

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

WRIT PETITION NO.1807 OF 2024

- | | | | |
|----|--|---|-----------------|
| 1. | Meenanath S/o Shivram Patil, |] | |
| | age. 72 yrs. oc. Rtd from Indian Navy, |] | |
| | R/o House No.2047-A, Kamtha, |] | |
| | Menwadi Post + Tq. Uran, Dist. |] | |
| | Raigad. Pin – 400702. |] | |
| 2. | Vijay S/o Mahadev Jadhav, |] | |
| | age 46 yrs. Occ. Pvt. Business, |] | |
| | R/o Room No.764-C- Patil Ali, |] | |
| | Near Pratik Bunglow, Bori Pakhadi, |] | |
| | Tq. Uran, Dist. Raigad. |] | ...Petitioners. |

V/s

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|----|---|---|--|
| 1. | Vivek S/o Balaram Deshmukh, |] | |
| | age. Major, occ. Business R/o. Sonu |] | |
| | Apartment “D” Wing, Kamtha Road, |] | |
| | Tq. Uran, Dist. Raigad. Pin – 4000702. |] | |
| 2. | M/s. Vinayak Developers, |] | |
| | through Mr. Vinayak Jaivindra Koli |] | |
| | R/o. Mora Koliwada Post, N.A.D. (Karanja),] |] | |
| | Tq. Uran, Dist-Raigad. |] | |
| 3. | Gram Panachayat Chanaje, |] | |
| | Taluka Uran, Dist-Raigad through |] | |
| | Sarpanch / Gramsevak. |] | |
| 4. | Chief Executive Officer, |] | |
| | Zilla Parishad Raigad (Alibaug) |] | |
| | District Raigad. |] | |
| 5. | Tahsildar Taluka Uran Dist. Raigad. |] | |
| 6. | Collector, District Raigad. |] | |
| 7. | City and Industrial Development |] | |
| | Corporation, through its Chief |] | |
| | Controller, illegal construction, |] | |

- | | | | |
|----|------------------------------|---|-----------------|
| | CIDCO Bhavan, New Mumbai. |] | |
| 8. | The State of Maharashtra, |] | |
| | through its Chief Secretary, |] | |
| | Mantralaya, Mumbai – 400032. |] | ...Respondents. |

Mr. Abhinandasn B. Vagyani a/w. Adv. V.R. Patil i/by Adv. S.V. Patil for the Petitioners.

Mr. Vishal Kanade a/w. Adv. Sachin Pawar for Respondent Nos.1 & 2.

Mr. Anish Khandeparkar a/w. Adv. Priyanka Acharya for Respondent No.4- Raigad Zilla Parishad.

Ms. Tanu N. Bhatia, A.G.P for Respondent Nos.5, 6 & 8-State.

Mr. B.B. Sharma for Respondent No.7.

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

RESERVED ON : 16th April, 2025.

PRONOUNCED ON : 20th June, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) The Petitioners have filed this Petition under Article 226 of the Constitution of India, seeking a writ of mandamus, directing the Respondents Nos.5 to 7 to demolish the illegal construction erected by Respondent Nos.1 and 2, in accordance with the Notice dated 7th March, 2014. They further seek directions to Respondent Nos.6 and 7 for initiating appropriate Civil and Criminal actions against Respondent Nos.1 and 4 for their inactions.

2) The Petitioners contend that, the Respondent No.1 started construction on the land bearing survey No.71/2/A and Survey No.71/2/B,

based on the No Objection Certificate (NOC) issued by the Grampanchayat Chanaje i.e. Respondent No.3, on 31st October, 2011. According to the Petitioners, a mere perusal of clause 1 of the NOC discloses that, the Grampanchayat had issued NOC for a house. Furthermore, clause 16 of the NOC explicitly stated that, the Respondent No.1 was required to obtain permission from City and Industrial Development Corporation of Maharashtra ('CIDCO').

2.1) The Petitioners further contend that, the Respondent Nos.1 and 2 were well aware about the mandatory permissions that had to be taken from CIDCO, as CIDCO had issued a letter dated 28th November, 2011, categorically informing them that, their land was falling under the residential zone and that any construction would require CIDCO's approval. Despite being fully aware of this requirement, the Respondent Nos.1 and 2 started construction on the said plot of land in the year 2013 without taking necessary approvals from CIDCO.

2.2) In view of this blatant disregard for regulations, the Petitioners lodged multiple complaints with the Grampanchayat Chanaje i.e. Respondent No.3 namely, on 3rd December 2013, 7th December 2013 and 23rd December 2013, highlighting that the unauthorized construction obstructed their access to their house and water well. Additional complaints were lodged with the Panchayat Samiti, Uran on 30th December, 2013 and

later with Collector, Raigad.

