

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1392 OF 2025

Baban Nana Kene

...Petitioner

Vs

The Municipal Commissioner, KDMC & Ors.

...Respondents

Mr. Mahesh Joshi with Mr. Prashant Muley and Ms. Mukta Shanbag for
Petitioner.

Mr. Sandeep Shinde for Respondent No.1/KDMC.

Mr. Y. D. Patil, AGP for the State/Respondent Nos.2 & 3.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 25 JUNE 2025.

Oral Order (Per G. S. Kulkarni, J.) :-

1. This petition under Article 226 of the Constitution of India is filed
praying for the following reliefs:-

“A) This Hon’ble Court be pleased to admit this Writ Petition.

B) This Hon’ble Court be pleased to issue writ of mandamus or any
other appropriate writ in the nature of directions to the Respondent No.
1 & 2 to take stern legal action of removal and demolition of the illegal
construction i.e. constructions of building known as Malhar Height
Ground + 6 floor structure on plot of land bearing Survey 82 Hissa
no.7/1/B at Ayre Tal Kalyan Dist Thane.

C) This Hon’ble Court be pleased to take appropriate penal action
against the defaulting officers of the Respondents and Builder.

D) Cost of this Writ Petition to the Petitioner.”

2. We have heard learned counsel for the petitioner, learned counsel for
Kalyan Dombivali Municipal Corporation (“KDMC”) and the learned AGP for
the State. We have also perused the reply affidavit of Smt. Indu Rani Jakhar,
Municipal Commissioner of KDMC.

3. It appears to be not in dispute that the building in question is an unauthorized construction, in regard to which a show cause notice to stop work and further notices for removal of such construction were issued since the year 2019. By an order dated 23 August 2019 passed by the KDMC, such construction was declared to be unauthorized liable to be removed/demolished. However, what has happened thereafter, is quite surprising as pointed out in the reply affidavit, that on the basis of fake and fraudulent permissions, sanctioned plan, commencement certificate, a registration with the RERA authorities was obtained and illegal construction progressed and third party rights were sought to be created. The fact, however, remains as seen from the Municipal Commissioner's reply affidavit that there is no permission which was granted by the KDMC to undertake construction of the said building and the building is accordingly totally unauthorized and illegal.

4. We find that the Municipal Corporation has also filed a First Information Report (FIR) on 28 February 2022 (97 of 2022) against the developer one Mr. Solkar and the land owner. The land owner had not granted any authority/permission to the said developer to undertake construction. The affidavit of the Municipal Commissioner also states that an inquiry is already initiated to identify the employees of the Municipal Corporation, who failed to discharge their duties in permitting such unauthorized construction to come up.

5. It is further informed that steps for the demolition of the building in question are already being taken for which the police are also informed about the schedule for demolition and police protection for the same is awaited. The

affidavit also states that the present construction is part of the unauthorized construction of about 60 buildings, subject matter of consideration of the Division Bench of this Court in PIL No.49 of 2021 wherein a Co-ordinate Bench of this Court [Coram: Devendra Kumar Upadhyaya, CJ (as His Lordship then was) & Amit Borkar, J.] passed orders directing the KDMC to take steps to demolish all 60 buildings. It is also pointed out from the reply affidavit that some occupants of the building have moved for regularization, however, their regularization application were rejected by the Municipal Corporation. We may note the contents of the reply affidavit of the Municipal Commissioner, which have the following significant statements:-

“3. I say that on 19.1.2019, the Beat Marshal of the Corporation during discharge of their official duty became aware of the unauthorized construction being carried out within the territorial jurisdiction "G" Ward, Kalyan Dombivli Municipal Corporation and immediately prepared a report and reported the same to the Ward Office of the Corporation under Inspection Report dated 19.1.2019. Hereto annexed and marked as Exhibit "A" is the copy of the Inspection Report dated 19.1.2019.

4. I say that upon the receipt of the Inspection Report from the Beat Marshal, the Ward Office enquired into the issue and found out that one Akshay Solkar was carrying out the said construction and therefore, on 15.4.2019, a Show Cause Notice and a Stop Work Notice was issued under the Provisional of Maharashtra Municipal Corporation act to the said person. Hereto annexed and marked as Exhibit "B" is the copy of the Notice dated 15.4.2019.

5. I say that pursuant to the said notice fair opportunity of hearing, the said construction came to be declared as unauthorized construction vide Order dated 23.8.2019. Hereto annexed and marked as Exhibit "C" is the copy of the Order dated 23.8.2019.

6. I say that thereafter, the said unauthorized construction was in fact demolished on 10.11.2020 by the Corporation and the Order dated 23.8.2019 was complied with. Hereto annexed and marked as Exhibit "D" is the copy of the Office Report dated 23.9.2021.

