

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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) 400607. |] | |
| 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 |] | |

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|----|---|------------------|------------------|
| | 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. Adv. Karan Bhide, Adv. Nilesh Tated i/by Mahimtura Company Advocates for the Petitioners.

Mr. R.S. Apte, Senior Counsel i/by Adv. Mandar Limaye for Respondent Nos.1 and 2.

Mr. Sanjeev Kadam, Senior Counsel a/w. Adv. Siddarth A. Mehta, Adv. Harshada Shrikihande, Adv. Vaibhav for Respondent No.3.

Mr. Siddarth A. Mehta a/w. Adv. Harshada Shrikihande, Adv. Vaibhav for Respondent Nos.5 to 7.

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

DATE : 30th April, 2025.

ORDER (Per Kamal Khata, J.):

- 1) The tendency with the Government Officers to somehow or the other circumvent the Orders of the Court and try to take recourse to one justification or the other has reached another level. The Supreme Court in

the case of *E. T. Sunup vs. C. A. N. S. S. Employees Assocn. & Anr* reported in 2004 (8) SVC 683 had held that, such tendencies show a complete lack of grace in accepting the Orders of the Court. Such a tendency cannot be countenanced. The Executive and Legislature has to work within the constitutional framework and the Judiciary has been given a role to watch dog to keep the Legislature and Executive within check.

2) This case is yet another classic example of how Government Officers have completely disregarded and circumvented Court's Orders.

3) While disposing of the Petition by our Order dated 10th March 2025, we had passed directions to demolish the illegal structure being a ground + 1 storied construction admeasuring about 60 X 60 metres and 10 X 20 metres within a period of two weeks after Ramadan i.e. by 14th April, 2025 considering that the structure was used for prayers. The matter was kept for compliance on 17th April 2025 to monitor the same.

4) On 17th April 2025, Mr. Ram Apte, learned senior counsel for the Respondent No.1-Thane Municipal Corporation ('TMC') tendered an Affidavit of the Deputy Municipal Commissioner Mr. Dinesh D Tayade dated 16th April 2025 stating that the demolition of the offending structure is completed and the Order dated 10th March 2025 is fully complied with.

5) However, with the view to ascertain the facts Mr. Kunal Dwarkadas, learned counsel for the Petitioners sought time to take instructions. On 28th April 2025, he tendered an Affidavit to assert that the

entire structure was not demolished and in fact the Respondent Nos 5 to 7 were carrying out repairs around the unauthorised writ structure. In view of this Affidavit, Mr. Apte learned senior counsel was afforded time to enable the TMC Commissioner to verify and affirm the true facts on Affidavit.

6) We now have an additional Affidavit filed by Mr. Saurabh Rao, the Commissioner of TMC, dated 29th April 2025 disclosing that, the structure is much larger structure and admeasures 17,610.02 Sq. ft. Moreover, as per the report of the PWD Department and communication dated 29th April, 2025 no permission is granted to Respondent No.3 for construction of the structure rendering the structure wholly illegal. This vindicates the assertions by the Petitioner in the Petition about the illegality of the structure. The illegal structure is not just 3,500 sq. ft. but it is 17,610 sq. ft. and if what the Petitioner contends is correct, the Respondent No.3 started with construction of 160 sq. ft. at the inception and now it is approximately 20,000 sq. ft. We had only directed demolition of around 3,500 sq. ft. leaving a balance of 17,610 sq. ft.

7) The TMC ought to have filed this Affidavit at the outset. Had it done so, it would have spared the Court unnecessary anguish, prevented the resultant delay in conclusion and provided much needed clarity regarding the situation.

8) In our view, the failure of the TMC to file the Affidavit dated 29th April, 2025 at the outset appears to be a deliberate attempt to

circumvent the Orders of the Court and to perpetuate ongoing illegalities. It is perplexing that, a religious trust would proceed to erect an illegal structure.

9) It is unbelievable that a Suit filed in the year 2002 is dragged for past 23 years. Wouldn't the Trustees of Respondent No.3 want to prove their assertions right in the Court of law? Or is it illegal as contended by the Petitioners?

10) In order to deal with the unscrupulous and dishonest litigants the Supreme Court in the case of *A Shamugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* reported in (2012) 6 SCC 430 has castigated dishonest and unscrupulous litigants, who have no place in Court of law.

11) The Delhi High Court in the case of *MF Buildcon (P) Ltd. v. Anjali* reported in 2019 SCC OnLine Del 8584 observed that, if the Courts, inspite of such conduct of the litigant, continue to also exercise discretion in favour of such litigant, the same will send a message that simultaneously with taking recourse to law, illegality can also be indulged in and the same will result in chaos in the society and against which the Supreme Court has repeatedly warned by holding in the case of *S.P. Chengalvaraya Naidu vs Jagannath* reported in (1994) 1 SCC 1 : AIR 1994 SC 853, *Dalip Singh vs State of U.P* reported in (2010) 2 SCC 114 and *Bandhua Mukti Morcha vs Union of India* reported in (1984) 3 SCC 161 that the Courts

should not lend their assistance to landgrabbers.

12) Taking a cue from the Supreme Court, we pass the following

Order:

- a) The Municipal Commissioner TMC to also verify what part of the structure is protected by the Order of the jurisdictional Civil Court and demolish the balance portion within a period of 4 weeks from the date of this Order;
- b) The TMC to ensure no further additions or alterations are carried out by the Respondent No. 3 or any of their representatives or assigns till the final adjudication of the Suit;
- c) We direct the Joint Civil Judge (Senior Division), Thane to dispose the said Suit mentioned in the Affidavit, as expeditiously as possible and in any event within a period of 6 months from the date of this Order.
- d) We further direct the Municipal Commissioner of the TMC to monitor and ensure that no adjournments are taken by TMC on any ground whatsoever in the said Suit;
- e) We also direct the Municipal Commissioner of TMC to take action against all those Officers responsible for

permitting and perpetuating the illegal structure atleast from the date of the first Complaint received from the Petitioner and state the actions taken in an Affidavit of Compliance that is to be filed within 6 months from the date of this Order;

- f) List the Petition 'for Compliance' on 1st December, 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.).