

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4210 OF 2025

Feroz Talukdar Khan

...Petitioner

Versus

The Municipal Commissioner Thane

Municipal Corporation & Anr.

...Respondents

Mr. Vishal Hegde a/w R. P. Shirole a/w Anuja Apte a/w Aiswarya Jose a/w Rohit Maurya for the Petitioner.

Mr. Jagdish G. Arudwad (Reddy) for Respondent No. 1-TMC.

Mr. Azimuddin Kazi a/w Rizwan Khan a/w Somesh Gandhi i/b N. N. Kazi & Associates for Respondent No. 3.

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

DATE: 18th JUNE 2025

Oral Judgment: (Per : G. S. Kulkarni, J.)

1. Few days back, we were confronted with a serious case^{*} in regard to the brazen and illegal construction of what we were then informed were 17 buildings on agricultural land within the Municipal jurisdiction of the Thane Municipal Corporation (for short “**the municipal corporation**”) at village Shil, Thane. By a detailed order dated 12th June, 2025, we permitted the municipal corporation to take appropriate steps as per law, to demolish 17 illegal buildings. We had also ordered an inquiry to be held by judicial officer appointed by the Learned Principal District Judge, Thane on such massive illegal construction which shocked our

^{*} Writ Petition No. 5898 of 2025 in the case of **Smt. Subhadra Ramchandra Takle Vs. State of Maharashtra & Ors.**,

judicial conscience. We are informed that the said order passed by us was assailed before the Supreme Court by some of the occupants of such illegal construction, however, such proceedings were ultimately withdrawn. Crucially, none of those who had put up these constructions had impugned the Order.

2. This is another case in the very same village/area in which grievance of the Petitioner is again, of a rank unauthorized construction undertaken by Respondent No. 3 which is stated to be a structure of ground plus six floors. The photographs of the construction on behalf of the Petitioner are placed on record. We are astounded and deeply distressed in considering such full-fledged building being constructed without any permission / approvals whatsoever, from the planning authority, The municipal corporation.

3. Mr. Reddy, learned Counsel for the Municipal Corporation, has drawn our attention to the reply affidavit filed by the Assistant Commissioner, (Diva Ward), Thane Municipal Corporation. At the outset, Mr. Reddy would submit that the construction was categorized to be wholly illegal and unauthorized and accordingly a notice dated 21st February, 2024 was issued by the Assistant Commissioner under the provision of Section 260 read with Section 267 (1) of the Maharashtra Municipal Corporations Act, 1949. A copy of the notice is annexed to the reply affidavit dated 15th March, 2024, whereby it was ordered that such illegal construction be removed. Notably at such stage, the construction had came up only till the plinth level.

4. However, it appears that Respondent No. 3, who has no regard for law, despite such notice, instead of removing the plinth (illegal construction), proceeded to undertake further construction and put up a full-fledged building of five floors. We are informed by the learned Counsel for Respondent No. 3 that now some occupants are also inducted. As to how the construction of the building could proceed when the plinth itself was called upon to be demolished, can only be answered by the Municipal Officers, and as to why further notices and action was not taken as the law would mandate also remains unanswered. We may observe that in such matters for the Municipal Officers to keep their eyes shut appears to be routine, for the reasons only they know.

5. Be that as it may, after one notice which remained only on the paper on which it was written another formality was adopted of a First Information Report (FIR) dated 18th January, 2025 being filed by the municipal corporation, which is quite recent. Despite which Respondent No. 3 with impunity in the absence of any real action being taken on the part of the municipal corporation, appears to have continued with the construction. We are not pointed out anything that such police complaint was investigated or pursued to its logical conclusion, by any criminal case being filed against Respondent No. 3.

6. The fact, however, remains that the entire construction undertaken on the land in question [Survey no.52] is wholly illegal and unauthorized for the reason that neither any permission was applied for, nor any permission was granted. This position is not disputed. Mr. Reddy, on instructions, has submitted that the action

