

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10675 OF 2025

Dilip Hanmantrao Kulkarni

...Petitioner

VERSUS

The State of Maharashtra and Anr.

...Respondents

Mr. Girish Godbole, Senior Advocate i/by Mr. Shivraj Patne and Mr. Aditya A. Joshi for Petitioner.

Dr. Dhruti Kapadia, A.G.P. for the Respondent No.1 - State.

Mr. Ajit D. Hon for Respondent No.2.

Mr. Shubham Mahare, Assistant Town Planner, Akkalkot Municipal Council, present.

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

DATE: 5th AUGUST 2025

P.C.

1. We have heard Mr. Godbole, learned Senior Advocate appearing for the Petitioner. This Petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs.

"A. That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus thereby directing the Respondent No.2 to withdraw/cancel Impugned Notice dated 30.07.2025 (being Exhibit Q to the present Petition).

B. That his Hon'ble Court may be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction in the nature of Writ of Certiorari thereby quashing and set aside Impugned Notice dated 30.07.2025 issued by Respondent No.2 (being Exhibit Q to the present Petition)."

2. Admittedly, the land in question on which the construction in question has been put up is under reservation. Such construction is undertaken without obtaining any permission from the Planning Authority namely the Akkalkot Municipal Council – Respondent No.2. The construction was objected by Respondent No.2. Notice was issued to the Petitioner on 9th February 2024 under Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (the "MRTP Act".) The Petitioner in fact being aggrieved by such action of Respondent No.2 has filed a Civil Suit i.e. R.C.S. No.42 of 2024 in the Court of Civil Judge Junior Division at Akkalkot.

3. The Petitioner also approached this Court in the proceedings of Civil Writ Petition No.18001 of 2024 challenging the said notice under Section 53 of the MRTP Act. The Writ Petition was not entertained and was dismissed by the order dated 9th December 2024 passed by the Co-ordinate Bench of this Court in which the Court recorded the fact of the suit filed being not disclosed. The Court also observed that the statutory notice under Section 127 (1) of the MRTP Act was not served by the Petitioner on the Municipal Council.

4. Be that as it may, it appears from the record that notice under Section 53 of the MRTP Act was partially implemented in as much as the part of the Petitioner's structure has been demolished and, at such stage the present proceedings have come before the Court. What is significant is that in the context of the reservation of the Petitioner's land which is for "Shri. Vatvruksha Swami

Samarth Temple Development” the Petitioner served a notice under Section 49 of the MRTP Act dated 6th December 2024 on the State Government through its Director of Town Planning, Pune. The State Government has confirmed the purchase notice in terms of the decision dated 20th May 2025 as communicated to the Petitioner under a letter of the Desk Officer, Directorate of Town Planning, State of Maharashtra - Pune dated 20th May 2025, a copy of which is annexed at Exhibit-O, (Page 126) to the Petition.

5. Mr. Godbole, Learned Senior Advocate for the Petitioner submits that as the purchase notice has been confirmed, the provisions of Sub-section 7 of Section 49 of the MRTP Act would now become applicable i.e. within one year from the date of confirmation of the purchase notice, the Appropriate Authority (Respondent No.2) needs to acquire the land, and in the event, it fails to make an application to acquire the land in respect for which the purchase notice stands confirmed as mandated under Section 126 of the MRTP Act, the reservation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from the reservation. He submits that the period of one year would come to an end on 19th May 2026. It is hence submitted that the Respondent No.2 - Akkalkot Municipal Council would be required to take further appropriate action to acquire the land as contemplated by Sub-section 7 of Section 49 of the MRTP Act.

6. On such backdrop, Mr. Godbole, submits that the plea of the Petitioner before the Court would be to the effect that the Petitioner would not use the

existing structure which lies in partly demolished condition, and subject to the further action which would be taken by the Municipal Corporation and the relevant time, if the land is not acquired, steps can be taken to regularize the construction, this draws our attention to the provisions of Section 53(3)(4) of the MRTP Act.

7. We are not inclined to consider Mr. Godbole's request of any regularization as the construction was rank unauthorized. It is a settled principle of law, considering a catena of decisions of the Supreme Court, as also this Court that such rank unauthorized construction cannot be permitted to be regularized and Section 53(3)(4) cannot be read in the manner as suggested by Mr. Godbole. In such context we may refer to the case of **Feroz Talukdar Khan Versus Municipal Commissioner, Thane Municipal Corporation and Another**¹ in which after considering several decisions on this aspect observed 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

¹ 2025 SCC OnLine Bom 2423.

planning authorities, as per the requirements of law. This is a case where no construction permission was applied for."

8. In a recent decision of the Supreme Court in **Kaniz Ahmed Vs. Sabuddin & Ors**², 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)]"

9. The aforesaid observations are apposite to the facts of the present case to reject Mr. Godbole's contention on regularization of this rank illegal structure. In these circumstances, we are of the clear opinion that the unauthorized construction undertaken by the Petitioner is required to be removed.

² 2025 SCC OnLine SC 995

10. At this stage Mr. Godbole, on instructions has fairly stated that the Petitioner would himself remove the remaining constructions and for which he requires a time by 15th September 2025. In the peculiar facts of the case, we accept the request as made by Mr. Godbole. Let the remaining unauthorized structure be removed by the Petitioner on or before 15th September 2025 and compliance to that effect be informed to the Chief Officer of the Akkalkot Municipal Council, who shall verify the removal. In the event such construction is not removed by 15th September 2025, Respondent No.2 is free to take an appropriate action to remove the same in accordance with law.

11. Mr. Godbole has also made a request that it would be in the interest of Respondent No.2 to protect the property and therefore at the Petitioner's cost the same be permitted to be fenced. In our opinion, such request can be accepted, however in this regard no equity can be claimed by the Petitioner, in any proceedings. In the light of the aforesaid discussion, we are not inclined to entertain this Petition. Petition is dismissed, however, subject to the above observations and the permission granted by us to the Petitioner to remove the construction as ordered.

12. At this stage, Mr. Godbole has also fairly stated that R.C.S. Suit No.42 of 2024 which is pending before the Court of Civil Judge Junior Division at Akkalkot is also sought to be withdrawn by the Petitioner as nothing would remain

in the said Suit. We permit such withdrawal. R.C.S. Suit No.42 of 2024 shall accordingly stands disposed of.

13. The Registry is directed to forward intimation of this order to the Civil Court at Akkalkot to be placed in the record of R.C.S. Suit No.42 of 2024. Let the Petitioner along with a copy of this order file a Pursis of a formal withdrawal before the Civil Court at Akkalkot.

14. Needless to observe that, in the event the land is not acquired in a manner known to law as provided for under Section 49 Sub-section 7 of the MRTP Act, all contentions of the Petitioner in that regard are expressly kept open. The land would in that event be available to the Petitioner to be utilized as the law would permit.

15. The Petition is disposed of. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)