9. I say that, when the said fact came to the light of the Corporation, the officers of the Corporation's - Town Planning Department on 3.10.2022 have filed First Information Report bearing No. 370 of 2022 against the Developer one Mr. Solkar and the land owner Mr. Kene, under the provisions of section 420, 465, 468 and 471

of Indian Penal Code with Dombivli Police Station. Hereto annexed and marked as Exhibit "E" is the copy of the FIR bearing NO. 370 of 2022.

10. I say that the Corporation has also on 28.2.2022, filed an FIR against the developer and the land owner under the provisions of section 397 of Maharashtra Municipal Corporation Act, section 52 of Maharashtra Regional and Town Planning Act. Hereto annexed and marked as Exhibit "F" is the copy of the FIR on 28.2.2022.

11. I say that the Corporation and its officers have been making an endeavor to demolish the said unauthorized construction and have in fact, once demolished the said construction. I further state and submit that, the present structure was also a part of the group of structures which were subject matter of PIL No. 49 of 2021.

12. I say that, the Corporation is amply empowered under the various provisions of Maharashtra Municipal Corporations Act, including powers under the provisions of Sections 478, 260, 267 and 267A along with other provisions. I say that, I am also aware of the directions as have been issued by the Hon'ble Apex Court in the matter of Rajendra Kumar Barjatya & Anr. Vs. U P Avas Evam Vikas Parishad & Ors., especially in Paragraph 21 (I to XII).

13. I say that after reading judgement of Hon'ble Apex Court in the matter of Rajendra Kumar Barjatya & Anr. Vs. U P Avas Evam Vikas Parishad & Ors. I have understood the intentions and observation of the apex court and corporation undertakes to abide by the same and to work towards expeditious implementation of the same.

14. I say that the Kalyan Dombivli Municipal Corporation undertakes before this Hon'ble Court to ensure the observations and directions as are laid down by the Apex Court in the judgement of Rajendra Kumar Barjatya & Anr. Vs. U P Avas Evam Vikas Parishad & Ors. be implemented effectively and for the said reason the administrative wing of the Corporation would be actively taking such measures and actions that the orders and directions as are passed by the Apex Court and this Hon'ble Court be immediately implemented.

15. I say that, instructions / request has been made to MSEB not to grant any new connections with the municipal limits without the NOC from the corporation to curb the menace of unauthorized construction. I further say that the water department has been instructed not to give fresh water connections to any construction without an completion being granted to the structure. I say that, now the corporation imprints a QR code for sanctioned plan to avoid any fraud and duplication.

16. I say that the Ward Office, 8/G Ward has been requesting Police Assistance as the said tenements are occupied and it is not possible for the Corporation to vacate the premises without police protection. I say that the Ward Officer, G Ward has been communication with Police officer for the same. Hereto annexed and marked as Exhibit "G" Colly, are the copies of the Correspondence with the Police Personnel

17. I say that I intend to conduct a detailed inquiry with respect to the said issue and undertake to identify the employees of the Corporation who have not discharged their duties efficiently due to which the said unauthorized construction has remained to be

demolished.

18. I say that upon the request of the corporation the Dombivli Police Station has written a letter to the ward officer to inform the schedule for demolition as a large part of the police force is currently involved in providing security and maintaining Law and order during the upcoming 10th STD and 12th STD examination, so also various other purposes. I say that considering the said situation and availability of police protection time be granted to the corporation till 31st March 2025 to complete the demolition of the alleged structure. I say that, pursuant to the order passed by this Hon'ble Court in PIL No. 49/2022 the demolition of 60 building including the present structure is proposed which would be phase wise and therefore the corporation is praying this Hon'ble Court to grant the corporation time till 31st March 2025 to complete the demolition of the structure. I say that the Order of demolition would be complied by the Corporation within the said period, by vacating the said premises with police assistance and by demolishing the same.

19. I say that, the corporation has received a notice dated 24Th February 2025 from the State Government calling for a report from the corporation , as the structure occupiers have filed an appeal to the state government against the order of the corporation rejecting the regularization application of the Occupants.

20. I say that, weekly reviews of the pending cases of unauthorized constructions and cases where orders of demolition have been passed are being personally taken by me. I further say that where officers are facing problems with such execution of orders, the Dy. Commissioners are guiding the officers to troubleshoot the issues and ensure the orders are complied. I say that, in the since January 2024 till date 317 orders have been passed with respect to the unauthorized constructions and there have been 376 complete demolition of unauthorized constructions with 103 FIR's being filed.

21. I say that I tender my unconditional apology to this Hon'ble Court for any failure on the part of the Corporation and its officers to discharge their duties in just manner and I undertake before this Hon'ble Court to ensure strict implementation of this Hon'ble Court's Order, Order of the Hon'ble Apex Court and the law of land.”