for demolition has already been initiated by the municipal corporation, if it is so initiated, it is required to be taken to its logical conclusion as the law would mandate. In such context, in our order dated 12th June, 2025 (supra), we have referred to the settled principles of law as laid down in the decisions of the Supreme Court in **M. I. Builders Pvt. Ltd. Vs. Radhey Shyam¹, Friends Colony Development Committee Vs. State of Orissa & Ors.², Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation & Ors.³, Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors.⁴, and Kerala State Coastal Zone Management Authority Vs. Maradu Municipality & Ors.⁵** and the decision of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) Vs. Bhiwandi Nizampur Municipal Corporation & Ors.⁶** wherein it has been consistently held that brazen unauthorized and illegal construction cannot be tolerated and the same would be required to be demolished. In the present case, when not even a single brick qua such large construction was laid under any approval of the planning authority, there is no question of such unauthorized construction in any manner being tolerated and rightly the municipal corporation has initiated the demolition action. Such demolition is on the same lines being undertaken by the Corporation qua the 17 buildings in **Smt. Subhadra Ramchandra Takle** (supra).

1 (1999) 6 SCC 464

2 (2004) 8 SCC 733

3 (2013) 5 SCC 336

4 (2021) 10 SCC 1

5 Civil Appeal Nos. 4784-4785 of 2019, decided on 8th May, 2019

6 2022 SCC OnLine Bom 386

7. Learned Counsel for Respondent No. 3, referring to a compilation, however, submits that Respondent No. 3 would intend to put up plans and regularize the illegal construction, hence, the action of demolition as initiated by the municipal corporation ought not to be resorted. He submits that such application as made by Respondent No. 3 dated 19th May, 2025 needs to be considered by the municipal corporation. His second submission is that there are some occupants, there would be a prejudice which would be caused to these occupants.

8. Having heard learned Counsel for the parties and having perused the record, we may observe that it is undisputed position, that the entire construction in question right from the plinth up to the sixth floor is unauthorized. We find from the photographs tendered on behalf of the Petitioner that although the construction is illegal, two additional floors are sought to be constructed.

9. We are really surprised at such approach on the part of any citizen, who would not have any regard to the mandate of law and more importantly, put up construction, which would be offered/sold in the open market that is, brazen illegal construction being sold, to innocent persons, by misguiding them in some manner, on the legality of the construction. This aspect would not require further elaboration. The ill effects an unauthorized construction entails and the adverse consequences it would bring about not only the society at large, but also the environment and above all the innocent tenement purchasers are just to be imagined.

10. We are also surprised that normally occupants are inducted in a building only after a legally permissible construction is put up and after an occupation certificate is granted by the planning authority, after due verification of the quality of construction and on examination of all aspect of the legality involved in the construction. However, all these norms, are thrown to the winds and were wholly ignored by Respondent No. 3. In our opinion, respondent No.3 had ample resources to do so and risk an unauthorized construction of such nature. However, the law would not allow any misplaced sympathy on such persons, who violate the law with open eyes.

11. This is a glaring case, wherein the municipal corporation earlier attempted to prevent the illegal construction when the same was at a plinth level. However, it appears that after the issuance of such notice, the municipal officers remained mute spectators and failed to exercise their powers in preventing further construction. By their inaction, the municipal officers not only permitted illegal construction to progress but also to be sold and to be occupied, knowing well that the construction is illegal. Certainly the municipal officers cannot take a stand that they were not aware of the progress of the construction, till a full fledged ground plus sixth floors was put up.

12. As observed by us in our order dated 12th June 2025, in the case of **Smt. Shubhadra Ramchandra Takle (Supra)**, such neglect or a permissive regime for a *fait accompli* to be achieved cannot arise unless such construction has the covert blessings of the Municipal / Government Officers. There is nothing different in the present case as it appears to us that the notice which was issued initially remained

confined to be merely a piece of paper, without any action taken by the municipal officers to remove the plinth and prevent further construction. Also, the FIR which was filed has also remained to be a paper FIR.

13. Mr. Reddy has stated that the Corporation is already taking steps to demolish the construction. In our opinion, given the settled position in law this is inevitable. Moreover, such construction was required to be nipped in the bud, so that further illegal construction could not have at all progressed.

14. Our common experience, in such context, is that the law which is understood by the municipal officers / government officers, is different from what the legislature and the Courts would accept. It is beyond our imagination. We can only say that when it comes to such rampant unauthorized construction, it cannot be that unless the Court intervenes, no action would be taken by the municipal officers to demolish the same. We wonder as to when the municipal officers and planning authorities working on the field would act honestly and in the spirit of the oath they take as public servants in discharging their duties as mandated by law. These are our sentiments of deep pain and anguish when we find such open defiance of law at the hands of the municipal officers whose duty is to ensure compliance with the Municipal Laws and not to ensure their observance in the breach. We have observed in our order in **Smt. Shubhadra Ramchandra Takle** (Supra) that it is difficult to believe that there exist any rule of law when it comes to unauthorized constructions.

