

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

WRIT PETITION NO.415 OF 2025

Abdul Hamid Mapkhan Shah

....Petitioner

V/S

The Deputy Collector
(ENC/REM) Borivali-I

....Respondent

Mr. Drupad Patil i/b Mr. Balasaheb G. Lingade *for the
Petitioner.*

Ms. M.S.Srivastava, AGP *for Respondent / State.*

CORAM: SANDEEP V. MARNE, J.

DATE : 13 JANUARY 2025.

P.C.:

1. The Petitioner is aggrieved by order passed by the Divisional Commissioner on 16 August 2024 refusing to grant interim stay to the Collector's order dated 24 July 2024.

2. Collector's order dated 24 July 2024 directs *interalia* demolition of structure of the Petitioner which juts out both in Survey No.40 (land belonging to Government) as well as Survey No.49 [land of Maharashtra Tourism Development Corporation (MTDC)]. The Collector's order is apparently based on two measurements carried out by the City Survey Office of Borivali under same MR No.2141/31/10/2023 in November 2023 and January 2024. The measurement map prepared in November

2023 apparently shows that the construction of the Petitioner juts out in portion of land bearing CTS No.40. The measurement map prepared in January 2024 apparently shows that swimming pool constructed by the Petitioner juts out in land bearing CTS No.49 in possession of MTDC.

3. It is the grouse of the Petitioner that though both the measurement maps refer to application made by the Petitioner for conduct of the measurements on 27 April 2023, no such application was ever made by the Petitioner. It is also Petitioner's complaint that no notice was issued to him while undertaking the measurements in November 2023 and January 2024.

4. It also appears that in addition to the allegation of unauthorized extensions in land bearing CTS Nos.40 and 49 Petitioner is also alleged to have encroached upon the alluvial land abutting the sea on the western side of CTS No.41 by carrying out certain constructions as well as keeping several articles. It is the contention of Mr. Patil the learned counsel appearing for the Petitioner that since Petitioner is an owner of adjoining land (CTS No.41) he is entitled to either grant of or temporary use of the alluvial land under provisions of Sections 32 and 33 of the the Maharashtra Land Revenue Code (**the Code**) and that this aspect is highlighted in the Appeal preferred before the Divisional Commissioner. In my view, even if the

Petitioner is to be granted permission to use the alluvial land either permanently or temporarily under provisions of Sections 32 and 33 of the Code, the Petitioner cannot be permitted to construct anything on such alluvial land. The Collector's order would indicate that Petitioner has carried out several constructions on the adjoining alluvial land, which is not only in contravention of provisions of Sections 32 and 33 of the Code but also in contravention of the CRZ restrictions. In my view, the Petitioner cannot be permitted to retain the structures on the alluvial land abutting the sea on the pretext of boundary disputes between land bearing CTS Nos.40, 41 and 49. In my view therefore, except the permissible activities, all the constructions put up by the Petitioner on the alluvial land must forthwith be demolished.

5. Coming back to the issue of encroachment on land at CTS Nos.40 and 49, in my view, it would be more advantageous for the Divisional Commissioner to determine the factual controversy about the alleged extension of resort and swimming pool of the Petitioner in lands bearing CTS Nos.40 and 49 if a fresh measurement is conducted in presence of the Petitioner in respect of lands bearing CTS Nos.40, 41 and 49. Since fresh measurement is necessitated on account of Petitioner's request, it is Petitioner who will have to bear the expenditure towards such fresh measurement.

6. In that view of the matter, I proceed to pass the following order:

a) Within one week from today, Petitioner shall file necessary application for carrying out fresh measurements of lands bearing CTS Nos.40, 41 and 49 and shall also pay the necessary charges for urgent measurements.

b) Within a period of four weeks of receipt of application by the Petitioner and upon payment of fees for urgent measurements, the City Survey Office shall remeasure the lands bearing CTS Nos.40, 41 and 49 and indicate thereon presence of the structures of the Petitioner.

c) Till the exercise of fresh measurements is carried out and for a period of two weeks thereafter the order passed by the Collector on 24 July 2024 shall not be implemented.

d) So far as the constructions carried out on unnumbered land abutting the sea at serial No.3 of the encroachment chart in the Collector's order dated 24 July 2024 are concerned, the interim stay granted by this Court shall not cover the said constructions and the Collector's order dated 24 July 2024 shall be forthwith implemented in respect of all constructions covered by serial No.3 of the encroachment chart at pages at 81 and 82 of the Petition.

e) The Additional Commissioner, Konkan Division shall proceed to decide the Appeal preferred by the Petitioner based on the fresh measurements carried out in pursuance of the present order.

f) In case the Petitioner fails to make an application or to pay requisite urgent measurement fees within time stipulated, the interim protection granted by this Court shall automatically come to an end.

7. With the above directions, the Writ Petition is **disposed of.**

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
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