

**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 i/by Vaishnavi Nagargoje for the Petitioners.

Ms. Savita A. Prabhune, AGP for Respondent No.1 -State.

Mr. A. S. Rao for Respondent Nos.3 to 5.

Mr. Hiten Venegaonkar for Enforcement Directorate and Dombivali Police Station.

Mr. Siddharth Chandrashekhar for Respondent Nos.6(a) to 6(c).

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

DATE: 04 JULY 2025.

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1. We have heard Learned Counsel for the parties.

2. At the outset, we may observe that although the Petitioners have prayed for several reliefs, the primary relief as prayed by the Petitioners qua the plea on the regularisation of the illegal and unauthorised construction which has been ordered to be demolished under the orders of a co-ordinate Bench of this Court [Coram: Devendra Kumar Upadhyaya, CJ (as His Lordship then was) & Amit Borkar, J.] in Public Interest Litigation No.49 of 2021 and that more particularly noted by us in our previous order dated 27th June 2025 cannot be granted. In any event, such order has been accepted by the Petitioners and/or not challenged. In this regard, the relevant extract of our order dated 27th June 2025 reads thus:

“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.”

(emphasis supplied)

3. In the context of the present proceedings, considering the settled principles of law that the construction in question, which is part of several other buildings which are illegally and unauthorisedly constructed and ordered to be demolished by the Division Bench in the aforesaid judgment, can never be protected, even if the purchasers of the illegal construction have formed the petitioner-society. Such persons cannot have any legal right qua the illegal construction much less to protect the same. This has been also accepted by the Petitioners as clearly observed by us in Paragraph 1 of the said order dated 27th June 2025 when we recorded as under :

“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.”

(emphasis supplied)

4. The case of the Petitioners on such backdrop is of a fraud, which was practiced on them by the developer. It is in the said context, we had also permitted the Petitioners to amend the Petition. In our opinion, the Petitioners qua the right of the Petitioners, if any, to seek compensation from the developers- Respondent Nos.6, (a) and (b) as also in assert its rights in respect of the land, such adjudication cannot be undertaken in this Writ Petition, as in respect of any compensation/damages, its quantum etc. which may be claimed by the Petitioners or its members can only be considered and determined in appropriate proceedings, as may be available to the petitioners in law. In such proceedings, it is also open to the petitioners assert contentions on the basis of the different enactments, which according to the Petitioners would confer on them legal rights as thereafter prayers of the Petitioners assert.

5. Learned Counsel for the Petitioners has tendered across the bar a copy of the Government Resolution dated 5th July 2023 which according to her provides for ‘Setting up Committees’, which can look into issues of fraud by the developers as urged by the Petitioners. Learned Counsel for the Petitioners submits that a Committee is constituted under the said Government Resolution, which is presided over by the Collector, Thane, the Deputy Commissioner (Unauthorised Constructions Control, Kalyan Dombivali Municipal Corporation), Assistant Director (Town Planning, Kalyan Dombivali Municipal Corporation), District Administrative Officer, Thane and Assistant Commissioner (Unauthorised

Constructions (Head-Quarters), Kalyan Dombivali Municipal Corporation). She submits that the Petitioners are desirous of approaching such Committee in addition to any representation the Petitioners intend to make asserting its legal rights. In our opinion, it is for the petitioners to espouse any remedy if so available in law, however, considering the clear orders passed by the Division Bench of this Court in Public Interest Litigation No. 49 of 2021 that the building in question forms part of the 60 brazen illegal and unauthorised constructions, the same would require to be demolished as ordered by the Division Bench, as the said judgement has attained finality and is binding on all the parties including the Petitioners.

6. At this stage, Learned Counsel for the Petitioners although has relied on the said Government Resolution dated 5th July 2023 and has tendered a copy of the said Government Resolution, now submits that the Petitioners does not intend to approach the Committee as constituted by the Government Resolution dated 5th July 2023, but intends to approach the State Government to seek damages and compensation. If the Petitioners have any such right, the Petitioners are free to pursue its remedy, if so available in law.

7. In view of the aforesaid observations, we are not inclined to entertain this petition. The same is rejected, however, subject to the aforesaid observations. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)