(emphasis supplied)

6. We may observe that when the present proceedings were listed before a co-ordinate Bench of this Court on 13 August 2024, a statement as made on behalf of the Municipal Corporation was recorded, that an action is already proposed against the illegal construction and the same would be completed by end of September 2024. The Court observed that the pendency of this petition should

not come in the way of the Municipal Corporation in proceeding with its action under the law. The said order dated 13 August 2024 passed by the co-ordinate Bench is required to be noted, which reads thus:-

- “1. Leave is granted to implead the owners of the alleged illegal construction as Respondents. Necessary amendment to be carried out within a week. Re-verification is dispensed with.
2. Issue notices to the newly impleaded Respondents, returnable on 6 September 2024.
3. **The learned counsel for the Corporation states that action is already proposed against the illegal constructions and the same would be completed by end of September. The pendency of this Petition should not come in the way of the Corporation in proceeding with its action under the law.**
4. The Petitioner shall clear the office objections within a week from today.”

(emphasis supplied)

The grievance of the petitioner is that despite such clear orders passed by the Court, further action in accordance with law to demolish the illegal construction is not being taken.

7. Thereafter, the proceedings were listed before another co-ordinate Bench of this Court on 04 February 2025 when the Court passed an order directing the Commissioner of KDMC to file reply to the petition. In pursuance thereto, Ms. Indu Rani Jakhar, Municipal Commissioner has placed on record an affidavit to which we have made a reference in the foregoing paragraphs.

8. From the affidavit of the Municipal Commissioner, it is seen that the Municipal Corporation is taking appropriate steps as the law would mandate to demolish such illegal and unauthorized construction. In regard to the unauthorized constructions, it is a settled principle of law that such constructions

irrespective of any third party rights being created by unscrupulous developers, and the purchasers of the tenements who have not taken adequate care and caution in verifying as to whether the construction is authorized and legal, cannot have any legal right or any protection in law against demolition of such unauthorized construction.

9. Similar issues had arisen before this Court in **Smt. Subhadra Ramchandra Takle vs. State of Maharashtra & Ors.**¹ when this Court considering the settled principles of law of the land as declared by the Supreme Court, and in similar circumstances where third party rights were stated to be created, approved the action of the Municipal Corporation to proceed to follow the due process of law, to remove unauthorized construction. In this view of the matter, we are in agreement with the learned counsel for the petitioner, as also from what has been set out by the Municipal Commissioner in the reply affidavit that the purchasers of these tenements whose acquisition of such tenements in unauthorized construction itself being illegal, cannot have any legal rights to be asserted before any forum. In this situation, a plea made by such persons, who have purchased the tenements in unauthorized construction for protection of such illegal construction cannot be entertained either before the Court, much less before the State Government to pass any orders which would be contrary to law. The State Government cannot be called upon to take a position not recognized by law or contrary to the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”) which recognizes only lawful construction being put up

¹ Civil Writ Petition No. 5898 of 2025

by adhering to the established procedure as prescribed by the planning authority. It is difficult to bypass such requirement of law. In this context, any plea that rank unauthorized construction be considered to be regularized is wholly unacceptable, as this would amount to creating a window to first put up rank illegal construction of whatever magnitude and then apply for regularization. This is wholly contrary to the rule of law and the basic compliances which are necessary under the provisions of the MRTP Act as also the Maharashtra Municipal Corporations Act, 1949 for any authorized/permissible construction to be undertaken. The principles of law in this regard are well settled in catena of decision of the Supreme Court. A useful reference at the outset can be made to the decision of the Supreme Court in **Friends Colony Development Committee vs. State of Orissa & Ors.**², wherein the Supreme Court has made the following significant observations:-

“23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and

2 (2004) 8 Supreme Court Case 733

do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.]

25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future.”

(emphasis supplied)

10. The principles of law in this regard also are reiterated by the Supreme Court into the decisions in **Rajendra Kumar Barjatya & Anr. v/s. U. P. Avas Evam Vikas Parishad & Ors.**³ and **Kaniz Ahmed vs. Sabuddin & Ors.**⁴ to which a detailed reference has been made in the orders passed by this Court in **Feroz Talukdar Khan vs. The Municipal Commissioner Thane Municipal Corporation & Anr.**⁵.

11. Thus, a plea of regularization of such illegal construction, which is a rank unauthorized construction, can neither be considered by the planning authority, nor by the State Government which would be in the teeth of the provisions of law as held by the Supreme Court in catena of decisions. Thus, such occupants of the

3 2015 SCC OnLine SC 1981

4 2025 SCC OnLine SC 995

5 Civil Writ Petition No. 4210 of 2025

unauthorized construction would not have any legal right to seek any relief qua such unauthorized construction. In such context, we may refer to the recent order of this Court in **Feroz Talukdar Khan** (supra) wherein following the settled principles of law as laid down in the decisions of the Supreme Court and this Court, the Court rejected the contention of any regularization. The relevant observations as made by the Court read thus:-

“14. Our common experience, in such context, is that the law which is understood by the municipal officers / government officers, is different from what the legislature and the Courts would accept. It is beyond our imagination. We can only say that when it comes to such rampant unauthorized construction, it cannot be that unless the Court intervenes, no action would be taken by the municipal officers to demolish the same. We wonder as to when the municipal officers and planning authorities working on the field would act honestly and in the spirit of the oath they take as public servants in discharging their duties as mandated by law. These are our sentiments of deep pain and anguish when we find such open defiance of law at the hands of the municipal officers whose duty is to ensure compliance with the Municipal Laws and not to ensure their observance in the breach. We have observed in our order in Smt. Shubhadra Ramchandra Takle (Supra) that it is difficult to believe that there exist any rule of law when it comes to unauthorized constructions.