2.3) Upon receiving the complaint, the Collector, Raigad directed the Tehsildar to make an inquiry and submit a report. On 20th February, 2014 the officers of CIDCO conducted site inspection of the illegal and unauthorized constructions and issued a Notice dated 7th March 2014 to the developers under Section 54(1) of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act') identifying the unauthorised constructions. Despite acknowledging the illegality of these structures, CIDCO took no decisive action to demolish them. On 9th February, 2015, the Collector, Raigad, issued a letter to the Divisional Commissioner, Konkan Region, confirming the findings of unauthorised construction.

2.4) CIDCO eventually filed an FIR (No.II 5/16) under Section 54(2) of the MRTP Act against the Developers i.e. Respondent Nos.1 and 2 at Uran Police Station on 6th January, 2016. However, even after these measures, CIDCO failed to initiate demolition of the illegal and unauthorized constructions compelling the Petitioners to file the present Petition.

2.5) The Petitioners assert that, despite service of the Writ Petition on CIDCO on 15th January, 2024, CIDCO has willfully disregarded its statutory obligations and failed to initiate demolition of the unauthorised construction. The sole action undertaken by CIDCO was a belated

inspection of the illegal and unauthorized construction, conducted after an inexplicable delay of seven months on 22nd August, 2024. Such passive conduct reflects a deliberate indifference to the law and a failure to uphold its mandate.

2.6) The Petitioners further contend that, with a view to demonstrate some semblance of action, CIDCO once again issued a Notice under Sections 53(1)(A), 53(6)(b), 53(6) and 53(7) of the MRTP Act on 23rd September 2024. By this time, an entire complex comprising of five buildings had already been constructed illegally by Respondents 1 & 2. This belated issuance of notice appears to be a mere formality rather than a genuine effort to address and/or prevent the rampant unauthorised construction.

2.7) Upon receiving the notice, during the pendency of the Writ Petition, the Respondent Nos.1 and 2 along with one of the flat owners of the complex, filed a Regular Civil Suit No.117 of 2024 before the Court of Civil Judge, Junior Division, Uran against Respondent No.7-CIDCO. Curiously, the Suit was filed under Sections 34 and 38 of the Specific Relief Act, 1963 seeking a declaration that, the Notice dated 23rd September, 2024, was null and void. Additionally, they sought an injunction restraining CIDCO from demolishing the five wings of the complex.

This legal manoeuvre appears to be a calculated attempt to

frustrate the pending Writ Petition and shield the unauthorised constructions from lawful action.

2.8) It is evident that, the Suit conspicuously omitted crucial material facts and documents, including the Notice dated 7th March 2014, issued by CIDCO under Section 54(1) of the MRTP Act. Furthermore, the Suit did not disclose the existence and pendency of the Writ Petition before the High Court, which had been duly served on Respondent No.1 as early as on 15th January, 2024. Additionally, the Order dated 18th September, 2024 passed by this Court, was deliberately withheld, reflecting a clear attempt to suppress material information and mislead the trial Court.

2.9) Upon hearing the Application filed by the Respondent Nos.1 and 2, (the plaintiffs therein) the Civil Judge Junior Division, Uran, granted status quo Order on 17th December, 2024, which was extended from time to time. In the meantime, Respondent Nos 1 & 2 sought regularization of the said unauthorised structures by filing an Application with CIDCO on 27th January, 2025. However, CIDCO, instead of outrightly rejecting the Application, merely informed the Respondents that the permission could not be processed further on the same date. Notably, CIDCO refrained from rejecting the Application despite the fact that, the record clearly indicated that Notices regarding illegal constructions had been issued as far back as 7th March, 2014, and again on 23rd September, 2024. This passive approach

of the concerned Officers of CIDCO is inexplicable and suggests a reluctance to uphold the mandate law.

3) Mr. Abhinandan B. Vagyani, learned Advocate for the Petitioners, contends that this case exemplifies yet another instance where the Government Authorities have not only tolerated but effectively facilitated illegal constructions, despite receiving multiple complaints from the Petitioners. He asserts that, the Authorities, through their sheer inaction, have effectively endorsed these unauthorised constructions by merely initiating superficial processes and issuing notices without taking any substantive action. According to him, this is a classic case where the Authorities have not just neglected their statutory obligations but have, by their conduct, actively permitted the perpetuation of illegal constructions on the writ land.

