

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.118 OF 2024**

Mrs. Sylvina Marian Carvalho

... Petitioner.

V/s.

Thane Municipal Corporation & Ors.

... Respondents.

Mr. Mayuresh Lagu a/w. Adv. Shashank Dubey for the Petitioner.

Mr. Ram Apte, Senior Advocate a/w. Adv. Narayan Bubna for Respondent Nos.1 to 4.

Mr. Kedar Dighe, Addl. GP a/w. Adv. A.A. Alaspurkar, AGP, for Respondent No.6-State.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.****DATE : 22nd January 2025.****Order (Per: Kamal Khata, J.):-**

1) The Petitioner's limited grievance in Civil Writ Petition No.76 of 2024 and Writ Petition No.118 of 2024 is that, the private Respondents have carried out some illegal constructions and despite complaints, the Thane Municipal Council ("TMC") is not initiating any action.

2) By our Order dated 18th June 2024 we had directed the TMC to cause an inspection at site and if there was merit in the allegations of the Petitioner to take action in accordance with law. We also recorded that, if adverse action is proposed to be taken against the private Respondents who are alleged to have put up the illegal constructions, the principles of natural justice and fair play must be followed. We called upon them to do the

needful on or before 16th July 2024. We further directed the TMC to communicate its decision to the Petitioner and also file a compliance report by 23rd July 2024. In these terms the two Petitions were disposed off.

3) On 8th January 2025, the TMC's Advocate sought and was granted time to file a compliance report by way of an Affidavit.

4) On 22nd January 2025, the Assistant Municipal Commissioner of Thane Municipal Corporation namely Mr. Bhalchandra Ghuge filed his Affidavit.

4.1) We are shocked to read the Affidavit. We therefore called upon their Advocate Mr. Bubna to give an explanation as to how, in paragraph No.2 of the Affidavit, the structure which was declared unauthorized was sought to be included in the Urban Renewal Cluster No. 12 of the Thane Municipal Corporation and the provisions of Regulation 14.8 of the Unified Development Control and Promotion Regulations were sought to be applied in this case.

4.2) The matter was kept back, for Mr. Bubna to take instructions, and was taken up in the second session.

5) In the second session, learned senior counsel Mr. Ram Apte appeared for the Thane Municipal Corporation. His attention too was drawn to the paragraph No.2 of the said Affidavit and was asked for an appropriate explanation for the same. He asserted that, it was in accordance with the Regulations that were framed and therefore there was nothing

illegal about the same.

6) For ready reference the Regulation 14.8 of the Unified Development Control and Promotion Regulations is reproduced here:

“14.8 URBAN RENEWAL SCHEME

Urban Renewal Scheme (URS) shall be applicable for all Corporation as given below.

4.8.1 Urban Renewal Scheme (URS) for Municipal Corporation Area.

i) Urban Renewal Scheme (URS) means any scheme for redevelopment of a cluster or clusters of buildings and structures in Municipal Corporation Area, over a minimum area of 10,000 Sq.m., in non-congested area and 4000 Sq.m. in congested area, bounded by existing distinguishing physical boundaries such as roads, Nallahs, railway lines etc. accessible by an existing or proposed D P road which is at least 18 m. wide and identified for urban renewal:-

[However, in specific cases, in which URS is not bounded by roads, Nallahs an railway lines etc. and / or, areas of any vacant or encroached land situated in the periphery of 400 mt. belonging to Municipal Corporation / any Public Authority / Planning Authority / Special Planning Authority, which is not contiguous, is proposed to be included in the URS, then the boundaries of such cluster having non-contiguous area can be decided/ finalised the by Municipal Commissioner, in consultation with High Power Committee (H.P.C.).]

However, in specific cases, in which URS is not bounded by roads, Nallahs and railway lines, then the boundary of the cluster can be decided/ finalised by Municipal Commissioner, in consultation with High Power Committee (H.P.C.)

In case of demonstrable hardship such as natural sub division by roads, Nallahs, river, railway lines, the area of the cluster can be allowed up to an area of 8000 Sq.m. in non-congested area which shall be allowed by Municipal Commissioner in consultation with H.P.C.

