

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18574 OF 2024

Safwan Jafar Hussain Sayyad)
R/at 102, A-Wing, Shri Complex)
Chetana Naka, Kalyan East,)
Taluka Kalyan, District Thane)...Petitioner

Versus

1. Ward Officer, "3/C" Ward, Kalyan)
Dombivali Municipal Corporation, Kalyan, Thane.)
2. The Commissioner, Kalyan Dombivali Municipal)
Corporation, Kalyan, Thane.)
3. The State of Maharashtra)
4. Shagaf Shanawaz Karel,)
Siyam Villa, C.T.S No.507, behind)
Namak Bandar Masjid, Kalyan (W), Dist. Thane.)
5. Faraz Shanawaz Karel,)
Siyam Villa, C.T.S No.507, behind)
Namak Bandar Masjid, Kalyan (W), Dist. Thane.)...Respondents

Mr. Kishor Patil a/w Mr. Pratik B. Rahade for the Petitioner.

Mr. Sarang S. Aradhye a/w Gauri Velankar and Shantanu Gurav for Respondent Nos. 1 and 2.

Mr. P. V. Nelson Rajan, AGP a/w Ms. Bane, AGP, for Respondent No. 3-State.

Mr. Surel Shah, Senior Advocate, a/w Mr. Durgaprasad Sabnis a/w Mr. Arjun Jeswani a/w Mr. Hitenlata a/w Saakshat Relekar i/b Arjun Jeswant for Respondent Nos. 4 and 5.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 21st JULY 2025

ORDER: (Per : Arif S. Doctor, J.)

1. The Petitioner has been constrained to approach this Court in its jurisdiction under Article 226 of the Constitution of India seeking the following substantive reliefs:

“a. Issue and appropriate Writ/Order directing the Respondent No.1 & 2 to decide the pending representation dated 22.10.2024 annexed at Exhibit-“E” to the present Petition.

b. Issue and appropriate Writ/Order directing the Respondent Nos.1 & 2 to take steps to execute and implement the Order/Notice dated 06.08.2024 (Exh-“D”) issued by the Respondent No. ”

2. The facts which lie within an extremely narrow compass, and which are not disputed, are as follows:

2.1 On 23rd July 2024, one Sagar Joshi filed a complaint with Respondent No. 1 and 2 i.e. the Ward Officer “3/C” Ward and the Commissioner of the Kalyan Dombivali Municipal Corporation (for convenience collectively referred to as “KDMC”) pointing out that the building comprising of ground plus six stories called ‘Siyam Villa’ (“**the said building**”) which had been constructed by Respondent No. 4 and 5 (“**the Developers**”) situated at S. No. 507 Govindwadi, Kalyan Dombivali was illegal and unauthorized.

2.2 Respondent No. 1 taking cognizance of the complaint issued a Show Cause Notice dated 6th August 2024 (“**the said Notice**”) under Section 260(1)¹ of the Maharashtra Municipal Corporation Act, 1949 (“**MMC Act**”) to the Developers calling upon them to (i) remain present on 13th August 2024 at a personal hearing

1 260. (1) The Commissioner shall, by notification in the Official Gazette, designate an officer of the Corporation to be the Designated Officer for the purposes of this section and of sections 261, 264, 267 and 478. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and difference officers may be designated for different local areas.

along with all the necessary documents to demonstrate how the said building was a legal structure, and (ii) putting the Developers to notice that in the event they failed to appear, Respondent No. 1 would initiate proceedings as per Section 260(2)² of the MMC Act.

2.3 Since no further action was taken by the KDMC after issuance of the said Notice, the Petitioner made a representation dated 22nd October 2024 (“the representation”) to the KDMC, a translation of which reads as follows:

“...However, I request you to remove the said unauthorized construction as soon as possible and cooperate with us. If you do not take action in accordance with this complaint, we will file a complaint against you in the Hon’ble Bombay High Court. Mr. Tushar Sonawane Ward Officer has taken an amount of Rs. 5,00,000/- from Shagaf Karel and Faraz Karel. However, no action has been taken. This information has been given to us by Mr. Gaikwad, an employee of the Ward Officer...”

2.4 Since despite the above, the KDMC, has neither acted upon the said notice nor the said representation, the Petitioner has filed the present Petition seeking the reliefs extracted above.

3. Mr. Rahade, Learned Counsel for the Petitioner pointed out that given the inaction on the part of the KDMC, it was clear that the Officers of the KDMC were hand in glove with the developers. He pointed out as per Section 260 of the MMC Act, a duty is cast upon the KDMC to take action against any building which was illegally constructed i.e. constructed without any permission.

2 260. (1) ... (2) If such person shall fail to show sufficient case, to the satisfaction of the Designated Officer, why such building or work shall not be removed altered or pulled down, the Designated Officer may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

4. He submitted that the KDMC had however in the present case other than issuing the said notice, not taken any steps in pursuance thereof and had thus failed to discharge its statutory duty under Section 260 of the MMC Act. He pointed out that all these facts had been brought to the notice of the KDMC vide the said representation despite which the KDMC had failed to act. He, therefore, submitted that it was imperative that this Court direct the KDMC to act upon the said representation and to take steps to execute and implement the said notice dated 6th August 2024.

