

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11143 OF 2025**

Santosh Nigappa Burje
Age: 39 years, Occu.: Business,
R/o. Part of City Survey No.405,
Behind Ghorpade
Natyagriha, Ichalkaranji,
Kolhapur.

..Petitioner

Versus

Ichalkaranji Municipal Corporation,
Through Commissioner,
Atalbihari Vajpayee Chow, Station Road,
Ichalkaranji, Kolhapur.

..Respondent

...

Mr. Ishan Kapse, a/w Mr. S. N. Mudgal, Advocate for Petitioner.
Mr. Akshay P. Shinde a/w Mr. Avesh Ghadge, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th SEPTEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present petition takes exception to order dated 30.08.2025 passed by learned District Judge, Ichalkaranji below Exhibit-5 in Regular Civil Appeal No.44/2024, thereby rejecting petitioner's application seeking temporary injunction against respondent-Corporation pending hearing and final disposal of Regular Civil Appeal.

3. The petitioner contends that he is owner of part of land in City Survey No.405. He has constructed residential house on his plot and resides alongwith his family. His adjacent owner Mr. Sadanand Kulkarni made complaint to Corporation alleging illegal construction by petitioner. In deference to his objection, respondent-Corporation issued notice dated 30.12.2021 to him under Section 53 of Maharashtra Regional and Town Planning Act, 1966 (for the sake of brevity hereinafter referred as 'MRTP Act, 1966'). However, further action was not initiated in pursuance of said notice. Mr. Kulkarni and another person filed Writ Petition No.14894/2022 before this Court seeking Writ of Mandamus against Corporation to take action against unauthorized construction. However, said Writ Petition was disposed of in wake of pendency of suit filed by Mr. Kulkarni.

4. The petitioner also instituted Regular Civil Suit No.384/2023 seeking decree of perpetual injunction to restrain Corporation from demolishing petitioner's construction of petitioner over suit property. Meanwhile, *ex-parte* ad-interim protection was granted in favour of petitioner. Mr. Kulkarni filed another Writ Petition No.1564/2024 seeking Mandamus against Corporation to take action in pursuance to notice served upon petitioner under Section 53 of MRTP Act, 1966. The respondent-Corporation made statement before this Court assuring to execute notice within period of four weeks. Accordingly, Writ Petition was disposed of. The petitioner had then filed Review Petition

No.112/2024, which was disposed of with direction to Trial Court to decide temporary injunction application filed by petitioner in time bound manner. Till then, respondent-Corporation was restrained from demolishing suit property.

5. The Trial Court after hearing parties, rejected petitioner's application Exhibit-5 in Regular Civil Suit No.384/2023, so also rejected plaint holding that suit is barred in view of Section 149 of MRTP Act, 1966. Aggrieved petitioner filed Regular Civil Appeal No.44/2024 before learned District Judge at Ichalkaranji and pressed application below Exhibit-5 for grant of injunction. The learned District Judge rejected said application vide impugned order dated 30.08.2025. Hence, this Writ Petition.

6. Mr. Ishan Kapse, learned Advocate appearing for petitioner would submit that undisputedly petitioner is owner of property. The construction is raised within four corners of plot owned by petitioner. On 17.10.2024, petitioner has already moved Competent Authority for regularization of construction and in view of Section 45 of MRTP Act, 1966, it shall be deemed to have been accepted.

7. Mr. Akshay Shinde, learned Advocate appearing for respondent-Corporation vehemently opposes contention raised by petitioner. He would submit that petitioner raised illegal construction without obtaining permission from respondent-Corporation. The person, who

has raised construction in breach of law cannot be permitted to take recourse of regularization. According to him, provision as to regularization can be invoked, where there is some minor deviation in construction as compare to plans and only such deviation is made for bonafide reasons. The respondent-Corporation has already served notice under Section 53 of MRTP Act, 1966 requiring petitioner to remove unauthorized construction. He would, therefore urge to reject petition.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it is evident that petitioner has raised construction without obtaining necessary permission from Planning Authority. The respondent-Corporation served notice under Section 53(1) of MRTP Act, 1966 upon petitioner for removal of unauthorized construction. This Court in Writ Petition No.1564/2024 has already directed Corporation to act upon notice. However, in Review Petition No.112/2024, limited protection was granted while directing Trial Court to decide application for temporary injunction. The learned Trial Judge finally rejected petitioner's application for temporary injunction vide order dated 02.09.2024, so also rejected plaint under Order VII Rule 11(D) of Code of Civil Procedure. In this background, limited controversy needs to be addressed in this petition, if petitioner deserves interim protection pending his Appeal against order of rejection of plaint.

