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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 7558 OF 2025

KUSUMBAI LAXMAN NARWADE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

WITH

905 WRIT PETITION NO. 7717 OF 2025

PRAMOD FULSINGH CHHANE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Mr.Hemant U.Dhage, Advocate for the Petitioners.

Mr.A.B.Girase, Government Pleader for the Respondent/State.

Mr.S.S.Tope and Mr.S.P.Urgunde, Advocates/Standing Counsel for
Respondent No.2

WITH

WRIT PETITION NO. 7560 OF 2025

PADMABAI SHIVNARAYAN JAISWAL AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS

Mr.Rupesh Anil Jaiswal, Advocate for the Petitioners.

Mr.A.B.Girase, Government Pleader for the Respondent/State.

Mr.S.S.Tope and Mr.S.P.Urgunde (Through V.C.), Advocate/Standing
Counsel for Respondent No.2

WITH

WRIT PETITION NO. 7570 OF 2025

KUSUMBAI KACHARU KAWADE AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS NEW DELHI AND OTHERS

Mr.D.P.Palodkar h/f Mr.Shubham S.Khoche, Advocate for the Petitioners.
Mr.Rahul Bagul, Standing Counsel for Respondent No.1.
Mr.A.B.Girase, Government Pleader for the Respondent/State.
Mr.S.S.Tope and Mr.S.P.Urgunde (Through V.C.), Advocates/Standing
Counsel for Respondent Nos.6 to 9.

WITH
903 WRIT PETITION NO. 7615 OF 2025

RUKHMANNBAI PANDIT DOLAS AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

Mr.D.P.Palodkar and Mr.Shubham S.Khoche, Advocate for the
Petitioners.
Mr.A.G.Talhar, D.S.G.I. for Respondent No.1 / Union of India.
Mr.S.S.Tope and Mr.S.P.Urgunde, Advocates for the Corporation.
Mr.S.D.Ghayal, AGP for the Respondent/ State.

WITH
WRIT PETITION NO.7554 OF 2025
(Ganesh Janadhan Zalke and Another Vs. State and Others)

Mr.G.R.Syed, Advocate for the Petitioner.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : JUNE 27, 2025

PER COURT :

1. WP No.7554/2025 was not on Board. Being an identical

matter, taken on board.

2. On 24.06.2025, we had passed the following order :-

1. After this matter was heard for quite sometime, the Petitioners, some of whom are present in the Court, admit that the properties concerning which this Writ Petition has been filed, does not belong to them. Not a single parcel of land or a plot belongs to them. The structures erected on these plots are without any building or construction permission from the competent authority.

2. The Corporation has invoked Section 231 of the Maharashtra Municipal Corporations Act, 1949 and has initiated a drive for removal of encroachments over the past six months in the City. Now they have reached the area where the Petitioners reside. When called upon, the Petitioners admit that none of the plots on which they have erected concrete structures, belong to them. They do not have any title to the land and they had constructed their small dwellings without the construction permission.

3. This Court (Coram: V.S. Shirpurkar and B.H. Marlapalle, JJ.) has delivered a judgment in Govind Nagar Shop Keepers Association and Anr. Vs. State of Maharashtra and Ors.; 1998 (2) Mh.L.J. 45, concluding that those who do not have any rightful residential spaces and do not have any permission to construct dwellings or shops, the right to live a decent life is not violated by Articles 14, 19 and 21 of the Constitution of India, if such structures are demolished. It was concluded that a common man would suffer if these encroachments are removed by the Corporation particularly when the Corporation is

duty bound to law to remove the encroachments. However, it cannot be said that construction of Pucca houses or shops could be said to be jeopardized if they amount to illegal structures which are being demolished.

4. The view taken by the Hon'ble Supreme Court in the judgment dated 13.11.2024 in Writ Petition (C) No.295/2022, is a clear dictum of the Hon'ble Court that those who have a right and title to a property, cannot be deprived of their dwellings or homes without following the due procedure of law. It is only when it is crystallized that the properties do not belong to them and are clear acts of encroachments on the roads, streets, footpath or abutting the railway line, such unauthorized structure will have to be demolished. In the instant case, most of the Petitioners have constructed Pucca houses in the 60 mtrs. width of the road. Some who may be having their houses beyond the total width of 60 mtrs., cannot be touched and the learned advocates for the Corporation submits that they would not be touching such property.

5. On the issue as to what would happen if the illegal structures are demolished and the inmates are on the street, the Corporation makes a statement that they have five shelter homes and in each shelter home, 200 people can be accommodated for some time. Therefore, those who fall within the said limit of 60 mtrs, would be granted shelters by the corporation for the time being and the structures will have to be demolished.

6. At this juncture, the learned advocate for the Petitioners submits on instructions that all those Petitioners residing within the 60 mtrs. width of the road having constructed Pucca

houses would demolish their own structures prior to 31.07.2025. In the meanwhile, they would start searching for alternate accommodation and relocate themselves.

