

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6607 OF 2024

- | | | | |
|----|---|---|-----------------|
| 1. | New Shree Swami Samartha Borivade |] | |
| | Housing Company Private Limited |] | |
| | A Company duly registered under the |] | |
| | Companies Act, 1956, having its |] | |
| | Registered Office at Parijat, Near Amar |] | |
| | Hind Mandal, Gokhale Road (North), |] | |
| | Dadar, Mumbai – 400 028. |] | |
| 2. | Satish Prabhakar Shetye |] | |
| | an adult Indian Inhabitant |] | |
| | being the authorized representative of |] | |
| | Petitioner No.1, having his office at |] | |
| | Parijat, Near Amar Hind Mandal, |] | |
| | Gokhale Road (North), |] | |
| | Dadar, Mumbai – 400 028. |] | ... Petitioners |

V/s.

- | | | |
|----|--|---|
| 1. | Thane Municipal Corporation |] |
| | having its office at |] |
| | New Administrative Building, |] |
| | Chandanwadi, Mahapalika |] |
| | Bhavan Road, Thane (West). |] |
| 2. | The Assistant Commissioner |] |
| | Majiwada-Manpada Ward Committee, |] |
| | Unauthorized Construction Removal & |] |
| | Encroachment, Thane Municipal Corporation, |] |

- | | | | |
|----|--|---|-----------------|
| | Kapurbawdi Junction, |] | |
| | Thane (West) – 400 607. |] | |
| 3. | Gazi Salauddin Rehmatulla Hoole |] | |
| | alias Pardeshi Baba Trust, |] | |
| | a Public Charitable Trust registered under the |] | |
| | Maharashtra Public Trust Act, 1950, having its |] | |
| | office at Kasarvadavli, Ghodbandar Road, |] | |
| | Thane (West) – 400 606. |] | |
| 4. | Shabbir Abdul Rehman Shaikh |] | |
| 5. | Bashir Ahmed Mohamed Husein Patel |] | |
| 6. | Afzal Umer Abdul Dattar |] | |
| 7. | Zaffer Suleman Shaikh |] | |
| 8. | Niyaz Amir Shaikh |] | |
| 9. | Mushtaq Ahemad Abdul Gafur Shaikh |] | |
| | All of Thane, Adults, Indian Inhabitants |] | |
| | Residing at Kasarvadavli, |] | |
| | Ghodbandar Road, Thane (West) – 400 606. |] | ... Respondents |

Mr. Kunal Dwarkadas a/w. Mr. Nilesh Tated i/b. M/s. Mahimtura & Co. for Petitioners.

Mr. Ram S. Apte, Senior Advocate a/w. Mr. Mandar Limaye for Respondent Nos.1 & 2.

Mr. S.S. Patwardhan i/b. Ms. Mrinal Shelar for Respondent No.3.

Mr. Siddharth A. Mehta a/w. Ms. Harshada Shrikhande, Mr. Vaibhav & Ms. Bhargavi Mundhe for Respondent Nos.5 & 7.

Officers :- (i) Ms. Smita Surve, Assistant Municipal Commissioner and (ii) Mr. Shankar Patole, Deputy Municipal Commissioner (Encroachment).

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

Reserved on : 5th March 2025.
Pronounced on : 10th March 2025.

ORDER (Per : A.S. Gadkari, J.) :-

1) By the present Petition under Article 226 of the Constitution of India, the Petitioners, who are owners of piece and parcel of land bearing Survey No. 46 admeasuring 18,122 square meters situated at Village Birivade, Taluka and District Thane, within the jurisdiction of Respondent Nos.1-Corporation, have prayed for the following substantive reliefs :-

- (a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction requiring Respondent Nos. 1 and 2 to initiate proceedings under section 260 of the Maharashtra Municipal Corporation Act read with sections 52 to 55 of the M.R.T.P Act, 1966 against Respondent No. 3 and its Trustees, being Respondent Nos. 4 to 9, for demolishing the said unauthorized and illegal encroachment on portion of the said lands i.e. the portion located near the western boundary of the lands bearing Survey No. 46 of village Borivade as indicated in pink, red and green outline on the plan being Exhibit 'A'.*
- (b) Pending the hearing and final disposal of this petition this Hon'ble Court do direct Respondent No. 2 to issue Show Cause Notice on Respondent No. 3 and its Trustees, being Respondent Nos. 4 to 9, to give reasons why the said unauthorized and illegal extended encroachment made in the*

year 2023 ought not to be demolished and there-upon take suitable action.

