

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13779 OF 2024

Jayant Kirshnarao Naik	]	Petitioner
vs.		
Thane Municipal Corporation and others	]	Respondents

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Ms. Jyoti Chavan i/b Mr. Tejas P. Kasar, for Petitioner.

Ms. Deepali Bagla a/w Mr. Harshad Kandalkar i/b AH Legal, for Respondent No.7.

Mr. Harshvardhan Patil i/b A.R. Pitale, for Respondent No.1 – TMC.

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**CORAM : G.S. KULKARNI &
ARIF S. DOCTOR, J.J.**

DATE : 12th JUNE, 2025.

P.C:

1. We have heard learned Counsel for the parties on this petition filed under Article 226 of the Constitution of India.

2. This petition is filed praying for the following substantial reliefs;

a) this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other order/direction in the similar nature directing the Respondent Nos.1 to 6 to take action against the Respondent No.7 for carrying out unauthorized Construction under the provisions of Maharashtra Regional Town Planning Act and the Maharashtra Municipal Corporation Act and be further pleased to demolish the said unauthorized construction carried out at buildings knowns as Ashoka Heights and Naik Paradise situated at land bearing

City Survey No.9B of Tika No.24 lying being and situated at Junction of Shivaji Path and Gokhale Road, Near Thane Railway Station and within the limits of Municipal Corporation of the City of Thane, Taluka and District Thane and be further pleased to direct the Respondent Nos.1 to 6 to issue stop work notice to the Respondent No.7 in respect of the said unauthorized under construction at building known as Naik Paradise;

b) this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other order/direction in the similar nature directing the Respondent Nos.1 to 6 to forthwith stop the unauthorized user of the said buildings by taking appropriate actions under the provisions of the Maharashtra Regional Town Planning Act and forthwith remove the unauthorized users occupying the said buildings known as Ashoka Heights and Naik Paradise;

c) this Hon'ble Court be pleased to initiate inquiring against the erring officers of Respondent Nos.1 to 6 and the Respondent No.7 for allowing such illegal construction to come up and thereafter penalize the erring officers of Respondent Nos.1 to 6 and the Respondent No.7 in accordance with law;

3. We find that the petitioner is owner of the land. The petitioner entered into an agreement with respondent No.7 – M/s. Clean Construction Company for undertaking development. There are two buildings which were proposed to be constructed under the development agreement as entered between the petitioner and respondent No.7 dated 18th October, 2006. It appears that the construction had progressed. According to respondent No.7, the construction was lawfully undertaken after the plans were sanctioned. However, according to the petitioner the construction is not in accordance with the approved plans

and also there is no occupation certificate which has been granted. It is stated that one of such building “Ashoka Heights” is completed. Other building which is proposed to be constructed is to be named as “Naik Paradise”. Be it so, we find that the petitioner terminated the Development Agreement and a Civil suit bearing No. 324 of 2016 is filed before the Court of Civil Judge (Senior Division) at Thane, in which the petitioner also had moved an injunction application below “Exhibit 5” which came to be initially allowed in the petitioner’s favour. The said order was challenged by respondent No.7 before this Court in Appeal from Order No.60 of 2017. The same was adjudicated and disposed of in terms of the consent terms dated 19th March, 2019 which are entered between the parties. It is on such backdrop, the petitioner contends that the Municipal Corporation is not taking any action in regard to the unauthorized construction undertaken by respondent No.7 which is being disputed by respondent No.7.

4. Considering the complexion of the dispute, in our opinion, it is appropriate for the petitioner that the very same cause of action as arising under the development agreement and the construction undertaken thereunder is subject matter of the pending civil suit. Necessarily in regard to the said construction, there is some role which Municipal Corporation is required to discharge *vis-a-vis* the rights of the petitioner as also respondent No.7. It is hence appropriate for the petitioner to implead the Municipal Corporation as party defendant in the said Civil Suit and seek appropriate orders in that regard.

5. Considering the nature of these disputed questions which are involved in the present proceedings, it may not be possible for us to grant any reliefs as prayed for in this petition filed under Article 226 of the Constitution of India.

6. Accordingly, we keep open all contentions of the petitioner as also respondent No.7 as also that of the Municipal Corporation to be urged for consideration of the Civil Court in the pending Civil Court.

7. Needless to observe that in the event Thane Municipal Corporation is of the opinion there is illegal construction or any other illegality, an appropriate action in that regard as known to the law would be required to be taken. All contentions of the parties in such context are also expressly kept open.

8. The Petition stands disposed of in the aforesaid terms. No costs.

9. Needless to observe that in the event the petitioner feels it appropriate, even those who are likely to be affected if any orders are passed in the civil suit can be impleaded as parties in the civil suit.

10. It is also clarified that the petitioner is certainly at liberty to seek urgent relief in the pending suit, if there are any.

[ARIF S. DOCTOR, J.]

[G.S. KULKARNI, J.]