However no forest land shall be included in such URS.

[Provided that encroached forest land may be included in such URS for clearance of encroachment on such forest land with NOC of Forest Department. However after clearance of encroachment, such forest land shall be used as mentioned in regulation 14.8.7(i)(g) with NOC of Forest Department.]

ii) Such URS may be :-

- a) Under the Development Plan (DP), where the DP contains such well-defined Clusters; or*
- b) Under the Urban Renewal Plan (URP) for the concerned area, prepared and notified by the Commissioner, who may revise the same, as and when required; or*
- c) By the Promoter of the Urban Renewal Scheme over a cluster or clusters of buildings, where such clusters are not shown on the DP and the URP is yet to be prepared. If such plans are submitted and approved, these shall mean to be URP within the meaning of this Regulation.*

*iii) **Building Age Criteria for URC shall be as under :—***

The Urban Renewal Cluster (URC) may consist of a mix of structures of different characteristics such as –

- a) **Unauthorized buildings which are at least***

30 years of age ;

- b) *Authorized dilapidated buildings, as determined by [the Designated Officer appointed by Municipal Commissioner or as per the] Regulation of Redevelopment of Dilapidated Buildings;*
- c) *Authorized buildings which are at least 30 years of age;*
- d) *Buildings belonging to the Central Government, the State Government, Semi-Government Organizations and Municipal Corporations, as well as Institutional Buildings, Office Buildings, tenanted Municipal Buildings, Staff Quarter Buildings of Municipal Corporation , that are at least 30 years of age with prior consent of the respective Authority ;*
- e) *Any land belonging to the State Government, any Semi-Government Organization, Municipal Corporation and MHADA (either vacant or built upon) which falls within the area of the proposed Urban Renewal Scheme including that which has been given on lease or granted on the tenure of Occupant Class II, provided that if built upon, these building shall be at least 30 years of age ;*
- f) *Any other buildings which may be less than 30 years of age but which by reasons of dis-repair or because of structural / sanitary defects, are unfit for human habitation or by reasons of their bad or sub-optimal configuration or the narrowness of streets are dangerous or injurious to the health or safety of the inhabitants of the area, as certified by [the Designated Officer appointed by Municipal Commissioner or as*

per the] Regulation of Redevelopment of Dilapidated Buildings;

- g) Slum areas declared as slums under section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 or slums on Public lands prior to 1st January 1995 or such other reference date notified by the Government. However such slum area shall be maximum 25% of cluster area;*

In case of Ulhasnagar Municipal Corporation, minimum area shall be 4000 Sq.m. for non-congested and congested area.

[Notwithstanding Anything Contained in these regulation, it shall not be permissible to develop declared slum under Regulation No. 14.7 which is included in URP / URS prepared & notified as per Regulation No. 14.8.1 (ii).]

- h) The lands belonging to MIDC can be included in the URS after obtaining necessary clearance from Industries Department.*

Explanation-1. - Age of a building shall be as on the 1st of January of the year in which URC involving such building, complete in all respect is submitted to the Commissioner or prepared and notified by the Commissioner and shall be calculated from the date of occupation certificate or, where such occupation certificate is not available, from the date of assessment as per the

property tax record in respect of such building, available with the Municipal Corporation.

Explanation–2.—Whenever any authorized building, more than 30 years of age, is included in a URC, the same shall not be done without evaluation of its state of disrepair by Municipal Corporation and if such building is found in a state of disrepair, only after giving the owner/occupier(s) thereof, a notice of three months to cause any repairs needed. At the end of three months, if such building is found to be habitable and safe, such building shall be treated at par with authorized buildings which are less than 30 years of age. If at the end of three month, such building is found and certified by [the Designated Officer appointed by Municipal Commissioner or as per the] Regulation of Redevelopment of Dilapidated Buildings as dilapidated and unsafe for habitation, such building shall be included in the URC without the requirement of consents.

