

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 6607 OF 2024**

New Shree Swami Samartha Borivade

Housing Company Private Ltd. & Anr.

... Petitioners

V/s.

Thane Municipal Corporation & Ors.

... Respondents

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Adv. Kunal Dwarkadas a/w Adv. Karan Bhide, Adv. Nilesh Tated and Adv. Ishaan Zaveri i/b M/s. Mahimtura And Company for Petitioners.

Adv. N.R. Bubna a/w Adv. Pooja Malik for Respondent Nos. 1 & 2.

Adv. S.S. Patwardhan a/w Adv. Mrinal Shelar for Respondent No.3.

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

DATE : 5th February 2025.

P.C. :

1) In our Order dated 18th December 2024, we have expressed our dissatisfaction with the functioning of subordinate Officers of the Respondent No.1-Thane Municipal Corporation. Their failure to provide timely instructions to their Advocates has hindered the adjudication of the Petition.

1.1) In view thereof, we directed the Commissioner of Respondent No.1-TMC to submit his detailed reply to the Petition within five weeks from 18th December 2024.

2) Unfortunately, these directions have once again not been followed by highest-ranking Officer of Respondent No.1-TMC namely, the

Commissioner of Corporation.

2.1) Today, Mr. Bubna, counsel for the Respondent Nos.1 and 2, once again seeks additional time to file reply in compliance with the Order dated 18th December 2024. It is important to note that, the deadline for filing reply expired on 22nd January 2025. Despite that, till date, no Application for extension of time or even a simple *praecipe* was submitted by the Advocate representing Respondent Nos. 1 and 2.

2.2) Today numerous unconvincing excuses were presented across the bar for non-compliance with the Order dated 18th December 2024, *inter alia* for failure to file the reply within stipulated period.

2.3) The Petitioner's grievance is that, Respondent Nos 4 to 9 have engaged in illegal construction. Consequently it is necessary to initiate legal action under the provisions of law to ensure demolition of these unlawful structures.

3) Upon perusal of Orders till date, following the Order dated 21st May 2024, it appears that, the concerned Officers of the Thane Municipal Corporation are deliberately protecting the illegalities committed by the Respondent Nos. 4 to 9. This is evident from the fact that, despite specific directions none of the officers of Respondent No. 1 have filed any reply to date. Therefore we safely infer that, the Officers of the Respondent No.1 have no intention of taking legal action against the illegal structures and/or constructions carried out by Respondent Nos. 4 to 9.

4) At this stage, we inquired with Mr. Bubna, regarding the steps that can be taken to ensure compliance with our Order dated 18th December 2024. He urged us to pass whatever Order this Court wants in the interest of justice in the given circumstances.

4.1) We then informed Mr. Bubna about our dual intentions: first, to impose costs on the Respondent No.1-Commissioner of TMC -- for condoning the delay in filing reply, and second, to issue summons on him to appear in-person before this Court.

4.2) After considering the matter for a few moments, Mr. Bubna submitted that this Court may pass any Orders it deems appropriate.

4.3) At the unexpected response from Mr. Bubna when we reiterated the submission presented, Mr. Bubna attempted to retract it, asserting that, he actually requested leniency and was unable to choose between the two options -- either imposing costs or summoning the Commissioner of Respondent No.1.

4.4) Since both of us on the bench were certain about the submission made by Mr. Bubna, which was also made in the presence of Petitioner's Advocates and others present in Court, we do not require any further clarification from him on the matter.

4.5) We do not appreciate this improper conduct of Mr. Bubna and we deprecate such practice.

5) However, although peeved by the events that have transpired and the recalcitrant attitude of the TMC officers, since we are conscience of dealing with the highest-ranking Officer of TMC, to grant him another opportunity, we permit him to file his reply by extending the period of submission, subject to payment of a cost amounting to Rs.50,000/- from his own account and not from the coffers of TMC. This amount shall be paid to the Advocates Association of Western India Generation Next Fund, Mumbai, within a period of one week from the date of uploading of Order on the official website of High Court of Bombay.

5.1) Details of the bank account for payment of cost are as under :-

Account Name	:-	Advocates Association of Western India Generation Next.
Account Number	:-	000110110007807.
Bank Name	:-	Bank of India.
Branch Name	:-	Mumbai Main.
IFSC Code	:-	BKID0000001.

6) Mr. Bubna, learned counsel for Respondent Nos. 1 and 2, is directed to personally communicate this Order to the Commissioner of Thane Municipal Corporation and produce an acknowledgment of the same on the next occasion.

7) Stand over to 20th February 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)