15. Insofar as the contentions as urged on behalf of Respondent No. 3 are concerned, that Respondent No. 3 intends to regularize the construction is a plea which outrightly needs to be rejected. Such a plea as urged is on a complete misunderstanding and misreading of the provisions of law and the settled principles which are laid down in a catena of decision on the principles of regularization.

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.

17. We may refer to the decision of the Supreme Court in Mahendra Baburao Mahadik & Ors. Vs. Subhash Krishna Kanitkar & Ors.⁷ rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act"). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

"37. The Municipal Council is a 'local authority' as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTP Act."

(emphasis supplied)

18. In Kaalkaa Real Estates Pvt. Ltd.& Anr. Vs. Municipal Corporation of Greater Mumbai & Ors.⁸, in the context of regularization of unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed

that this is not the intention of the legislature that in making the regularization provisions under the MRTTP Act, including the penal provisions (referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve condonation of the illegality.

19. In a recent decision of the Supreme Court in *Rajendra Kumar Barjatya & Anr. Vs. U. P. Avas Evam Vikas Parishad & Ors.*⁹, the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.

“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.”

20. In a recent decision of the Supreme Court in *Kaniz Ahmed Vs. Sabuddin & Ors.*¹⁰ deprecating regularization of illegal construction, the Supreme Court made the following observations:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

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)]”

21. Adverting to the aforesaid settled principles of law, the proposition on regularization as urged on behalf of Respondent No. 3, if accepted, would also bring about the situation of creating two categories of citizens as observed by the Division Bench of this Court in the proceedings of High Court on its own motion (In the matter of *Jilani Building at Bhiwandi*) (Supra) i.e. firstly, a category of citizens who would intend to adhere to the rule of law; who would approach the planning authority by applying for a planning / development permission by putting up plans through their architects and to undertake legal and authorized constructions; and on the other hand a category of citizens who have no regard for law and merely because they have large resources (possibly not legitimate) at their disposal to undertake unauthorized construction. What would be these resources is only to be imagined, being utilized in connivance with the official machinery in putting up illegal constructions.

22. We may observe that it is likely that many such illegal constructions have remained unattended and / or have flourished or impliedly protected by the municipal machinery. They remain unattended for years together with such blessings of the official machinery. We are not aware as to when an inspection and audit of this illegal / unauthorized construction ward wise would be undertaken. It needs to be immediately commenced by the Municipal Commissioner and prevent further lawlessness.

23. It is in these circumstances, we cannot accept the plea as urged on behalf of Respondent No. 3 to permit Respondent No. 3 to attempt or pursue any regularization application as the same is not maintainable in law. For the reasons which we have discussed hereinbefore, such an application can have no legal recognition, in fact it is a non-est and void application, which the municipal authorities, in no manner whatsoever even if they so desire, can consider.

24. We hope and trust that the municipal officers would consider such legal position whenever any regularization application is received in relation to rank unauthorized construction. The Municipal Commissioner in that regard needs to have a uniform policy so that inherently illegal and unauthorized constructions are not regularized and such applications are rejected. Such appropriate directions be forthwith issued by the Municipal Commissioner to the appropriate department receiving such regularization application.

25. Also as observed by this Court in Smt. Subhadra Ramchandra Takle (Supra), any occupant of the said unauthorized and illegal premises can have no legal right whatsoever. There can neither be any equity nor sympathy, which can be shown to such occupants who have purchased premises in illegal constructions. The Court has referred them to be greedy purchasers, who have ample means to purchase premises in illegal constructions.

26. For the aforesaid reasons, we have no manner of doubt that the Municipal Corporation needs to proceed further to demolish the unauthorized construction in question as per the lawful measures as initiated. There can be no protection to such illegal construction."

(emphasis supplied)

12. Relevant to the circumstances of the present case, insofar as the legal position in regard to the unauthorized construction and the action which is required to be taken by the planning authorities on the unauthorized construction is considered the same has been recently considered by this Court in the proceedings of **Smt. Subhadra Ramchandra Takle** (supra), wherein similar to the facts and circumstances of the present case, the Court taking into consideration the decision of the Supreme Court, had passed the following order:-

“1. This is one case which would shock the conscience of the Court, inasmuch as on a land, which is almost about 5½ acres in Survey Nos.178, 179 and 180, situated in Village Shil, Thane-400612, about 17 structures/buildings have been illegally constructed without obtaining any permission whatsoever from the Thane Municipal Corporation as also from the owners of the land.

