

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11478 OF 2025

Gulam Husain Abdul Kashim Khan & Ors. ...Petitioner
Vs
Thane Municipal Corporation & others. ...Respondents

Mr. Sandeep Mishra with Madhura Mulay,m for Petitioner.
Mr. Mandar Limaye, for Respondent – TMC.

**CORAM: G. S. KULKARNI &
MANJUSHA DESHPANDE, JJ.**

DATE: 4 SEPTEMBER 2025.

P.C.

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

“(a) Rule be issued on this writ petition.

(b) The Hon’ble Court be pleased to issue a writ of Mandamus or Certiorari or any other appropriate writ, order or direction in the nature of Mandamus or Certiorari thereby to set aside / cancel impugned notice dated 21/08/2025 issued by the respondent No.2 as the same was issued without following due process of law and the same is not executable and binding upon the petitioners.

(c) The Hon’ble Court be pleased to issue a writ of Mandamus or Certiorari or any other appropriate writ, order or direction in the nature of Mandamus or Certiorari thereby to direct the respondents not to take any action of demolition as per notice dated 21/08/2025 without providing the opportunity of hearing to the petitioners as well as without following due process of law.

(d) This Hon’ble Court be pleased to issue a writ of Mandamus or Certiorari or any other appropriate writ, order or direction in the nature of Mandamus or Certiorari thereby to direct the respondents to follow the procedure of law and provide proper and reasonable opportunity to the petitioners in respect of said shops / galas.”

2. We had heard this petition in the morning session for some time, the proceedings were passed over, to enable learned Advocate for the petitioners to take instructions whether the construction objected by the Municipal Corporation and subject matter of notice, for removal of such construction, was undertaken after obtaining prior development / construction permission from the Municipal Corporation. Learned Counsel for the petitioners, on instructions, submits that no permission whatsoever was taken and such construction was put up illegally.

3. On such backdrop, learned Counsel for the Municipal Corporation has drawn our attention to an order dated 12 June 2025 passed in Writ Petition No.5898 of 2025 (**Smt. Subhadra Ramchandra Takle Vs. State of Maharashtra & Ors.**) by a co-ordinate Bench of this Court to which one of us (G. S. Kulkarni, J.) was a member, wherein the Court considering the settled principles of law including very recent decisions of the Supreme Court, had held that rank illegal constructions cannot be countenanced and actions are required to be taken to demolish/remove the illegal constructions, wherever found in the developing areas of Thane. The Court observed that the officials be deputed ward-wise to identify unauthorized constructions so that accountability can be fixed in deciding complaints which may be filed by the aggrieved persons. In pursuance of such directions of the Court in **Subhadra Takle** (supra) several illegal constructions/buildings have been demolished. Also the subject action has been taken in pursuance of such directions of the Division Bench. We may also observe that the order dated 12 June 2025 passed by this Court was assailed

before the Supreme Court in Special Leave Petition (Civil) Diary No.33024/2025 which also was not entertained and eventually the subject of illegal constructions [17 structures/buildings] as involved in such proceedings were demolished by the Municipal Corporation.

4. We may thus observe that in pursuance of such orders which have been passed by this Court deprecating illegal constructions and the same being sheltered by unscrupulous elements, the Thane Municipal Corporation with all vigilance is taking actions in accordance with law to remove the illegal structures and the petitioner's structure is one of such construction. Such construction which is rank illegal/unauthorized cannot be countenanced, considering the settled principle of law as laid down by the Supreme Court in **M. I. Builders Pvt. Ltd. Vs. Radhey Shyam¹**; **Friends Colony Development Committee vs. State of Orissa & Ors.²**; **Dipak Kumar Mukherjee Vs. Kolakata Municipal Corporation & Ors.³**; **Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors.⁴**; **Kerala State Coastal Zone Management Authority Vs. Maradu Municipality & Ors.⁵**, and the orders of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation & Ors.⁶** All these decisions are referred in the orders passed by this Court in **Subhadra Takle** (supra).