15. Insofar as the contentions as urged on behalf of Respondent No. 3 are concerned, that Respondent No. 3 intends to regularize the construction is a plea which outrightly needs to be rejected. Such a plea as urged is on a complete misunderstanding and misreading of the provisions of law and the settled principles which are laid down in a catena of decision on the principles of regularization.

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.

17. We may refer to the decision of the Supreme Court in **Mahendra Baburao Mahadik & Ors. Vs. Subhash Krishna Kanitkar & Ors.**⁷ rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short “**MRTP Act**”). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

“37. The Municipal Council is a 'local authority' as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTP Act.”

(emphasis supplied)

18. In **Kaalkaa Real Estates Pvt. Ltd.& Anr. Vs. Municipal Corporation of Greater Mumbai & Ors.**⁸, in the context of regularization of unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter

7 (2005) 4 SCC 99

8 2022 SCC OnLine Bom 2536

of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed that this is not the intention of the legislature that in making the regularization provisions under the MRTTP Act, including the penal provisions (referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary

powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve condonation of the illegality.

19. In a recent decision of the Supreme Court in **Rajendra Kumar Barjatya & Anr. Vs. U. P. Avas Evam Vikas Parishad & Ors.**⁹, the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.

“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

9 2024 SCC OnLine SC 3767

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.”

20. In a recent decision of the Supreme Court in **Kaniz Ahmed Vs. Sabuddin & Ors.**¹⁰ deprecating regularization of illegal construction, the Supreme Court made the following observations:

“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)]”

21. Adverting to the aforesaid settled principles of law, the proposition on regularization as urged on behalf of Respondent No. 3, if accepted, would also bring about the situation of creating two categories of citizens as observed by the Division Bench of this Court in the proceedings of **High Court on its own motion (In the matter of Jilani Building at Bhiwandi)** (Supra) i.e. firstly, a category of

10 2025 SCC OnLine SC 995

citizens who would intend to adhere to the rule of law; who would approach the planning authority by applying for a planning / development permission by putting up plans through their architects and to undertake legal and authorized constructions; and on the other hand a category of citizens who have no regard for law and merely because they have large resources (possibly not legitimate) at their disposal to undertake unauthorized construction. What would be these resources is only to be imagined, being utilized in connivance with the official machinery in putting up illegal constructions.

22. We may observe that it is likely that many such illegal constructions have remained unattended and / or have flourished or impliedly protected by the municipal machinery. They remain unattended for years together with such blessings of the official machinery. We are not aware as to when an inspection and audit of this illegal / unauthorized construction ward wise would be undertaken. It needs to be immediately commenced by the Municipal Commissioner and prevent further lawlessness.

23. It is in these circumstances, we cannot accept the plea as urged on behalf of Respondent No. 3 to permit Respondent No. 3 to attempt or pursue any regularization application as the same is not maintainable in law. For the reasons which we have discussed hereinbefore, such an application can have no legal recognition, in fact it is a non-est and void application, which the municipal authorities, in no manner whatsoever even if they so desire, can consider.

24. We hope and trust that the municipal officers would consider such legal position whenever any regularization application is received in relation to rank unauthorized construction. The Municipal Commissioner in that regard needs to have a uniform policy so that inherently illegal and unauthorized constructions are not regularized and such applications are rejected. Such appropriate directions be forthwith issued by the Municipal Commissioner to the appropriate department receiving such regularization application.

25. Also as observed by this Court in **Smt. Subhadra Ramchandra Takle** (Supra), any occupant of the said unauthorized and illegal premises can have no legal right whatsoever. There can neither be any equity nor sympathy, which can be shown to such occupants who have purchased premises in illegal constructions. The Court has referred them to be greedy purchasers, who have ample means to purchase premises in illegal constructions.

26. For the aforesaid reasons, we have no manner of doubt that the Municipal Corporation needs to proceed further to demolish the unauthorized construction in question as per the lawful measures as initiated. There can be no protection to such illegal construction.

27. We dispose of this petition in the aforesaid terms. No costs.

28. List the matter on 2nd July, 2025 for compliance.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)