2. The case of the Petitioner, who is a senior citizen, is of land grabbing by a land mafia or land sharks. The photographs of the construction are annexed to the Petition. They are just to be believed that such massive construction can be undertaken without any permission from the planning authority and that too by grabbing lands belonging to third parties.

3. We have considered the nature of the representation made by the Petitioner dated 24th January 2025 to the Hon'ble Chief Minister, Deputy Chief Minister as also to the Chief Secretary to Thane Municipal Corporation, Municipal Commissioner of the Thane Municipal Corporation and the Assistant Municipal Commissioner which records that such construction has been undertaken by the persons linked with underworld as described by the Petitioner in Paragraph 3 of the said representation (Page 15 of the Paperbook). We can understand the plight of the Petitioner who apart from being a lady and a senior citizen could never have single handedly been in a position to confront such land mafia and such massive illegal construction. Such construction could not have come up except with the blessings of the Government and Municipal Officers. It is also shocking that the persons who have rampantly undertaken such construction could spend such huge amounts in undertaking such brazen illegal construction and ultimately to defraud innocent flat purchasers to purchase flats/tenements in such construction. The situation is so serious that it would be difficult to believe that there is at all any rule of law when it comes to illegal constructions and whether the Thane Municipal Corporation is at all alive to what is happening under its feet and under the blessings of its officers. The Petitioner has timely approached this Court as there are certain constructions which are stated to be ongoing and yet to be occupied. It is informed to us that in respect of some of these structures, there is a likelihood that some persons are illegally put in possession.

4. In considering such gross illegality, this large unauthorised construction, we are reminded of the law of the land as laid down by the Supreme Court in a line of decisions. In *M. I. Builders Pvt. Ltd. vs. Radhey Shyam*¹, the Supreme Court in dealing with unauthorised construction held, it needs to be demolished, made the following observations with regard to the illegal construction:

73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be

demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.....”

(emphasis supplied)

5. In Friends Colony Development Committee vs. State of Orissa & Ors.², the Supreme Court has made the following observations :

“20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.”

(emphasis supplied)

6. In Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.³, the Supreme Court held following observations:

“29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity

lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

(emphasis supplied)

7. In a recent decision of the Supreme Court in **Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Ors.**⁴, the Supreme Court ordering demolition of large illegal construction, made the following observations:

159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy

nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.”

(emphasis supplied)

8. In **Kerala State Coastal Zone Management Authority vs. Maradu Municipality & Ors.**, the Supreme Court again made the following observations:

“.....This Court in Vaamika Island (Green Lagoon Resort) vs. Union of India & Ors. [(2013) 8 SCC 760], has observed:-

“26. The petitioner had affected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No.32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettala Thuruthu will fall has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7.3.1995, 17.7.1996 directed all the panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Committee on Sciences Technology and Environment (KSCSTE) was accepted.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decisions of this Court in *Piedade Filomena Gonsalves v. State of Goa* [(2004) 3 SCC 445], wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.”

In *Piedade Filomena Gonsalves vs. State of Goa & Ors.* [(2004) 3 SCC

445], this Court has observed :

“4. We do not think that any fault can be found with the judgment of the High Court and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the Constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 meters of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondent, has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18.8.1994 introduced in the notification dated 19.2.1991 entitled the Coastal Regulation Zone notification issued in exercise of the power conferred by section 3(1) and Section 3(2)(v) of the Environment Protection Act, 1986, while the appellant's construction was completed before the date of the amendment and, therefore, the appellant cannot take benefit of the order dated 25.9.96 passed in writ petition No. 102 of 1996.

6. The Coastal Regulation Zone notifications have been issued in the interest of protecting the environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment.”

We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate.

In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

(emphasis supplied)

9. In a decision of the Division Bench of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation & Ors.**⁵ in which one of us (G. S. Kulkarni, J.) was a member, this Court taking into consideration the decisions of the Supreme Court in Friends Colony Development Committee Vs. State of Orissa⁶ and Dipak Kumar Mukherjee V. Kolkata Municipal Corporation & ors.⁷ reached to a conclusion that the unauthorised and illegal construction cannot be tolerated and would be required to be demolished. The Court issued several directions in disposing of the Public Interest Litigation. The observations as made by the Division Bench as also its directions relevant for the present proceedings are required to be noted, which read thus:

“93. We also cannot forget the role of the municipal officers and its law officers in not showing promptness and/or in delaying to

move the Courts for vacating any orders passed on illegal constructions and dilapidated buildings. They cannot remain mute spectators in the event the situation requires a stay or injunction, warranting to be urgently vacated. The Municipal Commissioner needs to take appropriate actions on the concerned officials, if it is found that prompt actions are intentionally not being taken or are delayed for extraneous purposes and for unexplainable reasons.