9. The Division Bench of this Court in *Suo Motu Public Interest Litigation No.1/2025* in matter of *Jilani Building at Bhiwandi Vs. Bhiwandi Nizampur Municipal Corporation and Others* laid down guidelines for Civil Courts in paragraph no.81, which reads as under:

“We also caution the Civil Courts which might be approached with civil suits/proceedings when the Municipal Corporations/Planning Authority/Competent Authority commence action against illegal and unauthorized constructions or actions being taken against dilapidated buildings. The Civil Court needs to be extremely cautious and ought to have a well considered approach in dealing with such suits. When applications for temporary injunction are moved in civil suits which are filed assailing any action being taken by the municipal officers on unauthorized/illegal constructions or actions being taken against dilapidated buildings, the injunction applications ought to be decided without any delay and not later than one week from the date of its presentation, so that in legitimate cases, the actions against illegal structures being taken by the Municipal Officers, are not delayed by any undeserving judicial intervention. In this context, we may usefully refer to a decision of the Division Bench of this Court in Mohd. Talib Habib Shaikh v. Mohammad Siddaqui Haji and Others. Justice G.S.Patel speaking for the Bench, made the following observations on the role of the Civil Courts in considering matters arising from unauthorized and illegal construction, also referring to the previous orders passed by the Division Bench: -

“6. We are surprised that when the demolition was scheduled, the persons concerned promptly approached a Civil Court. The Civil Court in Regular Civil Suit No. 716 of 2018 passed an ex parte ad-interim order dated 31st December 2018. That order was served on the Municipal Corporation. That is taken to be a handicap and an obstacle.

7. We are shocked and surprised firstly at the approach of the Municipal Corporation, which by now through its officials is experienced enough to pre-empt the passing of such ex parte orders. The officials should be aware that those constructing buildings unauthorisedly and illegally are bound to go to every Court right up to the highest Court in the country to stall the inevitable. Therefore, a

caveat should have been filed and entered. That was not done. That possibly indicates that the Municipal Corporation is giving its blessing to such construction activity within its limits. If the order of this Court can be neutralised or set at naught and the directions therein set at naught in this manner, then we are equally disturbed by the approach of the Civil Court.

9. We would only invite the attention of the Civil Court to several judgments of this Court as also of the Supreme Court particularly in the case of Shiv Kumar Chadha v Municipal Corporation of Delhi [(1993) 3 SCC 161] wherein the Hon'ble Supreme Court has highlighted the element of public interest which is paramount in matters of this nature and particularly while considering an application for interlocutory orders, including prohibitory directions and injunctions restraining public bodies from demolishing unauthorised constructions or removing obstacles in implementation of a public project.

10. If public interest is not to be considered a vital element as highlighted in this judgment, then possibly everything would be subsidiary. The civil court must be mindful that an illegal construction poses a threat to the public at large and that there is good reason for the statutory requirement that every construction has to be authorised so that it conforms inter alia to safety and other norms."

10. In light of aforesaid observations, when respondent-Corporation has commenced action against illegal/unauthorized construction made by petitioner, judicial intervention is uncalled for. In present case, Municipal Corporation came into action upon intervention of this Court, whereby Corporation assured this Court to take up action expeditiously. When petitioner has clearly flouted mandate of law while raising illegal construction, he cannot seek protection of injunction order from Civil Court. Pertinently, petitioner has filed application seeking regularization first time in October-2024, when he

was unsuccessful in dodging action of Corporation. At this stage reference can be made to observations of Division Bench of this Court in case of ***Feroz Talukdar Khan Vs. Municipal Commissioner, Thane Municipal Corporation and Another***¹, particularly in paragraph no.16, which reads as under:

“16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.”

11. In light of aforesaid observation, pendency of application for regularization would not benefit petitioner to secure injunction order against Corporation in facts of present case. In light of aforesaid

¹ 2025 SCC OnLine Bom 2423.

observations, this Court do not find substance in Writ Petition. Writ Petition stands dismissed.

12. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025