, Mumbai-400022 ("said property").

3) At some point, one Jamunabai L. Pawar illegally encroached upon the land, erected three small structures and claimed ownership through adverse possession. Despite multiple complaints by the erstwhile owners, the BMC failed to take any action.

4) In 1991, during the development of the said property, the developer, Marol Land Developers, was informed by the BMC that part of the land occupied by the illegal structures was to be surrendered for road widening as BMC's condition. To avoid the delays and litigation expenses the developer entered into an agreement with the late Jamunabai L Pawar on 2<sup>nd</sup> May 1991, offering shops in exchange for surrender and demolition of the illegal structures. This Agreement is on record with the BMC.

Subsequently, on 6<sup>th</sup> November 1992, Indian Cork Mills Pvt. Ltd acquired rights of a certain portion of the said property from Marol Land Developers.

5) On 22<sup>nd</sup> March 1994, the said Jamunabai L. Pawar submitted an undertaking to the BMC, promising to demolish the three illegal structures within three months, by 22<sup>nd</sup> June 1994. However, she failed to comply, and the BMC also took no action. Meanwhile, on 14<sup>th</sup> November 1995 Marol Land Developers transferred their rights to the present Petitioners.

6) The Petitioner constructed two wings of building named “Oxford Chambers” and applied for an Occupation Certificate through its Architect by letter dated 11<sup>th</sup> April 2000. Despite repeated requests to Jamunabai L. Pawar to vacate and remove the three illegal structures, no action was taken, and she eventually passed away. Her four alleged legal heirs continued occupying and encroaching further, including onto open spaces and atop septic tanks within the compound, turning the property into a dumping ground.

7) On 28<sup>th</sup> March, 2000, the Petitioner was granted partial OC with the onerous conditions of i) clearing the illegal structures in the setback area for DP road and ii) re-accommodating the occupants to obtain further OC for the B & C Wings.

8) Mr. Gala, representing the Petitioner, argued that the illegal occupants, emboldened by the inaction of the BMC, have resorted to extortionate demands. He submitted that the inaction of the BMC Officers

and the State Police has enabled the continuation of these illegal structures, despite Jamunabai L Pawar's undertaking in 1994 to vacate and demolish them. As a result, the Petitioners have been unable to secure the OC though no fault of their own.

9) Faced with this impasse, the Petitioner filed a Writ Petition on 8<sup>th</sup> August 2018, seeking a writ of mandamus directing the Respondents to take action of demolition against illegal structures.

10) Upon hearing the parties thereto on 16<sup>th</sup> March 2020, this Court passed the following order:-

*"1. By the above Writ Petition, the Petitioner seeks the following reliefs:*

*"(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ or order under Article 226 of the Constitution of India directing the Respondent Nos.1 and 2 to initiate prompt action against (1) Mr. Ashok Lahanu Pawar, (2) Mr. Vijay Lahanu Pawar, (3) Ms. Shantabai Vijay Pawar, and (4) Ms. Shaila Ashok Pawar to have the said illegal structures vacated and demolished.*

*(c) This Hon'ble Court be pleased to direct the Respondents to initiate prompt action against 1) Mr. Ashok Lahanu Pawar, (2) Mr. Vijay Lahanu Pawar, (3) Ms. Shantabai Vijay Pawar, and (4) Ms. Shaila Ashok Pawar to have the said illegal structures vacated and demolished pursuant to the report of the Commissioner of this Hon'ble Court.*

*(d) This Hon'ble Court be pleased to direct the Respondents to appoint a Committee to investigate unlawful actions on the part of the officers of the Respondent Nos.1 and 2 with directions to take appropriate action against them including*

*prosecution as well as departmental enquiry against the erring officers.”*

*2. The Learned Advocate appearing for the Petitioner states that the Petitioner had filed a representation dated 21<sup>st</sup> July, 2018, however, the Corporation has not taken any action. The Corporation is directed to decide the representation of the Petitioner dated 21<sup>st</sup> July, 2018 within two weeks from today, and if any structures are found to be illegal, forthwith take action in accordance with law within a period of four weeks from today. The above Writ Petition is accordingly disposed off.”*

11) As per the said Order, the Corporation was directed to decide the representation of the Petitioner dated 21<sup>st</sup> July 2018 within a period of 2 weeks. It also directed that if any structures were found to be illegal, to forthwith act in accordance with law within a period of 4 weeks. With these directions, the Petition was disposed off.

12) As with several similar cases, the Petitioner had no choice but to file a Contempt Petition on 9<sup>th</sup> January 2023, against the BMC (through the Commissioner), the Assistant Municipal Commissioner, the Commissioner of Police and the Senior Inspector.

13) The Contempt Petition highlights the ground reality of what transpired during the nationwide lockdown. Once restrictions were relaxed, the Petitioner made inquiries with BMC officials about the implementation of the High Court's Order. However, no action was taken. Instead, further illegal structures were constructed on the land. A representation was made

on 21<sup>st</sup> July 2018 calling upon the Petitioner to act in accordance with law within a period of 4 weeks from the letter/representation.