5. Thus, learned Counsel for the petitioner having taken a fair position that

1 1999(6) SCC 464

2 (2004)8 SCC 733

3 (2013)5 SCC 336

4 (2021)10 SCC 1

5 (2022)8 SCC 240

6 2022 SCC OnLine Bom 386

there was no permission whatsoever, to undertake the construction in question, subject matter of the present petition, would state that the petitioner be permitted to make an application for regularization of such construction. We cannot accept such contention. It is well settled that the construction which has been put up in brazen defiance of the legal requirements, and which is rank illegal cannot at all be the subject matter of regularization. The law in this regard is well settled. In a recent decision in **Feroz Talukdar Khan Vs. The Municipal Commissioner Thane Municipal Corporation & Anr.**⁷ decided on 18 June 2025 in rejecting the plea of regularization considering the decisions of the Supreme Court, the Court had made the following observations:-

“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.

17. We may refer to the decision of the Supreme Court in *Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar (2005) 4 SCC 99* rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized

⁷ 2025 SCC OnLine Bom 2423

constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

“37. The Municipal Council is a ‘local authority’ as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTTP Act.”

(emphasis supplied)

18. In *Kaalkaa Real Estates Pvt. Ltd. v. Municipal Corporation of Greater Mumbai* (2022 SCC OnLine Bom 2536), in the context of regularization of unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed that this is not the intention of the legislature that in making the regularization provisions under the MRTTP Act, including the penal provisions (referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve

condonation of the illegality.

19. In a recent decision of the Supreme Court in *Rajendra Kumar Barjatya v. U.P. Avas Evam Vikas Parishad* (2024 SCC OnLine SC 3767), the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

20. In a recent decision of the Supreme Court in *Kaniz Ahmed v. Sabuddin* (2025 SCC OnLine SC 995)

“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)]”

21. Adverting to the aforesaid settled principles of law, the proposition on regularization as urged on behalf of Respondent No. 3, if accepted, would also bring about the situation of creating two categories of citizens as observed by the Division Bench of this Court in the proceedings of *High Court on its own motion (In the matter of Jilani Building at Bhiwandi)* (Supra) i.e. firstly, a category of citizens who would intend to adhere to the rule of law; who would approach the planning authority by applying for a planning/development permission by putting up plans through their architects and to undertake legal and authorized constructions; and on the other hand a category of citizens who have no regard for law and merely because they have large resources (possibly not legitimate) at their disposal to undertake unauthorized construction. What would be these resources is only to be imagined, being utilized in connivance with the official machinery in putting up illegal constructions.

22. We may observe that it is likely that many such illegal constructions have remained unattended and/or have flourished or impliedly protected by the municipal machinery. They remain unattended for years together with such blessings of the official machinery. We are not aware as to when an inspection and audit of this illegal/unauthorized construction ward wise would be undertaken. It needs to be immediately commenced by the Municipal Commissioner and prevent further lawlessness.

23. It is in these circumstances, we cannot accept the plea as urged on behalf of Respondent No. 3 to permit Respondent No. 3 to attempt or pursue any regularization application as the same is not maintainable in law. For the reasons which we have discussed hereinbefore, such an application can have no legal recognition, in fact it is a non-est and void application, which the municipal authorities, in no manner whatsoever even if they so desire, can consider.

24. We hope and trust that the municipal officers would consider such legal position whenever any regularization application is received in relation to rank unauthorized construction. The Municipal Commissioner in that regard needs to have a uniform policy so that inherently illegal and unauthorized constructions are not regularized and such applications are rejected. Such appropriate directions be forthwith issued by the Municipal Commissioner to the appropriate department receiving such regularization application.

25. Also as observed by this Court in *Smt. Subhadra Ramchandra Takle* (Supra), any occupant of the said unauthorized and illegal premises can have no legal right whatsoever. There can neither be any equity nor sympathy, which can be shown to such occupants who have purchased premises in illegal constructions. The Court has referred them to be greedy purchasers, who have ample means to purchase premises in illegal constructions.

26. For the aforesaid reasons, we have no manner of doubt that the Municipal Corporation needs to proceed further to demolish the unauthorized construction in question as per the lawful measures as initiated. There can be no protection to such illegal construction.”

6. Thus, as held by this Court in **Feroz Talukdar Khan** (supra) the construction subject matter of the present proceedings would be required to be removed being rank illegal construction.

7. In the light of the aforesaid observations we find no merit in the petition. It is accordingly dismissed. No costs.

(MANJUSHA DESHPANDE, J.)

(G. S. KULKARNI, J.)