

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

WRIT PETITION NO.3972 OF 2025

Pinky Bhawarlal Parihar	]	
Age : 32 years, Occ : Business	]	
Owner of Unit No.B-7,	]	
Rangoli Time Complex Premises	]	
Co-operative Society Ltd.,	]	
Dr. Babasaheb Ambedkar Marg,	]	
Parel, Mumbai – 400 012.	]	...Petitioner.

V/s

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|----|---|---|-----------------|
| 1. | Designated Officer Ward F/South |] | |
| | E.E. & D.O. (B & F), F/South |] | |
| | Having office at F/S Ward Office Building |] | |
| | Jaganath Bhatankar Marg |] | |
| | Dr. B.A. Road Junction, Parel Naka |] | |
| | Mumbai – 400 012. |] | |
| 2. | Mumbai Municipal Corporation |] | |
| | Through its Municipal Commissioner |] | |
| | Having office at MCGM Head Office |] | |
| | Mahapalika Marg, Near CSMT |] | |
| | Mumbai – 400 001. |] | ...Respondents. |

WRIT PETITION NO.3973 OF 2025

Bhawarlal C. Parihar	]	
Age : 34 years, Occ : Business	]	
Owner of Unit No.B-7,	]	
Rangoli Time Complex Premises	]	
Co-operative Society Ltd.,	]	
Dr. Babasaheb Ambedkar Marg,	]	
Parel, Mumbai – 400 012.	]	...Petitioner.

V/s

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|----|---------------------------------|---|--|
| 1. | Designated Officer Ward F/South |] | |
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|---|---|-----------------|
| E.E. & D.O. (B & F), F/South |] | |
| Having office at F/S Ward Office Building |] | |
| Jaganath Bhatankar Marg |] | |
| Dr. B.A. Road Junction, Parel Naka |] | |
| Mumbai – 400 012. |] | |
| | | |
| 2. Mumbai Municipal Corporation |] | |
| Through its Municipal Commissioner |] | |
| Having office at MCGM Head Office |] | |
| Mahapalika Marg, Near CSMT |] | |
| Mumbai – 400 001. |] | ...Respondents. |

Mr. Vikram N. Walawalkar a/w Mr. Suresh Sabrad for the Petitioner.

Ms. Komal Punjabi a/w Mr. R.Y. Sirsikar, Mr. Anand Khairnar & Ms. Sharmila Modle for the Respondent-BMC.

Mr. Pawan Khairnar JE (B & F) F/South & Mr. Vishal Patil, A.E. (B & F) F/South, present.

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

DATED : 19th March, 2025.

ORDER (Per Kamal Khata, J.):

1) By these Writ Petitions under Article 226 of the Constitution of India, the Petitioners are challenging a Notice dated 30th April 2019 under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP) as well as, the Speaking Order dated 14th February 2025 passed by the Designated Officer, Ward F/South of the Brihanmumbai Municipal Corporation (BMC), Respondent No.1 herein.

2) The Petitioners are the purchasers of Unit No. B-7 in Writ Petition

No.3972 of 2023 and Unit No.B-6 in Writ Petition No.3973 of 2023 in the Rangoli Time Complex Premises Co-operative Society Ltd. (the notice premises) by way of a Registered Sale Deed dated 24th January 2002 and are using the said notice premises situated in the basement of the building only for storage purposes. The approved plan of 29th September 1988 shows that, the basement was approved for usage as a shop/godown area. The Petitioners have also paid property taxes for their unit since 1st January 1992 after the building was completed in the year 1990.

3) The Petitioners had received a Notice under Section 53(1) of the MRTP Act on 30th April 2019 calling upon the Petitioners to reinstate the basement or apply for regularization and retention under Section 44 of the MRTP Act within a month from the receipt of the Notice. According to the Petitioners, the plan relied upon by the BMC dated 27th December 1988 which was not the final approved plan. The Petitioners responded to the said Notice through their Advocate on 6th June 2019 and asserted that, they had not changed the user of the premises or made any alteration or structural changes to the said premises and it was being used in the same manner as received by them since inception i.e. from 1988 to 1992. Since no action was taken after the Advocate's response to the notice issued by the Respondent-BMC, the Petitioners carried an impression that, no action whatsoever was required to be taken and the response to the notice was

accepted by the Respondent-BMC. Suddenly, on 14th February 2025, after a period of more than 5 years, a Speaking Order came to be served on the Petitioners. It is under these circumstances that, the present Petitions are filed.

4) Mr. Vikram Walawalkar, learned counsel for the Petitioners submitted that, the service of a Speaking Order, after a period of more than 5 years since the Notice dated 30th April 2019 under Section 53(1) of the MRTTP Act, itself evinces malafide intention. He submits that, the Petitioners eviction from the premises is for the proposed redevelopment of the building. He submitted that, there was no inspection or any photographs taken before issuance of Notice on 30th April 2019. According to him, the Notice had lost its efficacy after a period of 5 years, since it was issued, therefore the Order passed on 14th February 2025 was not in accordance with law.

4.1) He vehemently contended that, the action of issuing the impugned Order belatedly was contrary to law, perverse, erroneous and was liable to be set aside. He also took us through the Share Certificates, the Plans and the other Assessment Payment Challans in support of his contention that, the premises were as per the final approved plan. He thus submitted that, the Petitions deserve to be made absolute and the Notice and the Speaking Order deserves to be set aside.

5) Ms. Komal Punjabi, the learned counsel appearing for the Respondents submitted that, the partitions made in the godown were not in accordance with the sanctioned plans. She supported the Speaking Order dated 14th February 2025 by submitting that, the contraventions were clearly stated and they were given sufficient time to produce the necessary documents in support of their contention, if any. She submitted that, the actions were not in any manner perverse as alleged, neither were they in contravention of any law. She also submitted that, the demolition of the illegal partitions was completed and only a part of the same remained and would be completed in a day or two.

6) We heard both learned Advocates Mr. Vikram Walawalkar and Ms. Punjabi and also perused the papers and proceedings before us.

7) We called upon Mr. Walawalkar to show us the final sanctioned plans based on which the partitions were constructed. Although he had some plan it was not the final sanctioned plan showing the partition in the basement. He contended that, they had purchased the units in the manner in which it was shown to them and they had not made any changes therein. According to him, these units were assessed as separate units since inception and therefore, it could safely be inferred that the units were sanctioned or authorized. Besides that, the premises were used only as a godown as per the sanctioned plans and not for any other purpose.

8) Though we agree with Mr. Walawalkar that, such hasty action from BMC was totally unwarranted, we are unable to accept his contention that, separate units with partitions in the basement were sanctioned by the concerned Authority at any stage. In the absence of such sanctioned plans, we are unable to protect the Petitioners interest in any manner whatsoever.

9) We are bound by the judgment of the Hon'ble Supreme Court in the case of *Rajendra Kumar Barjatya & Another v/s. U.P. Avas Evam Vikas Parishad & Others* reported in *2024 SCC OnLine SC 3767*. Paragraph No.20 is reproduced herein below for ready reference:

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s)

under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable

for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

[emphasis supplied]

10) In view thereof, we are unable to accede to the request of Mr. Walawalkar that, the Share Certificates, the Assessment Bills or sanctioned plan showing the use as a godown would authorize him or his clients to divide the entire area with partitions and use them as separate units. The issuance of share certificate by the Society or payment of assessment bills or even electricity bills, will not amount to deemed authorisation of the partitions identifying the individual premises.

11) In view of the above, we find no merit in the Petitions and are accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)