

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6856 OF 2025

Shri Iqbal Ahmed Shaikh Mohammed Khot ...Petitioner

Vs.

The Ward Officer, 3/C Ward, Kalyan Dombivali
Municipal Corporation & Ors.

...Respondents

Mr. Kishor Patil with Mr. Pratik Rahade for the Petitioner.

Mr. Pankaj Deokar for Respondent Nos.1 to 4.

Mrs. M. P. Thakur, AGP for Respondent No.5.

Mr. Durgaprasad Sabnis with Mr. Arjun Jeswani and Mr. Hiten Lala i/b. Mr. Arjun Jeswani for Respondent Nos.6 and 7.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 23 JULY 2025.

P.C.

1. We have heard learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India is filed
praying for the only relief which reads thus:-

“(a) This Hon’ble Court be pleased to direct the Respondent Nos.1 to 3 to consider the objections raised by the Petitioner by letter dated 21.3.2025 at Exhibit H before passing any Order on the Regularization Application filed by the Respondent No.6 & 7.”

3. It has been fairly pointed out at the Bar that in regard to the very structure, Writ Petition No.18574 of 2024 (**Safwan Jafar Hussain Sayyad vs. Ward Officer, 3/C Ward, Kalyan Dombivali Municipal Corporation & Ors.**) was adjudicated by this Court by a judgment and order dated 21 July 2025. The Court considering that the structure was rank illegal and the settled principles of law as laid down by

the Supreme Court in its decision in **Kaniz Ahmed Vs. Sabuddin & Ors.**¹ *inter alia* held that the structures which are illegally constructed cannot be regularized and would be required to be demolished. The said petition came to be allowed in terms of the following relevant observations and directions:-

“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, 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 every canon 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:

“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.”

4. It is not in dispute that the aforesaid decision would cover the present proceedings as they pertain to same subject property. We accordingly dispose of this petition as the prayers as made in the petition would not be maintainable in view of our aforesaid judgment and order in **Kaniz Ahmed Vs. Sabuddin & Ors.** (supra). No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)