

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6728 OF 2024

- | | | | |
|----|---|---|------------------|
| 1. | Madhukar Janardhan Dhole |] | |
| | Age: 70 Years, Occ.: Business/Agriculture |] | |
| 2. | Samir Madhukar Dhole |] | |
| | Age: 43 Years, Occ.: Business |] | |
| 3. | Sandip Madhukar Dhole |] | |
| | Age: 38 Years, Occ.: Business, |] | |
| | All adult Indian Inhabitant |] | |
| | Residing at Flat Nos.1 & 2, Rutushree |] | |
| | Apartment, Patas Road, Baramati, |] | |
| | Pune – 413 102. |] | ... Petitioners. |

V/s.

- | | | | |
|----|---------------------------------|---|-----------------|
| 1. | The Chief Officer, |] | |
| | Baramati Municipal Council, |] | |
| | Bhigwan Chowk, Baramati, |] | |
| | Pune – 413 102. |] | |
| 2. | Suchetra Udaysinha Gaikwad |] | |
| | Age: 36 Years, Occ.: Housewife, |] | |
| | Residing at Flat No.1, Trimurti |] | |
| | Apartment, Gaikwadd Mala, |] | |
| | Patas Road, Baramati, |] | |
| | Pune – 413 102. |] | ...Respondents. |

Mr. S.R. Ganbavale i/by Adv. Sangramsinh Yadav for the Petitioners.

Mr. S.R. Nargolkar a/w. Adv. Neeta Patil for Respondent No.1.

Mr. Divyesh Jain a/w. Adv. Shantanu Kolhe for Respondent No.2.

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

RESERVED ON : 3rd February, 2025.

PRONOUNCED ON : 7th February, 2025.

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JUDGMENT (Per Kamal Khata, J.):

- 1) Rule. Returnable forthwith. By consent of parties heard and disposed off finally at admission stage.
- 2) This Petition highlights a dispute between two neighbours at Baramati, Pune. Law abiders on the one hand and law violators on the other.
- 3) The Petitioners, who are flat purchasers, have filed this Petition under Article 226 of the Constitution of India, seeking a directive for the Baramati Municipal Council (BaMC) to demolish unauthorised construction carried out by the 2nd Respondent on an adjoining plot bearing Survey No. 223, Ward No. 8, Patas Road, Baramati, Pune 413102.
- 4) The Petitioners raised grievances with the BaMC about the unauthorised construction affecting their enjoyment of natural air and light by letters dated 18th September 2023, 11th October 2023 and 20th October 2023.
- 5) Upon receiving the complaints, the Respondent No.1 carried out site inspection and called upon the Respondent No.2 to provide the sanctions and permissions obtained by them for their construction. Since the Respondent No.2 failed and neglected to provide the documents, the Respondent No.1 by their notice dated 25th September 2023 under section 54 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act)

directed the Respondent No.2 to forthwith stop the unauthorized construction on the said plot.

6) Since the Respondent No. 2 continued their construction, as per Section 53 (6a) of MRTP Act, an FIR dated 13th October, 2023 was registered at the Police Station by the Respondent No.1 against the Respondent No.2. By an Order dated 3rd November, 2023 by the concerned BaMC authority, directions were issued to the concerned Officers of Respondent No.1 to not only stop the unauthorised construction activities but also initiate criminal action against Respondent No.2 in accordance with law. On 5th January 2024 an office order was issued to take steps and seize the materials and recover costs as penalty from the property. On 8th January 2024 action was taken and report was filed.

7) The Petitioners through an RTI application have discovered that, the Respondent No.2 has not obtained any permission or sanction for carrying out the construction work on the said plot. Since the Respondent No.2 failed to stop the construction, the Petitioners filed a Regular Civil Suit No.22 of 2024 before the Civil Judge, Junior Division, Baramati and sought a restraint Order for the construction. The Petitioners Application for injunction was allowed by the CJJD by an Order dated 18th March 2024 and the Respondent No.2 was restrained from carrying out further construction of the first floor and the second floor. Despite Orders of the Civil Court and the Notices issued by Respondent No.1, Petitioner's allege that, no action has

been taken by the Respondent No.1 to demolish the illegal structure.

8) Heard all counsel and perused the record.

Reasons and conclusion

9) The BaMC appears to have stayed their action on account of the CJD's Order dated 18th March 2024. A bare perusal of the Order dated 18th March 2024 evinces that, the Respondent No.2 was restrained from completing further construction of the first floor and the second floor until the Suit was concluded.

9.1) We find no ambiguity in this order. There was no implied stay on the implementation of the notices issued by the Respondent No.1-Corporation against the Respondent No.2. The Respondent No.1 has misread and misconstrued the Order. Assuming there was a doubt they ought to have obtained a clarification of it from the concerned Court.