14) Four years on, in August 2022, the alleged legal heirs claiming ownership of the illegal structures filed Suit (L) No. 7892 of 2022 before the City Civil Court, Bombay seeking a declaration of ownership rights and injunctive reliefs. The Petitioner opposed this suit, and the claimants unconditionally withdrew it on 19<sup>th</sup> December 2022. Despite this, the BMC has failed to act against the illegal occupants, leading the Petitioner to seek contempt proceedings and compliance of the Court Order dated 16<sup>th</sup> March 2020. In addition thereto, the Petitioner seeks direction to initiate enquiry against all Officials and persons including policemen, incharge of overlooking and maintaining the record of illegal structures.

15) Upon hearing arguments of Mr. Gala (for the Petitioner) and Mr. Anoop Patil (for the BMC), the Court noted several disturbing facts. Mr. Patil claimed that the BMC could not demolish the three illegal structures as they could not be identified. However, when questioned about other illegal structures on the property and why the BMC Officers could not enquire as to whether they were authorised and sanctioned structures, he submitted that, those were on private land and beyond BMC's jurisdiction.

16) We are unable to accept such a response from a statutory Corporation. The said submission of the counsel for BMC is only stated to be rejected at its threshold, as it is contrary to the basics of law. It is the

solemn duty of the BMC who according to us, falls within the ambit of Article 12 of the Constitution of India, to take all the necessary action against the illegal structures once it is pointed out and even though they themselves are not interested in removing it. But once the citizen points out that certain structures are illegal, then it is the duty of the BMC to take necessary action under the provisions of law, notwithstanding the fact that it is a private or public land. This will pre-empt most suits and resolve most disputes. Prevention is better than cure.

17) The learned single Judge of this Court in the case of *Reverend Father Peter Paul Fernandes, Parish Priest and Sole Trustee of the Church of St. Francis Xavier v State of Maharashtra* reported in 1991 SCC OnLine Bom 92, in paragraph 6 held as under:

*“6. ... It is unthinkable that person whose land has been encroached upon, which land is situated in Greater Bombay, would keep quiet and not seek the assistance of the public authorities to get rid of squatters. It will have to be presumed that the petitioner's predecessor's had done so and an indirect confirmation of this comes from the portion excerpted from the order at Exh. A. The same speaks of demolition by the B.M.C. or the demolition squad of the Encroachment department of the Revenue. **This demolition of the unauthorised structure is to be undertaken by the B.M.C. and the Revenue authorities and that it is they alone who can deal with the squatters. Slum colonies in Bombay had their origin in acts of trespass and the private citizens suffering could do little to get even with the wrong doers. For this reason, demolition of unauthorised structures is the responsibility of the Corporation or the demolition squad of the Revenue authorities. Judicial notice can be taken of the fact that the squatters are the creations of***

*either slumlords or they themselves and that where the lands encroached upon are of private parties; the latter having no remedy against the wrong doers. Mr. Bora says that the petitioner or his predecessors could have filed a complaint or a suit in a Court of law against the trespassers. It is well known that the complaints and suits take decades to reach a decision in the City of Bombay and that even where relief is granted, it is merely on paper. To execute decrees and secure the eviction of trespassers through the process of a Criminal Court is virtually impossible, and, in this situation, to impose upon the owner the burden of N.A. assessment or fine or penalty is to add insult to injury. The owners whose property has been occupied and perhaps lost for ever, are further burdened with the liability to pay for the benefits originating in the acts of trespass and enjoyed by the trespassers or their successors-in-interest.*

*(Emphasis supplied)*

18) We concur with the above view and affirm the same.

The Officers of BMC cannot be silent spectators to the illegalities being committed by the concerned persons, constructing structure without lawful permission in that behalf. We cannot have two sets of laws one for the law abiders and one for non-abiders. The condition put by the BMC on the developer is unwarranted. Once there is an undertaking given to the BMC that the concerned person would demolish by himself/herself, on their failure the BMC was duty bound to demolish/remove the same within a week thereafter. The whole purpose of accepting the undertaking is otherwise thwarted. The BMC must and are duty bound to enforce the undertaking when it was breached. It could not have permitted the illegality to persist. Every property owner cannot be thrust with a

compulsion to have security guards to protect their property. Chapter XII of the Mumbai Municipal Corporation Act, 1888 (BMC Act) dealing with Building Regulations have provided sufficient powers to the BMC to demolish the building which include a house, outhouse, stable, shed, hut and every other structure, whether of masonry, bricks, wood, mud, metal or any other material whatever under section 3 (s) of the BMC Act. These are certainly for private lands and the BMC cannot argue that they could not demolish the structures as they were on private land.

19) In view of the afore-stated disturbing facts on record, there is no other alternative than to bring it to the kind notice of the Commissioner of BMC to initiate appropriate action not only against the illegal structures but also against the Officers who patently failed to remove and/or demolish illegal structures.

20) We therefore hereby direct as under:

- (a) The Assistant Municipal Commissioner L Ward to personally oversee the demolition of the illegal structures on the said property, if necessary with the help of local police, having jurisdiction over the said property, who will arrange to deploy such number of police personnel as required and if unavailable to take assistance of State Reserve Police (S.R.P) to comply with the Court orders and file a compliance Affidavit within two weeks from the date of uploading of this Order on the official website of High Court of Bombay.

(b) The Municipal Commissioner and the Jt. Commissioner of Police (L&O) to file Affidavits to show cause why they and their predecessors (disclosing the names of all concerned) who were tasked to comply with the Court Order dated 16<sup>th</sup> March 2020 should not be held responsible for willful disobedience of the said Order.

21) List the matter 'for reporting compliance' on 13<sup>th</sup> January 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)