5. *Per contra*, Mr. Shah, learned Counsel appearing on behalf of the Developers submitted that the Petition was misconceived and was liable to be dismissed as such since the Developers had filed an application dated 24th July 2024 for regularization of the said Building, which application was pending. He submitted that until such time that the Application was pending, the question of action upon either the said Notice or the said representation did not arise.

6. Mr. Shah then tendered a compilation of documents basis which he submitted that the Developers were the owners of the said plot in question and had carried out construction thereon within the permissible FSI. Mr. Shah, further pointed out that pursuant to the application for regularization, the Assistant Commissioner, KDMC had issued a notice dated 24th February, 2025 by which the Developers had been granted a personal hearing. He also pointed out that a letter dated 26th March 2025 had been issued by the “Bhumi Abhilek” department for carrying out a survey/measurement of the said property and its sub-division.

7. Basis the above, Mr. Shah submitted that since an application for regularization had been filed and was pending adjudication the said Notice ought not be acted upon. He submitted that if the said Notice was acted upon, before the regularization application was decided the same would amount to the Developers being deprived of their property without following the due process of law and would therefore be in the teeth of the directions issued by the Hon'ble Supreme in the case of *Re: Directions in the matter of Demolition of Structures*³. Basis this, Mr. Shah submitted that the petition be dismissed, and the regularization application be heard and disposed of.

8. At this stage, we inquired of Mr. Shah, as to whether the Developers had obtained even a single permission prior to constructing the said building, to which Mr. Shah fairly responded by saying that the Developers had not. He, however, reiterated that a regularization application was filed and pending as also that the Developers had constructed within the permissible FSI.

9. Having heard learned Counsel for the parties and having considered the material that is placed before us as also the case law both relied upon, and to which reference was made by Mr. Shah, we find that the Petition deserves to succeed for the following reasons:

- A. It is not in dispute that the construction of the said building is wholly illegal i.e., without a single permission. The only ground on which the Petition is opposed is that the Developers have filed an application for regularization,

3 (2025) 5 SCC 1

pending which, the said Notice must not be acted upon. We find that such a contention needs only to be stated to be rejected in view of the law laid down by the Hon'ble Supreme Court in the case of **Kaniz Ahmed Vs. Sabuddin & Ors.**⁴ in which the Hon'ble Supreme Court while deprecating the practice of regularization of illegal construction observed as follows:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]”

The aforesaid exposition by the Hon'ble Supreme Court, conclusively determines the issue. Thus, it matters little that Developers have filed a regularisation application as any such is a nullity in the eyes of law. The said building being wholly illegal, must first be demolished and after which, the Developers if they so desire may apply for a permission, and if such permission is sanctioned, carry on construction in accordance with such permission. To permit otherwise would not only be contrary to

4 2025 SCC OnLine SC 995

every cannon of the rule of law but also embolden others to put up constructions without first obtaining the necessary permissions.

- B. This Court recently in the case of *Feroz Talukdar Khan vs. The Municipal Commissioner Thane Municipal Corporation & Anr.*⁵ while dealing with the issue of illegal construction, in which a similar argument of a regularization was made, *inter alia* held as follows:

“16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.”

We find the above observations would also apply on all fours to the facts of the present case.

- C. Reference by Mr. Shah to the judgment of the Hon’ble Supreme Court in the case of in *Re: Directions in the matter of Demolition of Structures*⁶ is not only entirely misplaced but is infact against the Developers since the only issue which fell for consideration in the said cases was as follows:

⁵ 2025 SCC OnLine Bom 2423

⁶ (2025) 5 SCC 1

“15. The scope of the present petitions is limited. The question that will have to be considered is, as to whether the properties of the persons, who are accused of committing certain crimes or for that matter even convicted for commission of criminal offences, can be demolished without following the due process of law or not?”

In the facts of the present case, the aforesaid issue does not arise at all. The issue at hand pertains to brazenly illegal and unauthorized construction carried out by Developers who have scant regard for law and then seek shelter under the garb of a regularisation application.

- D. Also and *crucially*, in the facts of the present case, the KDMC has infact, taken steps in accordance with law by issuing the said Notice, and is thus followed the due process of law. Regrettably however, the KDMC has, after issuing the said Notices, not taken any further steps to complete the action initiated by it after issuance of the said Notice under Section 260 of the MMC Act. It is this process which has been duly commenced in accordance with law, which must be taken to its logical conclusion, failing which, the KDMC will not only be in breach of its statutory duties but also will be complicit in aiding and encouraging such patently illegal and unauthorized construction.

Operative Order:

10. For the aforesaid reasons, the Petition must succeed and hence we pass the following Order :

- (i) KDMC is hereby directed in terms of prayer clause (a) to decide the pending representation dated 22.10.2024 annexed at Exhibit-“E” to the present Petition within a period of four weeks from today by inquiring into the allegations made against Mr. Tushar Sonawane, Ward Officer, and file a report to that effect.
- (ii) The KDMC is directed in terms of prayer clause (b) to take steps to execute and implement the said Notice dated 06.08.2024 (Exh-“D” to the Petition), after following due process of law within a period of two months from today.
- (iii) List for compliance on 10th September 2025.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)