10) In the case of *Commissioner, Akola Municipal Corporation v Bhalchandra Govind Mahashabde* reported in 2013 (5) Bom C. R 124 (NB), the High Court has held that, if there is a special provision in an Act barring Civil Jurisdiction, then the jurisdiction of Civil Court stands excluded. The provision of Section 433-A of the Maharashtra Municipal Corporation Act that creates a bar of jurisdiction of Civil Court in matters falling under section 260, 261, 264, 267 or section 478 ought to have been pointed out. The failure to point out the correct position of the law to the Court has led

to the delay in implementation of the Notice issued by the Respondent No.1 to Respondent No.2.

11) The Respondent No. 1 is the executing and implementing authority. They cannot be seen to be by-standers in a litigation which stems from an illegality. They must take active role, they are duty bound to do so. The statute empowers them to take action against unauthorised and illegal construction and casts a duty too under Chapter XV and Chapter XXVI (IX) & (X) of the Maharashtra Municipal Corporation Act, 1949 as well as under Chapter IV of the MRTP Act. Their failure to act has led to rise in illegalities. In this case though, the BaMC have been vigilant until a Court case was filed and Order obtained.

12) The Respondent No.2's have raised the standard defences. That the Petition is not maintainable since the civil proceedings, in respect of the same cause of action, is pending before the Civil Judge, Junior Division, Baramati. That by an application, under Order VI Rule 17, the Petitioners have also sought directions to the Respondent No.1 to demolish the unauthorised structure. Apart from these standard preliminary objections we find no substantial defence.

13) In fact, the plot No.47 on which the structure is erected is a part and parcel of a larger plot bearing Gut No.223 and is jointly owned with other family members. The Respondent No. 2 contends that she could not convert the land parcel to non-agricultural as such application was required

to be made jointly by co-owners and that was not possible.

14) The Respondent No.2 has evidently no defence. The Order dated 18th March 2024 records the Respondent No. 2's assertion that since she owns the land no permission is necessary to construct on her plot no. 47. She claims to have completed 80% to 90% of the construction and only architectural work remains. No attempt is even made to produce any document evincing permission from BaMC – thus the construction is unauthorised. The Notice issued by the Respondent No.1 to Respondent No. 2 are in accordance with law. Evidently, the Respondent No. 2 in blatant defiance of BaMC Notices continued to carry out further construction. During arguments we are informed that the construction was continued despite injunction orders of the CJJD. This willful breach and violation in utter defiance of law cannot be permitted.

15) The reply of the respondent No.1 is elaborate and narrates all the steps taken by them following the Petitioner's complaint as noted above. Mr. Nargolkar on instructions, fairly admits that, in view of the matter being sub-judice before the Civil Court the action of demolition was not taken.

16) A Writ under Article 226, in these circumstances, is certainly maintainable. The Petitioner was faced with a daily sufferance on account of the unauthorised construction which was barely 10 feet away from their building – if it was authorised it would have been certainly 20 feet or more. In such circumstances, we find no fault with the Petitioner filing this

Petition. Moreover, we have been evincing a meteorical rise in both illegal and unauthorised constructions across the State of Maharashtra. Overburdened - the Civil Courts obviously take considerable time to finally adjudicate matters. In the meantime, the audacious violators of law complete illegal unauthorized constructions and enjoy the illicit benefits therefrom. As a ripple effect there are more people who take a chance, leading to a cumulative failure of law and order.

17) To stem these misadventures and to uphold the dignity of the law, we have entertained this Petition. We find no restraint against the Respondent No.1 from carrying out demolition of the unauthorised structures. In fact, they are supported by the Orders of the Civil Judge to restrain the Respondent No.2 from carrying out further construction. The Respondent No. 1 has erred in misconstruing the Order as restraint from implementing its Notice against the Respondent No.2. We find no merit in the defense of Respondent No.2.

18) In the case of *High Court on its Own Motion v State of Maharashtra and Others* reported in 2024 SCC OnLine Bom 918 this Court has emphatically rejected the contention that: so long as the person is not a trespasser, he need not apply for any permission whatsoever. He can construct whatever he likes. Because a recourse under section 53(3) is available to him.

19) In view of the above, the Petition is made absolute in terms of prayer clause (a) which reads thus.

“a) 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 directing the Respondents to demolish the illegal construction carried out by the Respondent No.2, i.e. Suchitra Udaysingh Gaikwad, at Plot bearing Survey No. 223, Ward No.8, Patas Road, Baramati, Pune – 413 102.”

20) We direct the Respondent No.1 to demolish the structure within a period of 1 week from the date of uploading of this Order on the official website of High Court of Bombay.

21) List the matter for “compliance” on 20th February 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

22) At this stage, learned Advocate for the Respondent No.2 submitted that, the Respondent No.2 is intending to question the correctness of the present Order before the Hon’ble Apex Court and therefore the effect and implementation of present Order may be stayed for a period of four weeks from today.

23) Taking into consideration the fact that, the structure of the Respondent No.2 is thoroughly illegal and unauthorized, as noted by us in

the present Judgment, we are not inclined to accede to the said request of the learned counsel for Respondent No.2. Hence, the said request is rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)