2) Heard, Mr. Kunal Dwarkadas, learned counsel for Petitioners, Mr. Ram Apte, learned senior counsel for Respondent Nos.1 & 2, Mr. S.S. Patwardhan, learned counsel for Respondent No.3 and Mr. Siddharth Mehta, learned counsel for Respondent Nos.5 & 7. Perused entire record produced before us.

3) It be noted here that, most of the facts stated in the Petition are admitted facts on record. Our Orders dated 18th December 2024, 5th February 2025 and 20th February 2025 are self eloquent. For the sake of brevity, we have refrained from repetition of the facts and circumstances mentioned therein.

4) In pursuance of our Order dated 5th February 2025, Mr. Saurabh Rao, Municipal Commissioner of Respondent No.1 has filed on record a detailed Affidavit dated 4th February 2025. It is stated therein that, pursuant to the complaint of unauthorized construction received, site inspection (of the writ structure) was carried out on 1st January 2025, which revealed construction of G+1 storey construction of a mosque admeasuring 60'x60' including a prayer hall admeasuring 10'x20'. The occupants therein claimed that, the construction was very old partaking to a period when area was within the limits of erstwhile Gram Panchayat but could not produce any

permission for the construction. That, no permission for the concerned construction is available in the municipal record. In the circumstances, a Notice dated 6th January 2025 under Section 260(1)(2) of the Maharashtra Municipal Corporation Act, 1949 was served and pursuant thereto a hearing was held on 22nd January 2025 before the Assistant Commissioner, Majiwada-Manpada Ward Committee. That, during the hearing since no documents evincing permission were produced by the concerned, an Order dated 27th January 2025 was passed declaring the writ structure to be unauthorized and directions were issued to remove it.

4.1) It is further stated that, by an Order dated 27th January 2025 the Corporation has granted the period of 15 days in accordance with law. That period would expire on 10th February 2025 and if the writ structure is not removed by the Respondent No.3, further steps will be taken in accordance with law. The Order dated 27th January 2025 passed by the Assistant Commissioner and Designated Officer of the Municipal Corporation is annexed to the said Affidavit.

5) The Petition was listed for hearing on 20th February 2025, when it was pointed out to this Court that in furtherance of Order passed by the Assistant Commissioner on 27th January 2025, the demolition work of offending structure has already undertaken and necessary compliance report would be filed on the next date of hearing i.e. on 4th March 2025. The

Petition was therefore adjourned to 4th March 2025.

6) On 4th March 2025 it was pointed out to this Court that, partial demolition of the offending structure has been carried out and due to the resistance from the followers / devotees offering prayer at the writ structure, further demolition work could not take place. We had therefore expressed our strong displeasure about the act and/or conduct of the Officers of the Corporation and at the request of learned Advocate for Respondent Nos.1 & 2, the Petition was kept for further hearing today.

7) Today, Mr. Ram Apte, learned senior counsel appearing for Respondent Nos.1 & 2 tendered across the bar Affidavit-in-Reply dated 5th March 2025 of Mr. Dinesh D. Tayade, the Officer of Respondent No.2. It is stated therein that, the Corporation has demolished part of construction of Ground+1 floor building on 15th, 16th, 17th & 18th February 2025 respectively. Various photographs in support of his contention are also annexed to his Affidavit. It is further stated that, the balance construction work will be demolished by the Corporation within the period of four weeks on the conclusion of Ramadan (2025) month.

7.1) That, the Corporation has initiated disciplinary action against the erring Officers / employees by issuing show cause notices and after the reply is received from the concerned, further enquiry will be conducted as per the Service Rules. The said Affidavit is taken on record.

8) Mr. Ram Apte, learned senior counsel on instructions submitted that, during the period from 15th February 2025 till 18th February 2025 when demolition work of the writ structure was undertaken, 65 labourers were employed and 10 Officers of the Corporation were supervising the demolition work, however the entire demolition could not be completed. He asserted that, the Police Department had deputed sufficient number of Police personnel for maintaining law and order situation and to give protection to the Officers of Corporation.