99. In the scheme of Constitutional governance, it is not possible for us to assume that a public official, howsoever high, or mighty or low, can remain without public accountability to “We the People”. Failure of accountability and discharge of public duties and responsibilities which the law would mandate them to discharge, in our opinion, are anathema not only to the expectations of lawful governance, but would also bring about a colossal case of derailment of the Constitutional and legal machinery, resulting into patent societal injustice and a civic regime opposed to the rule of law. The issues, which we have discussed above, certainly cast a serious doubt as to whether the above expectations of the rule of law are at all fulfilled and/or are followed in breach. It is for such reason, when there is a glaring and an apparent failure on the part of the statutory authorities to comply their lawful duties and Constitutional expectations, and/or when there is a dent or a breach in enforcement of the laws, the Courts unhesitantly are required to step in, so as to correct those who are failing in the discharge of their lawful duties, of not only to remind them of such duties and obligations but use the strong arm of law to set the same enforced and restore the confidence and expectations of the citizens, in the rule of law. This would also certainly require the Court to strictly deal with such officials, as the law would mandate the Court to so deal with them. They ought not to be under any impression that they can evade law with impunity. The famous quote of Lord Acton that “power corrupts and absolute power corrupts absolutely” ought to be realized to be untrue and something of the past, in its applicability in public governance. This, more particularly, when the aim is to compete with the other countries of the world where not only the building laws are stringently followed but also the aesthetics in relation to constructions and building designs are given a great impetus, so that the cities do not become eye sores of brick and mortar. This apart, as echoed in every public policy, corruption in municipal governance should be brought to the books by establishing multiple layers of anti-corruption mechanism within and outside the organization and achieve strict application of the provisions of the Prevention of Corruption Act, 1988. This ought to be implemented with immediate urgency by keeping a vigil on those officers who in the absence of any hurdles are deliberately not taking actions against illegal and unauthorized constructions. It is only then that there can be a ray of hope and sunshine for the future generations.

101. It is with the above parting words, we close the present proceedings by the following orders:

ORDERS

i)

ii)

iii) The planning authorities through its Competent Officers shall keep informed the Urban Development Department of the Government of Maharashtra on the numbers of illegal constructions in the respective municipal and jurisdictional areas and the action being taken in regard to such illegal constructions, which shall be notified on the website of the planning authority.

iv) The names and designations of the officers/Municipal Officers and employees in charge of the respective municipal and jurisdictional areas, reposed with the authority to initiate action in regard to the illegal, unauthorized and ruinous structures, shall be notified by the planning authorities/Municipal Corporations ward-wise on its official websites, so that accountability can be attributed and fixed in deciding complaints which may be filed by the aggrieved persons.

v) Municipal Commissioner and/or the competent authority of a designated planning authority, is directed to take a review of the illegal buildings/structures in every ward and actions taken thereon, periodically between the 25th to 30th day of every month.

vi) Except for an acceptable and lawful reason, if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than six months, the Municipal Commissioner shall take penal action against such erring municipal officers including lodging of prosecution under the Municipal laws, in addition to the relevant provisions of the Indian Penal Code, apart from initiating disciplinary proceedings.

ix) The persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law.

x) The concerned Municipal Commissioners are directed to give effect to the provisions of Section 152A of the MMC Act and Section 267A of the Maharashtra Municipal Corporations Act to levy penalty which shall be equal to twice the property taxes leviable on such building, so long as it remains unlawful and recover such amounts as arrears of property taxes.

xi) The Permanent Standing Committee (Encroachment Prevention Committee) as constituted under the Government Resolution dated 15th December 2004, shall forthwith be made functional by the State Government so as to commence its functioning with effect 15th March 2022. Such committee shall hold periodical sittings twice every month so as to take account of the actions on illegal structures in Mumbai. Such Committee shall also be constituted in respect of other cities in Maharashtra and it shall hold sittings accordingly."

(emphasis supplied)

10. It is thus clear that any construction which is unauthorised and illegal would be required to be removed/demolished. We may observe that those who purchase tenements in illegal construction are greedy purchasers, who are a different category of citizens as opposed to those citizens who would purchase tenements which are lawfully constructed, they cannot assert rights in regard to illegal construction.

11. The question however is that how such construction can come up and as to whether the Municipal Officers would not be responsible and/or accountable when such rampant illegal construction is undertaken within their jurisdiction and more particularly when the land, on which the construction in the present case has been undertaken, is an agricultural land/green zone, on which no permission for construction can ever be granted by the Corporation.

12. As noted hereinabove, in High Court on its own motion (In the matter of Jilani Building at Bhiwandi) (supra), the Court has categorically ordered on the accountability to be affixed on the Municipal Officers which would include the Municipal Commissioner, who is the Chief Executive Officer of the Municipal Corporation. If such large construction, which is about 17 buildings can illegally come up, we do not know as to whether the officials of the Municipal Corporation are at all discharging their duties in a manner as known to law. Merely filing complaints with the Police and issuing notices of demolition certainly is not sufficient as no action whatsoever is taken when rampant illegal construction is in progress. No efforts are taken to stop such construction in a manner known to law. This would all require an inquiry to be undertaken as per the principles of law as laid down by this Court in the said proceedings. We may state that the Municipal Officers are supposed to discharge their duties as the law mandates. They discharge such duties on the principles of public trust as reposed in them. It appears that every single officer of the Municipal Corporation who is possibly supposed to take action, has failed to take action, and unless there was an implied support of these persons to enable such persons to undertake illegal constructions, it would have never come up.

