

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8590 OF 2025

Tulip Heights Housing Society & Ors. ...Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

Ms. Preeti Walimbe with Ms. Vaishnavi Nagargoje for the Petitioners.
Ms. Savita Prabhune, AGP for State/Respondent No.1.
Mr. A. S. Rao for Respondent Nos.3 to 5.
Mr. H. S. Venegaonkar, PP for State.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 27 JUNE 2025.

P.C.

1. Leave to amend to incorporate appropriate amendments and the real reliefs the petitioners would intend to pray, more particularly considering the submissions as made on behalf of the petitioners, that the legal and constitutional rights of the petitioners certainly stand violated by such illegal construction. At the same time, learned counsel for the petitioners has fairly pointed out that the construction being illegal, necessarily needs to be demolished. She, however, raises a concern in regard to the existing rights of the petitioners qua the land to undertake lawful construction. Such contention is on the basis that the members of the petitioners have purchased flats after availing of the information qua the project from the Maha-RERA and after taking all precautions. She submits that in view of

the registered agreements as entered between the petitioners' members and the developer which have due recognition in law her contention is that certainly the petitioners have valuable legal and constitutional rights which are now intended to be asserted.

2. As urged by learned counsel for the petitioners, the concern of the petitioners is also in regard to the gross illegality of the municipal officers as involved and who permitted such an illegal building to be constructed by the developer and the land owner resulting the flats in the said building being sold to innocent persons like the petitioners. She submits that there needs to be an accountability as also penal/criminal consequences. Her contention is that the petitioners have a legitimate entitlement that action be taken against the municipal officers which, according to her, on one hand, are mute spectators, and on the other hand, members of the petitioners keep suffering, having invested their life savings in purchasing the root over their heads.

3. Learned counsel for the petitioners has fairly pointed out that the decision of the Division Bench of this Court [Coram: Devendra Kumar Upadhyaya, CJ (as His Lordship then was) & Amit Borkar, J.] in PIL No. 49 of 2021 (Sandeep Pandurang Patil V/s. The State of Maharashtra & Ors.) dated 19 November 2024 would certainly apply insofar as the directions as made in paragraph 22(6) of the said order are concerned which are in

respect of demolition of illegal structures in question. The said direction reads thus:-

“22(6) Respondent No.4 shall carry out the demolition of illegal structures as specified in paragraph 5 of the affidavit dated 26th August 2024 in accordance with law. The concerned police station is directed to provide all necessary assistance to Municipal Corporation officials in removing occupants, as requested by authorized officers, to ensure that demolition process is conducted without hindrance. The entire demolition procedure shall be completed within three months from the date of this judgment.”

4. However, learned counsel for the petitioners submits that the petitioners' grievance is a larger grievance as set out in the petition and on the further amendments which are intended to be incorporated in the memo of the writ petition.

5. Considering the peculiar facts and circumstances of the case, we permit the petitioners to amend the petition so as to make necessary averments in regard to such legal and constitutional rights the petitioners intend to canvass in this petition as also make appropriate prayers.

6. Amendment be carried out on or before 01 July 2025. Copy of the amended petition be served on all the parties. Reply affidavit on behalf of the Municipal Corporation be placed on record. Respondent nos.6A and 6B are stated to be served by private service, however they are not represented. Issue notice to respondent nos.6A and 6B. Hamdast permitted. Bailiff of the local Court with the help of officer-in-charge of the concerned police station, shall serve the notice on respondent nos.6A and

6B.

7. Permission to delete respondent no.7.

8. Bailiff to place on record a report of service on respondent nos.6A and 6B prior to the adjourned date of hearing.

9. We have also requested Mr. Venegaonkar, learned P.P. to inform the Court of the stage investigation has progressed insofar as the FIRs lodged by the Municipal Corporation are concerned, in regard to 57 projects including the project in question. He would also make an endeavour to obtain information on the progress of the investigation and action taken by the Enforcement Directorate, as there are observations in this regard made in paragraph 9 of the said decision of the Division Bench of this Court. Let this information be placed on record on the adjourned date of hearing to which Mr. Venegaonkar has fairly agreed. In the event it is difficult for Mr. Venegaonkar to get such information, he is permitted to request the learned standing counsel for the Enforcement Directorate to appear and appraise the Court on such issue.

10. Parties to act on an authenticated copy of this order.

11. List the proceedings on **04 July 2025 (H.O.B.)**.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)