

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5441 OF 2025

Mohan Laxman Bamanian alias Mohan Lacmane ...Petitioner

Versus

The ADM/Member Secretary,
Planning and Development Authority Div
UT ADM of Dadra and Nagar Haveli and Anr. ...Respondents

Mr. S.R. Nargolkar i/b. Aumkar Joshi, for the Petitioner.

Mr. Harsh Dedhia h/f. Hiten Venegavkar, for the Respondents.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 23 APRIL 2025

P.C.:

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs:-

“(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order or direction of the same nature calling for the record and proceedings in connection with the Petitioner's case from the Respondent No.1 and after going through the legality and propriety of the same, be pleased to quash and set aside the impugned Notice dated 25.3.2025 issued by Respondent No.1 at Exhibit "M" hereto;

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction of the same nature, directing Respondents, their officers and/or any other person acting on behalf of the Respondents not to take any coercive steps against the Petitioner in pursuance of the impugned Notice dated 25.3.2025 issued by Respondent No.1, annexed at Exhibit "M".”

2. It appears that on 25 March 2025 (**Exh.M** - page 43) the
ADM/Member Secretary, Planning and Development Authority - Diu

issued a notice to the petitioner to stop unauthorised development *inter alia* stating that the development on the land in question of 334.62 sq. meters as constructed by the petitioner was unauthorised development, without obtaining any construction permission from the Planning and Development Authority - Diu. The petitioner was called upon to stop construction with immediate effect and was also called upon to get the construction regularised or it shall be demolished within 30 days.

3. It is in these circumstances the present petition was moved. The petitioner has submitted its reply to the said notice, being reply dated 11 April 2025 which was received by the respondents on 16 April 2025 a copy of which is annexed at (Exh. 'N' page 44) to the Petition. The petitioner has sought to justify the construction that it is not unauthorised. Such reply is stated to be pending consideration of the ADM/Member Secretary/Planning and Development Authority - Diu. The petitioner apprehends that pending consideration of such reply no action be taken against such construction of the petitioner which is stated to be illegal by the respondent/authorities and an appropriate order in this regard needs to be passed by the ADM/Member Secretary/Planning and Development Authority - Diu after hearing the petitioner is the petitioner's contention.

4. It is on such premise we heard the proceedings yesterday. We called upon the petitioner to place on record of this petition, the construction

permission, if any, granted to the petitioner by the appropriate authority as Mr. Nargolkar, learned counsel for the petitioner had merely relied on a photocopy of a purported plan annexed at **Exh. 'D'** (page 22). This in our opinion was wholly insufficient for the Court to prima facie accept the legality of the contention, when the Court is called upon to exercise writ jurisdiction. This more particularly, when reliance was placed by Mr. Nargolkar on the Dadra and Nagar Haveli and Daman and Diu Town and Country Planning Act, 1974. We have noted the relevant provisions of the said legislation more particularly Section 44 which pertains to "Grant of Permission" for construction by the Planning and Development Authority. The decision of this authority is contained under Section 2(23). Accordingly, we intended the petitioner to place on record an appropriate planning/development permission. However, the petitioner is unable to place the same on record stating that certain documents could not be located by the petitioner on the purported ground that the construction is an old construction.

5. Even otherwise, considering the nature of the contentions as urged by the petitioner, it appears to be difficult for us to exercise discretionary jurisdiction under Article 226 of the Constitution of India considering such questions of fact in the absence of any acceptable documents, even to come to a conclusion as to whether in these circumstances any prima facie

case, at all is made out by the petitioner.

6. Be that as it may, in our opinion, albeit such case as brought before the Court by the petitioner, if at all the petitioner has any lawful building permission and the construction is authorized, as sought to be contended in the petitioner's reply dated 11 April 2025 to the impugned notice dated 25 March 2025, in our opinion, let the same be considered by the ADM/Member Secretary/Planning and Development Authority – Diu. Any additional documents, if are sought to be submitted by the petitioner, let the same be placed before the said authority on the date of hearing. The ADM/Member Secretary/Planning and Development Authority - Diu shall consider all issues on the legality of the construction of the petitioners as objected, so as to ascertain, whether it complies with the provisions of law and shall pass further appropriate orders as may be permissible in law.

7. We keep open all contentions of the petitioner to be urged before the PDA. Let the hearing on the proceedings be fixed before ADM/Member Secretary/Planning and Development Authority - Diu on **30 April 2025 at 1.30 pm** and an order on such contentions be passed within a period of one week from today. Till such order is passed, we order that the status-quo as on date, be maintained.

8. Needless to observe that if the petitioner fails to satisfy the authority that the construction is legal, the authority is free to proceed to implement the impugned order.

9. We clarify that the limited protection as granted by us is in no manner, any expression on the merits of the rival contentions and it is for the authority to consider all such contentions and the record, and take appropriate view in the matter.

10. Petition is disposed of in the aforesaid terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]