7. Let such affidavits be filed until tomorrow in this Court. Those Petitioners who do not file the affidavit undertakings to demolish their own structures by 31.07.2025, the Corporation would be at liberty to proceed to demolish the said structures with effect from 26.06.2025, only with regard to those which are within the 60 mtrs. width of the road. This order is restricted only to the extent of the Petitioners.

8. List this petition on 25.06.2025 for recording the affidavits and for dictating orders.”

3. In pursuance to the above order, the petitioners submit that they would be removing their structures / portions of the dwelling, which have been constructed without building/construction permission or without a title to the property. It is further canvassed that the Government has issued a circular dated 10.02.2001, with regard to “non-demolition of unauthorized slums and other constructions on Government, Semi Government or Private lands during monsoon.” It is also stated that “this order will not be applicable in the following cases :-

“1. Excepting residential constructions and residential slums constructed prior to 1 June with

people actually residing therein, other constructions / unauthorized slums / encroachments.

2. All types of constructions / unauthorized slums / encroachments done after 1 June taking advantage of the monsoon.

3. Within Brihanmumbai as well as other cities where Slum Rehabilitation Scheme has been inevitable to do eviction of eligible / ineligible slums for freeing space during the current monsoon, only after being confirmed thus slums at such locations.

4. At locations where the Court has given order for eviction of slums.”

4. It is, thus, apparent from Clause 4 that the said circular would not apply to the locations with reference to which the Court has given orders for eviction of slums.

5. The issue before the Court emerging from these petitions, is not with regard to slums. There are 2 types of constructions before the Court. One type consists of those constructions of commercial tin shops selling goat meat, chicken meat, Garages and other similar commercial constructions on open lands abutting the main road on one side and adjacent to colonies, which have legal existence, which are abutting the main arterial road from the airport upto to Kranti Chowk,

where the Chhatrapati Shivaji Maharaj statue is erected and further to the Holy Cross School and the Military Area. One segment of the said arterial road is locally called as the *Adalat Road*, considering the large complex of the District Court, Maharashtra Administrative Tribunal, Family Court, Co-operative Court, Law and Justice Department and Labour and Industrial Courts. The first sight of the town, as soon as anybody gets out of the airport and travels on this arterial road, is the encroachments on either side of the road upto Seth Nandlal Dhoot Hospital, where there is always a traffic jam due to encroachments abutting the road, which creates serious hurdles even for the ambulances. Well marked service roads have virtually disappeared as there is encroachment all around. Various two wheeler and four wheeler repair garages, vegetable vendors, fruit sellers, besides the chicken and mutton shops, are abutting the road. The issue is, how far can this can be permitted or tolerated ? And how long should the city continue to miserably suffer such tin shade shops/jhuggi/zoppadies ?

6. The other type of encroachment is the illegal constructions of dwellings. Since, the road has not been widened for many years, residents in the various colonies started constructing on the government

lands. They have dared the law by erecting constructions without permission and approval of plans. The internal roads have shrunk and have squeezed the area leading to maddening traffic jams.

7. We have passed the order dated 24.06.2025 and we clarify in this order as well, that all those tin sheds, taparies and temporary shops are to be removed by those residents responsible for their erections, by today evening. By 27.06.2025 evening, the said area should be cleaned up, failing which, the Corporation Authorities are permitted to clear those areas from the morning of 28.06.2025. Several Petitioners, who have set up such shops, have sought time till today evening to remove their belongings and the material kept inside the shops. Affidavits making such statements are being filed in this Court. We permit this.

8. The second type of the properties before us include the Petitioners who do not have any right or title to a property or a plot and have erected constructions. These encroachments are in major colonies, which have a legal existence and some of such dwelling constructions are within the width of the road and some portions are beyond the

width. As observed by the Hon'ble Supreme Court in paragraph No.91 of the judgment delivered in WP (Civil) No.295/2022, the directions and conditions culled out by the Hon'ble Supreme Court as being procedural norms to be adopted while carrying out demolitions, would not apply to those structures which are completely illegal and are encroachments. However, as per the statements of the Petitioners, they need time to take away their belongings and remove such portions of the constructions.

9. With regard to such structures, where a portion may be on the width of the road, we had granted time till 31.07.2025 for such dwellers to shift their belongings to those portions which are outside the width of the road. In order to avoid damage to the entire structure, which could happen if the Demolition Squad of the Corporation takes charge of the situation, we have granted time to the Petitioners to remove those structures by themselves so that the rest of the dwelling would not be disturbed. Specifically in this context, we clarify today that, in view of the request made before us by these identically placed Petitioners, we would grant time to all of them, up to 15.08.2025

10. It is apparent that the circular dated 10.02.2021, mentions that this circular would not be applicable to the locations where the Court has given orders. The Corporation has relied upon the judgment delivered in **Govind Nagar Shop Keepers Association Vs. State of Maharashtra and Others** [1998(2) Mh.L.J. 45], the series of orders passed by the Aurangabad Bench in PIL No.109/2015 with PIL No.38/2015 with WP No.1651/2004 with WP No.421/1986, more particularly the order dated 22.08.2024, wherein we have adverted to the judgment delivered by the Bombay High Court [Coram : A.S.Oka (as His Lordship then was) and A.A.Sayed (as His Lordship then was)] in **Society for Fast Justice and another Vs. the State of Maharashtra and Others** [2016 SCC Online Bombay 9263].