8.1) In this precise background, upon a query by the Court, as to why the entire structure which admittedly measured not more than 3600 square feet could not be demolished within four working days, no plausible explanation could be offered by the Officers of Corporation. It was informed to this Court that, on 19th February 2025 a large mob gathered at the writ structure and opposed the demolition and therefore the Officers of Corporation could not complete the demolition.

8.2) It be noted here that, in our Order dated 5th February 2025 in para No.3 we have observed that, it appears to us that the concerned Officers of Thane Municipal Corporation are deliberately protecting the illegalities committed by the Respondent Nos. 4 to 9. That, it is evident from the fact that, despite specific directions none of the Officers of Respondent No.1 have filed any reply to the Petition. We had therefore safely inferred that the

Officers of Respondent No.1 have no intention of taking legal action against the illegal structures and/or illegal constructions carried out by the Respondent Nos. 4 to 9.

9) The Hon'ble Supreme Court in the case of the Hon'ble Supreme Court in case of *Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others*, reported in 2024 SCC OnLine SC 3767, in para No. 20, has held as under :-

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and

irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

10) We are unable to accept the submission of Mr. Apte, learned senior counsel for Respondent Nos.1 & 2-Corporation that, due to strong opposition from a mob which had gathered on 19th April 2025 at the site of writ structure, the balance of demolition work could not be completed.

10.1) According to us, it is the settled position of law that, in a democratic State, a person / group of persons or an Association cannot be even permitted to say that, it will not follow the law of the land and will oppose it on any ground. In such circumstances, it is the duty of the law enforcers to make such person / persons / Association to abide by the law of the land. It is also necessary for the law enforcers to imbibe in the minds of the citizens that the violation of law and/or opposition to implement the law by the State will not be countenanced and/or tolerated.

10.2) It will not be out of way to observe here that, when such a huge structure was being constructed by the Respondent Nos. 3 to 9, we wonder what steps the concerned Officers of Municipal Corporation have taken to prevent it, despite there being repeated correspondence of the Petitioners in that behalf.

11) Mr. Apte, learned senior counsel submitted that, local police have informed the Corporation in writing that, in view of the holy Ramadan / Ramzan month, which may end on 30th March 2025, the demolition work may be postponed. That, the police will provide necessary protection after Ramzan Eid, to the Officers of Corporation, to carryout further demolition work. He submitted that, as stated in the Affidavit of Mr. Dinesh Tayade dated 5th March 2025, it may take further four weeks to complete the demolition process.

12) The submission of Mr. Apte is not acceptable for the reason that, for a structure which as per the photographs has already been demolished to substantive extent, four weeks further period is necessary to the Corporation to complete the demolition. Upon deliberation in Court, we were informed that two weeks period is sufficient to carryout balance demolition work. We accept the said statement.

13) Mr. Patwardhan, learned senior counsel appearing for Respondent No.3, on the instructions from the Trustees of the said Trust, submitted that, the Trust and/or the Trustees will not oppose the demolition of illegal structure, as mentioned in Order dated 27th January 2025 passed by the Competent Authority and will cooperate with the Corporation in that behalf. The said Trustees are impleaded herein as Respondent Nos. 4 to 9. We also accept the statement made by the Trustees of Respondent No.3.

14) We make it clear that, the Corporation shall undertake the balance demolition work immediately after the holy month of Ramadan / Ramzan ends and shall complete it within a period of two weeks therefrom i.e. by 14th April 2025.

15) In the interregnum, neither the Respondent Nos. 3 to 9 or any other person shall even make an attempt to reconstruct the already demolished portion of the writ structure.

16) Mr. Ram Apte, learned senior counsel on instructions submitted that, (i) Ms. Smita Surve, Assistant Municipal Commissioner and (ii) Mr. Shankar Patole, Deputy Municipal Commissioner (Encroachment) are the persons responsible for demolition and preventing erection of illegal structures. It is therefore the duty of the said two persons to be vigilant and to take care that not even a single brick is hereinafter put on the already demolished structure. They shall also supervise that the balance structure shall be demolished as stated by the Corporation and noted herein above.

17) Petition is accordingly allowed in the aforesaid terms.

18) List the Petition on board on 17th April 2025, under the caption 'For reporting compliance'.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

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