4) Mr. Vishal Kanade, learned Advocate appearing for Respondent Nos.1 and 2 made a determined attempt to justify the construction, claiming that it was backed by the permissions from the Gram Panchayat. However, when specifically questioned by this Court, about whether the requisite permissions were obtained from CIDCO, he very candidly admitted that no such permissions were taken. Instead, he submitted that, an Application for regularization of the structures was filed with CIDCO on 27th January 2025. He further submitted that, a status quo Order in favour of

Respondent Nos. 1 & 2 had been granted by the Civil Judge, Junior Division, Uran, District Raigad.

5) After hearing both Counsel, we directed the production of the original proceedings of Regular Civil Suit. No.117 of 2024 from the Civil Judge Junior Division, Uran, District Raigad. The proceedings were produced before us on 19th March, 2025 and we carefully perused the same in the presence of both Counsel. Upon examination, it was evident that, the Suit conspicuously omitted any reference to the Notices issued by the CIDCO, as well as the Writ Petition filed in this Court, which had been duly served on the Respondent No.1 as early as 15th January, 2024. This deliberate suppression of material facts raises serious questions about the bona fide in filing the Suit.

6) Mr. B.B. Sharma, learned Advocate appearing for Respondent No.7-CIDCO drew our attention to the Affidavit-in-reply filed by Mr. Bharat Thakur, who was working as a Controller of Unauthorized Construction at CIDCO. He specifically highlighted paragraph No.11 of the said Affidavit, wherein it was disclosed that during an inspection conducted on 22nd August 2024, CIDCO Officials found residents occupying illegally and unauthorisedly constructed buildings. Given the absence of any construction permissions or sanctions for these illegal structures, CIDCO issued a Notice under Section 153(1A) of MRTP Act on 23rd September,

2024.

6.1) Mr. Sharma further informed us that, the Vice Chairman and Managing Director of CIDCO has filed an Affidavit dated 4th February, 2025, in compliance of the Order of this Court dated 10th January, 2025. He emphasised that, the Regularization Application submitted by the Respondent No.1 had been expressly rejected by CIDCO on 27th January, 2025. Additionally, he drew our attention to paragraph No.16 of the said Affidavit, which confirmed that, the subject lands were notified for acquisition under the Public Notice dated 12th October, 2022, and were earmarked for residential use. He therefore assured the Court that, CIDCO will proceed to take necessary action against the unauthorised constructions immediately upon receiving further direction from this Court.

7) We have heard all the Counsel and have perused the papers and proceedings before us, including the Suit filed by the Respondent Nos.1 and 2 before the Civil Judge, Junior Division, Uran, District Raigad.

8) We find this to be yet another case where the Authorities have been complicit in promoting and tolerating illegal and unauthorized constructions, despite being consistently alerted through written complaints from citizens. We fail to understand why the Respondent No.7-CIDCO deemed it necessary to issue a Notice under Section 53 of the MRTP Act on 23rd September, 2024, while the Writ Petition was pending before this

Court. In our view, this Notice was deliberately issued to assist the Respondent Nos.1 and 2 in initiating civil proceedings, securing a favourable Order of injunction and thereby frustrating or delaying the proceedings of Writ Petition pending before this Court.

9) This conduct by CIDCO is nothing but sort of an abuse of statutory powers, especially when the law is well-settled by the Supreme Court and this Court.

9.1) The Apex Court in *K. Ramdas Shenoy V/s. The Chief Officers, Town Municipal Council, Udipi* reported in (1976) 1 SC 24, has unequivocally held that illegalities are incurable and must not be tolerated. Furthermore, this Court in *High Court on its Own Motion V/s. the State of Maharashtra through Principal Secretary & Ors.* reported in 2024 SCC OnLine Bombay 918 has categorically held that mere ownership of land does not confer an absolute right to undertake construction and later seek regularization.

9.2) A Division Bench of our Court in *Abdul Razzaq Sunsera V/s. Municipal Corporation of Greater Mumbai & Ors.* reported in 2013 SCC Online Bombay 832 :(2013) 5 AIR Bom R 343 upheld the constitutional validity of section 515-A of the Mumbai Municipal Corporation Act, 1888 (BMC Act) which is pari materia with Section 433 of Maharashtra Municipal Corporations Act, 1949 (MMC Act) and in paragraph 17 has

observed as under:

“The State of Maharashtra and more particularly its urban areas are plagued by a menace of unauthorized constructions. The object of introducing section 515-A was to ensure that recourse to civil remedies is not utilized with a view to abuse the process as would generally result when those responsible for unauthorized constructions use every possible means to ensure that a delay takes place in the disposal of proceedings, once a stay is obtained. In this background, the legislative provision cannot be regarded as being arbitrary.”