Explanation–3.—If some authorized buildings which are less than 30 years of age or buildings which are developed or in the process of development, under the different provisions of the DCR, are required to be included in the URC for the purpose of wholesome planning, they may be so included, provided the area under such buildings does not exceed 40% of the total area of URC. If any such building is included in the URC without the requisite

consent of 70% of all title holders of such building, the Commissioner shall retain such building while designing/ sanctioning URS and area of such building shall be excluded from calculation of FSI under this Regulation.

However, the area under slum mentioned in Regulation No.14.8.1(iii)(G) and area under authorised structure mentioned above shall not be more than 50% in aggregate.

Explanation 4.—When any private land owner / developer submits such scheme will be given priority while implementation.

14.8.2 Eligibility for Urban Renewal Cluster (URC)–

- i) **For Buildings outside Slums** -Every occupant of every building falling under a URC on the date of sanction of this Regulation (hereinafter referred to as the cut-off date), shall be eligible for rehabilitation and relocation under the Scheme, in accordance with the provisions of Regulation No. 14.8.4 and 14.8.5, subject to the ineligibility criteria mentioned herein below.*
- a) **No new Tenancy, occupancy or any other right created after the cut-off date shall be taken into account in any illegal or unauthorized construction. No unauthorized construction made after the cut-off date in any existing building or in the form of new building shall be considered while doing computation of existing FSI or liability of rehabilitation on the URC.***
- b) Any occupant, who has been allotted any subsidized housing in the [respective*

Metropolitan Region, or in the Corporation area as the case may be] by any public or semi-public authority in the past shall not be eligible for subsidized rehabilitation under a URC as mentioned in Regulation No. 14.8.5. For this, a self-declaration in the form of Registered Affidavit shall be considered sufficient which, if ever found to be false, shall render the concerned allottee liable for eviction and prosecution as per law.

- c) Subject to the forgoing provisions, only the actual [owners of residential unit of authorized building and the occupants of unauthorized buildings] fulfilling the eligibility criteria mentioned under this Regulation shall be held eligible for rehabilitation and any person, other than the actual occupant, claiming rights as owner/ promoter/ developer/lessee over any land/ building/ structure included in the URC, shall have no right whatsoever to rehabilitation under the URC in the reconstructed tenements against such land/building/structure. In case of an unoccupied building or a building occupied illegally, no one shall have right whatsoever to rehabilitation under the URC, against such building/structure.*
- ii) Slum Areas - Whenever a Slum area or part thereof is included in a URC, eligibility of the hutment dwellers of such slum area rehabilitation under the URC, shall be governed by corresponding provisions of Slum Rehabilitation Scheme. Eligibility of any hutment dweller of a Slum area included in the URC shall be certified by the Competent Authorities as notified under the*

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act, 1971). For slum dwellers not covered under Slum Rehabilitation Scheme, the eligibility for rehab area shall be the same as under Slum Rehabilitation Scheme.”

[Emphasis supplied]

7) Upon the plain reading of the above provision, we do not find how an unauthorized building which is recently constructed can be included in the scheme. We are also unable to accept this contention of the learned senior counsel, since ex facie it is contrary to the recent Judgment of the Hon'ble Supreme Court, in the case of *Rajendra Kumar Barjatya & Anr. vs. UP Awas Evam Vikas Parishad & Ors. in Civil Appeal No.14604 OF 2024 and connected Appeals reported in 2024 SCC OnLine SC 3767*, which reiterates the settled law that “illegality is incurable”. Paragraph No. 20 of the Judgment reads as under:

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would

amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in

orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

[Emphasis supplied]

8) In view of the aforesaid law, we are unable to accept the contention of the learned senior counsel that, such an illegal building would be included in a unified redevelopment as a cluster building.

9) In view of the deliberation that followed in Court, the learned senior counsel has caused filing of another Affidavit dated 22nd January 2025 by the end of the second session. In this Affidavit the Assistant Municipal Commissioner of the Thane Municipal Corporation Mr. Bhalchandra Ghuge has made a solemn statement that he shall start the demolition of the ground plus seven storeyed building called Vinayak

Bhavan on 23rd January, 2025 and continue to demolish until its completion.

10) We list this matter for compliance on 7th February, 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)