13. Today, we have the affidavit of Mr. Shivraj Prasad Nagargoje, Assistant Municipal Commissioner, who surprisingly has opposed this Petition as set out in Paragraphs 1 and 2 as also has made allegations against the Petitioner, however, at the same time it has been categorically admitted in the affidavit that there is unauthorised construction on these land being Survey Nos.178, 179 and 180. It is stated that there are 17 identified structures which are illegally put up in respect of which some action was being resorted by the Municipal Corporation. It appears that the said Officer has awakened only after the proceedings were heard by this Court on 9th June 2025 when he states in Paragraph 6 that on 10th June 2025 the said officer had addressed a letter to the Water Supply Department as well as to the Electricity Distribution Company regarding disconnection of the water and electricity supply. A statement of 17 structures as also the persons who have undertaken the same is annexed to the reply affidavit. It is further stated that the structures are partially occupied by the occupants and that now action could be resorted for removal of these unauthorised construction for which sanction is being obtained from the Municipal Commissioner under Section 268(5) of the

Maharashtra Municipal Corporation Act, 1949. It is also stated that the Corporation is empowered under Sections 478, 260, 267, 267A alongwith other provisions to take action and that the said action would be resorted.

14. We are thoroughly dissatisfied with the affidavit as filed by the Assistant Commissioner. We are further shocked that considering the nature of such large illegal construction, the Corporation is delaying matters to take action in a manner as suggested in the affidavit when categorically it is admitted that the construction has been put up without any permission from the Municipal Corporation that too on land where no construction can be undertaken. Considering the seriousness of the matter that this is a clear case of land grabbing as also the complaints having fallen to the deaf ears of the Municipal Officers, as a Constitutional Court cannot overlook this complete abdication of the Petitioner to the rule of law, at the hands of the Municipal Authorities and/or the citizens taking law into their hands and putting up illegal constructions.

15. In the aforesaid circumstances, we are inclined to pass the following order:-

OPERATIVE ORDER

i. We direct the Prothonotary & Senior Master of this Court to appoint a competent officer to visit the site in question, viz., Survey Nos.178, 179 and 180, situated in Village Shil, Thane – 400612, so as to immediately undertake an inspection of the seventeen unauthorised structures/buildings, as put up on this land, its status, etc. The Court Officer shall be accompanied by the Municipal Commissioner, Thane Municipal Corporation alongwith other officers. The Court Officer shall initially report at the office of the Municipal Commissioner, Thane Municipal Corporation at 10.15 a.m. tomorrow, from where the Court Officer alongwith the Municipal Commissioner and the other necessary officials shall visit the site at 11.00 a.m.

ii. We would not dispense the Municipal Commissioner not visiting, considering such gross illegality.

iii. The Court Officer, at the cost of the Municipal Corporation, shall take appropriate photographs of the site as also a video recording of the site and the buildings illegally constructed so as to be placed before the Court alongwith his report.

iv. The Court Officer as also the Municipal Officers shall be granted full police protection of armed police personnel by the Commissioner of Police, Thane. A copy of this order be forwarded to the Commissioner of Police, Thane for compliance.

v. Let the Court Officer as appointed by this Court act on an operative part of the order which be made available to the parties.

vi. Insofar as the second part of our observations are concerned, we request the Principal District Judge, Thane to appoint a Senior Judicial Officer to undertake an inquiry in regard to the role of all the persons who have undertaken the illegal constructions and the role of the municipal officers, who were involved at the relevant times and who

would otherwise be responsible for preventing such illegal construction, which would include recording statements of all Municipal Officers including of the Municipal Commissioner.

vii. Let a report of such inquiry be placed before the Court within a period of six weeks from the date the inquiry is initiated. The Learned Judicial Officer, who is appointed, is free to adopt an appropriate procedure of issuance of notices, recording statements of all the concerned persons.

viii. On a report on such gross illegality, the Court would proceed to pass further appropriate orders in the larger interest of the rule of law being preserved in the municipal administration of the Thane Municipal Corporation.

ix. We may observe that depending on the report, which would be submitted to the Court by the Learned Judicial Officer, further appropriate orders in regard to the municipal officers as also those who are guilty of undertaking such illegal construction would be required to be taken in accordance with law.

x. Parties to act on an authenticated copy of this order.

xi. Needless to observe that in the event any demolition is planned, the Municipal Corporation shall not await for any further orders and lawful action if it is set into motion shall be taken to its logical conclusion.