10) Despite such a clear and settled position in law, it is regrettable that the Civil Judge, Junior Division, Uran, District Raigad proceeded to grant a status quo Order, effectively protecting the illegal constructions. Equally concerning is the conduct of CIDCO – an Authority established for planned development – which has not only exhibited a deliberate inaction but has also taken superficial steps, further encouraging illegal constructions. By its conduct, CIDCO has not only fostered unauthorised structures but has also jeopardized the interest of innocent flat purchasers who, despite investing their hard-earned money, have become victims of these illegal developments. These purchasers, who failed to exercise due diligence by conducting proper title searches and obtaining sanctioned plans, cannot be entirely absolved of their imprudence. Their recourse, if any, lies against the Developer.

11) A careful examination of the Affidavit filed by Respondents

Nos.1 and 2 in response to the Writ Petition reveals a deliberate suppression of material facts. The Affidavit conspicuously omits any reference to the inspections conducted by CIDCO on 20th February, 2014, and 22nd August, 2024. It further suppresses the fact that an FIR was registered against the Respondents on 6th January, 2016, under the Maharashtra Regional and Town Planning Act (MRTP Act). Additionally, the Affidavit fails to disclose the Public Notice dated 7th August, 2015, issued by CIDCO, which explicitly identified the structures in question as illegal and unauthorized.

11.1) The concealment does not end here. The Affidavit also makes a patently false statement, claiming that the property was released from acquisition proceedings and that building permission had been granted by Gram Panchayat Chanaje. Such deliberate misrepresentation and suppression of material facts constitute a serious attempt to mislead this Court and undermine the integrity of judicial proceedings.

12) The Apex Court, in its landmark judgment in the case of *S.P. Chengalvaraya Naidu v. Jagannath*, reported in (1994) 1 SCC 1, has unequivocally held that litigants who approach the Court with unclean hands are not entitled to any relief and should be dismissed at the threshold itself. The Supreme Court emphasized that the Court's doors are not open to those who engage in deceit, concealment of material facts, or misrepresentation.

13) In the present case, we are of the firm view that this is a classic example where Respondents Nos.1 and 2 have approached this Court with unclean hands. Their deliberate suppression of material facts, submission of false statements, and blatant misrepresentation of records leave no room for doubt. Such conduct cannot be tolerated, especially in matters where the sanctity of judicial proceedings is paramount.

14) The Supreme Court in the case of *Rajendra Kumar Barjatia & Anr. V/s. U.P. Avas Evam Vikas Parishad & Ors.* reported in 2024 SCC OnLine SC 3767 in paragraph 20 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 regularization 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. Unauthorized 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.”

14.1) Recently, on 30th April, 2025 the Supreme Court in the case of *Kaniz Ahmed V/s. Sabuddin & Ors.* reported in 2025 INSC 610 after reaffirming the principles enunciated in the case of *Rajendra Kumar Barjatya* (supra), in paragraph no.7 it held as under:

“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)].”

15) Accordingly, we find this to be a fit case to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India, to prevent the abuse of process and to maintain the sanctity of the judicial process. We, therefore, deem it appropriate to call for and dismiss the Regular Civil Suit No.117 of 2024 that has been filed with oblique motive, at this very stage, without allowing it to progress any further.

16) In the light of the overwhelming evidence of material suppression, misleading actions, and apparent collusion between Respondent Nos. 1, 2 and the Officers of CIDCO, we are of the considered view that the Petition deserves to be allowed.

Accordingly we pass the following Orders:

- I. Respondent No.7-CIDCO to demolish the illegal constructions on the writ land within a period of four weeks from today.
- II. The Respondents Nos.5 to 7 to take steps and actions against

all concerned Officers who have permitted the continuance of illegal construction since 2014 and take appropriate action against not only the Officers of CIDCO but also against the concerned Developers as well as Respondent Nos.1 and 2, as per the provisions of the MRTP Act as more particularly stated in the Notice dated 7th March, 2014.

III. The Regular Civil Suit No.117 of 2024 is dismissed as the same is not maintainable, by exercising our powers under Article 226 of the Constitution of India, for not only suppression of material facts and documents but also with a view to subserve the ends of justice. The Order of status quo passed by trial Court is accordingly set aside.

17. List the Petition on board under the caption for “reporting compliance” on 28th July 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

18. At this stage, learned counsel for the Respondent Nos.1 and 2 submitted that, the operation and implementation of this Order may be suspended for a period of four weeks to enable his clients to test the correctness of the present judgment before the Apex Court.

19. In view of the facts and discussion in the foregoing paras, we are of the considered view that, the stay may not be granted. Accordingly, the said prayer is rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)