11. In paragraph No.17 of the order dated 22.08.2024 (supra), we have recorded as under :-

“17. In the next hearing, we expect the learned Amicus-Curiae to point out acts of dis-obedience of various orders passed by this Court, by the Corporation Authorities or individuals. We will consider such instances and we will start issuing notices under the Contempt of Courts Act to the Officers of the Municipal Corporation. If we find that the instances of dis-obedience are repeated, we will be recommending suspension of the Officers, for disobeying our orders. We expect

that the Municipal Commissioner would take cognizance of these observations because ultimately he would be the Authority, who will be responsible for the implementation of our directions and he would not be immune from facing contempt of Court proceedings.”

12. In the order dated 25.07.2024 passed in PIL No.109/2015, we had recorded in paragraph Nos. 10,11, and 12 as under :-

*“10. We are now developing a strong feeling that the officers of the Corporation have an intention of neutralizing the orders of the High Court. In this last one year, we have passed innumerable orders running into hundreds of pages. We had also quoted a portion from the judgment delivered by the Bombay High Court [Coram : A.S.Oka (as His Lordship then was) and A.A.Sayed (as His Lordship then was)] **in Society for Fast Justice and Another Vs. The State of Maharashtra and Others, 2016 SCC Online Bombay 9263**. Yet, in this last one year, we have not found that the conclusions of the Court in Society For Fast Justice (supra), and several strict orders passed by us, have really had the desired result.*

11. Since, Shri Deshpande, the learned Senior Advocate assures us that he would personally look into the issue, we would let the Corporation one more opportunity to deal with the ever growing menace of encroachment in Chhatrapati Sambhajinagar (Aurangabad).

12. The learned Senior Advocate Shri Deshpande submits that 30 days time may be granted to the

Corporation to work on the encroachment removal drive in the whole city, without showing any affection or favour towards any encroacher or violator, that we are listing this Petition on 22.08.2024, at 4.30 p.m.”

13. In **Kaniz Ahmed Vs. Sabuddin and Others**, Petition for **Special Leave to Appeal (Civil) Nos. 12199-12200/2025**, [2025 SCC OnLine SC 995], the Hon'ble Supreme Court of India has observed in paragraph Nos. 5 and 7, as under :-

5. In one of our recent pronouncements, in the case of Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others reported in 2024 INSC 990, we have made ourselves very explicitly clear that each and every construction must be made scrupulously following and strictly adhering to the rules and regulations. In the event of any violation, being brought to the notice of the courts, the same should be dealt with iron hands and any leniency or mercy shown to the person guilty of unauthorised construction would amount to showing misplaced sympathy. In our decision referred to above, we have issued the following directions:

“(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of

wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non- issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90

days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.

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7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law,

rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]

14. Besides the above fact situation, we record in the interest of the Petitioners that those Petitioners, whose construction is beyond the width of the road as per the records, would be at liberty to move the Corporation within one week for the regularisation of *Gunthewari* or any other valid policy of the Government with all relevant documents, by following the due procedure. Only if such applications, complete in all respects, are tendered in relation to such properties, the Corporation may follow the due procedure laid down in Law and take an appropriate decision. If any application is not complete and is aimed only at prolonging the issue and delay the matter, the Corporation would be at liberty to reject the same.

15. We have already permitted the Petitioners to tender their affidavits in terms of the earlier orders. The said condition applies to all. So also, we have extended the time till 15.08.2025, to those who desire to demolish the illegal concrete constructions.

16. Needless to state that if a demolition takes place in terms of the Corporation's Policy, earlier orders of this Court and our directions, and subsequently it is noticed that the land was beyond the scope of the Government's property and the concerned Petitioner was deprived of the property in violation of Article 300 A of the Constitution, compensation payable in accordance with the provisions of Law will be, therefore, quantified by following the due procedure and would be paid to such people. Therefore, in such cases, the Corporation shall follow the due procedure prescribed in law, before initiating the demolition of such structures. We clarify, that this would not apply to the tin shops/sheds/slaughter places in the tin enclosures/garages etc.

17. The learned Advocate for the Petitioners submits that, whether legally or illegally, some encroachers in the demolition drive

were earlier paid compensation by the Corporation / Government under a Rehabilitation Scheme and, therefore, similar compensation should be paid to the encroachers before this Court. The learned Advocates for the Corporation and the learned Government Pleader vehemently contradict the statement made by the learned Advocate for the Petitioners. We are unable to accede to such request as it would not stand the test of Law.

18. In view of the above directions, **all the Petitions stand disposed off.**

(Y.G.KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)