16. We may also sound a note of caution, if such gross illegality as admitted by the Municipal Corporation wantonly persist, whether at all the Corporation is functioning as per the mandate and the provisions of law, would be required to be pondered. The principles of law in this regard are well settled. Today we do not know how many such illegal constructions are overlooked, neglected and no action has been taken by the Municipal Corporation and more particularly in the interest of innocent tenement purchasers, who are likely to invest their money in purchasing tenements, in illegal and unauthorised constructions, also at the cost of their life as there is no certainty about the legality and quality of the construction which they would occupy.

17. The Municipal Commissioner is accordingly directed to undertake a survey of all such illegal constructions in the different wards and more particularly, in the developing areas of Thane and initiate action as the law would mandate before it is too late on any unauthorised and illegal constructions. This more particularly, illegal constructions in the green zone and the areas in which no construction is permissible, ought to be safeguarded. If any such construction has come up on such no development areas/lands/zones, it should be immediately attended and removed in accordance with law.

18. If such duties and obligations as mandated by law are not performed by the Municipal Corporation through its municipal machinery, there would be no alternative but to adhere to the settled principles of law, considering that the Corporation is unable to function in accordance with law, and in such event the Thane Municipal Corporation would be required to be governed by a different/separate machinery which has also been provided under the provisions of the Maharashtra Municipal Corporation Act, for which the State Government would be required to

be directed to take appropriate steps if the need so arises.

19. The Municipal Commissioner shall place on record a compliance report in terms of our directions at the time the report of the Learned Judicial Officer is scheduled to be filed.

20. To enable the court officer to place the report on the record of this Court, we adjourn the proceedings to 19th June 2025 (FOB).

21. Needless to observe that the municipal officers shall extend all cooperation to the Court Officer in discharge of his duties under the present order. Further, the fees/charges of the Court Officer, as may be ordered by this Court, shall be borne by the Thane Municipal Corporation.”

(emphasis supplied)

13. As informed a Special Leave Petition (Civil) Diary No. 33024 of 2025 filed by the flat purchasers was permitted to be withdrawn by the Supreme Court by an order dated 17 June 2025.

14. The present proceedings are not different. The Municipal Commissioner has placed on record an affidavit to state that the municipal machinery has proceeded to remove the unauthorized construction in question, which is on the land of the petitioner, which has no permission whatsoever, from the planning authority/ Municipal Corporation and/or the same is a rank unauthorized construction, as also held in its judgment dated 19 November 2024 rendered by the Division Bench [(Coram:-Devendra Kumar Upadhyaya, CJ (as His Lordship then was) & Amit Borkar, J.) in PIL No.49 of 2021. Hence, the Municipal Corporation needs to proceed to take further appropriate action as per law to remove the unauthorized construction as specifically directed by the Division Bench in such judgment in paragraph 22(6) which reads thus:-

“22(6) Respondent No.4 shall carry out the demolition of illegal structures as specified in paragraph 5 of the affidavit dated 26th August 2024 in accordance with law. The concerned police

station is directed to provide all necessary assistance to Municipal Corporation officials in removing occupants, as requested by authorized officers, to ensure that demolition process is conducted without hindrance. The entire demolition procedure shall be completed within three months from the date of this judgment.”

15. The Municipal Commissioner who is under a mandate of law including under the said orders of the Division Bench (supra) to undertake demolition, has a grievance that police machinery of adequate strength is required to be made available by the Commissioner of Police. As we are informed that notices are already issued by following due procedure in law to demolish the unauthorized construction and the occupants of the building in question are fully aware about the same, we direct that the occupants shall vacate their respective premises within a period of 15 days from the day a copy of this order is made available. In the past, several notices were issued to them and the last such notice was issued on 05 February 2025 calling upon the occupants to vacate the premises. However, we grant additional time of 15 days from the date a copy of this order is made available which will be served on the Municipal Corporation and on the occupants. We are informed that the time limit, as per the lawful notices issued to the occupants of the building in implementing the orders of the Division Bench in PIL No. 49 of 2021 (supra), has expired long time back. We are informed that similar illegal buildings are already demolished, thus, the occupants cannot resist demolition. In the event the occupants do not vacate their respective premises, the Municipal Corporation would be required to take such appropriate action as the law would permit to get the building vacated, so that the demolition action can be taken forward.

16. In passing this order, we keep open all rights and contentions of the occupants/purchasers of such tenements to proceed to seek reliefs against the municipal officers, developer, as the case may be, in the event the occupants contend that these parties are privy to any illegality in such unauthorized tenements being sold to them, as may be permissible in law.

17. We also keep open the rights of the purchasers of the tenements or their cooperative society if any, qua the land as recognized by the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

18. In this view of the matter, we are of the opinion that as the Municipal Corporation has already taken a position that it will take appropriate steps to remove the unauthorized construction, further adjudication of this petition for the relief that the illegal building be demolished would not be required, as we recognize such lawful action as resorted on the part of the Municipal Corporation. Let such action be taken as per law. We accordingly dispose of this petition in terms of the aforesaid observations. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)