

Vishambhar Shida Suryavanshi and Ors.	...	Petitioners
versus		
Bhiwandi Nizampur City Municipal Corporation	...	Respondent

Mr. Dipesh Siroya with Mr. Amit Maurya i/by L I M Legit, for Petitioners.
Mr. Dilip Bodake with Ms. Shraddha Pawar, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 19 NOVEMBER 2025

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to a judgment and order dated 10 November 2025, passed by the learned District Judge, Bhiwandi, whereby the appeal preferred by Petitioner Nos.1 and 2 and the plaintiffs against an order dated 29 October 2025 passed by the learned Civil Judge, Bhiwandi, whereby the application preferred by the Plaintiffs to restrain the Respondent – Corporation from taking action pursuant to the notice issued by the Municipal Corporation on 5 March 2016 in respect of the constructions which were unauthorizedly erected by Plaintiff Nos.1 to 3 – developers, came to be dismissed.
3. The Plaintiffs had instituted a prior suit (i.e. Suit No.376 of 2009) in respect of the suit premises. It was dismissed by the Court. The

unauthorized construction was demolished. Plaintiff Nos.1 to 3 allegedly again erected unauthorized construction. The Municipal Corporation, thus, issued a notice on 5 March 2016 in regard to the illegal construction allegedly erected by Plaintiff Nos.1 to 3. To assail the said notice of demolition, Plaintiff Nos.1 to 3 instituted another Suit being RCS No.316 of 2016 seeking the same reliefs. An order of status quo was obtained in the said suit.

4. In another proceeding i.e. WP No.3830 of 2018, the issue of unauthorized construction came up before this Court. A Division Bench of this Court after an elaborate consideration, on 8 October 2025, passed the following order :

“8. In these circumstances, in the fresh suit, on 9 April 2025, Respondent No.5/plaintiff moved the Court and again obtained an order of ‘status quo’ qua the illegal structure and it is in these circumstances, the rank illegal construction put up without any permission whatsoever from the Municipal Corporation have continued to subsist and that too encroaching on the petitioners’ plot of land. In any event, once construction has no permission from the municipal corporation / planning authority and/or it is rank unauthorized, such construction cannot be protected.

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12. Despite aforesaid clear orders passed by this court almost a decade back, it appears that the municipal corporation is not taking effective action. The present case is a classic case as to how the officers of the municipal corporation are protecting the illegal constructions and

certainly for extraneous reasons. We may observe that it is a matter of routine affair for the officers of the municipal corporation not to take action against illegal constructions and only when the proceedings are brought before the Court, the municipal machinery is activated. This is the usual experience in these matters. The reasons are not too far to be seen.....

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16. We direct the municipal corporation to move the learned Civil Judge on any application as filed by the municipal corporation for vacating of the status quo order and whatever order that may be passed by the Civil Court, be placed on record of this Court. We are at this stage being informed that such application filed by the municipal corporation is pending for quite some time and possibly for the reason that as the municipal corporation being the only defendant, is not taking earnest steps to move the application before the Court. We expect that the municipal corporation would immediately move the Civil Court by tomorrow and request the Civil Court to pass orders on the Interim Application filed for vacating of the status quo order passed in the matter.

5. On 15th October 2025, the Division Bench passed the following orders :

2. We are informed by the learned Counsel for the Municipal Corporation that in the pending suit bearing RCS No.316 of 2016 in which the status quo order is operating, the learned 2nd Joint Civil Judge, Senior Division, Bhiwandi, was moved by the Municipal Corporation by filing an application for vacating of the stay. The said application was

heard and an order was passed on 10 October 2025 rejecting the said application. It is thus stated on behalf of the Municipal Corporation that there is no restraint on the Municipal Corporation to proceed and undertake demolition of the illegal construction in question. It is also pointed out to us by the learned Counsel for the Municipal Corporation that electricity has already been disconnected.

3. Considering the detailed observations as made in the aforesaid orders dated 8 October 2025 passed by this Court referring to the settled principles of law laid down in the several decisions of the Supreme Court, in regard to the action being required to be taken against the illegal construction. The Municipal Corporation is now intending to take appropriate action in accordance with law to demolish the rank illegal construction in question.

4. In this view of the matter, and in the absence of any embargo on the Municipal Corporation from removing the illegal construction on the Petitioner's land, we accept the statement made on behalf of the Municipal Corporation that appropriate action in accordance with law shall be taken within four weeks from today. Such statement is made on behalf of the Municipal Corporation in presence of the instructing officers, namely, Anil Pradhan, Law Officer, and, Mr. Manik Jadhav, Assistant Commissioner, Ward No.2, Bhiwandi Nizampur City Municipal Corporation."

6. Pursuant to the aforesaid directions, application for temporary injunction taken out by the Plaintiffs was heard and by an order dated 29

October 2025, the application came to be rejected observing, inter alia, that there was no permission for the erection of the alleged construction and the High Court in the aforesaid order, made it clear that the construction was illegal. It was also made clear that, before the application for temporary injunction was taken up for hearing, the alleged unauthorized construction was demolished and the electricity supply to the premises was disconnected, and, therefore, nothing survived for consideration qua the prayer for grant of temporary injunction.

7. Though the Petitioners were not the persons who had filed an application for temporary injunction, the Petitioners joined the original Plaintiffs in filing an appeal before the learned District Judge.

8. By the impugned order, learned District Judge dismissed the appeal concurring with the view of the learned Civil Judge.

9. Learned Counsel for the Petitioners submitted that, the Courts below have passed the impugned orders on the basis of the prima facie observations made by the Division Bench of this Court that the structure was illegal, though there was voluminous record to show that permission was obtained.

10. Learned Counsel for the Respondent – Corporation resisted the submissions on behalf of the Petitioner. Attention of the Court was invited to the observations made by the Division Bench of this Court in the order dated

25 October 2025. It was submitted that, the said order was carried in appeal before the Supreme Court and, by an order dated 11 November 2025, the said Appeal was dismissed by the Supreme Court. It was submitted that, the said fact was not brought to the notice of this Court by the Petitioners.

11. The Petitioner Nos.1 and 2 before this Court, claimed to be in the occupation of Flat Nos.301 and 304. Since the trial Court has recorded that the offending structure has already been demolished, learned Counsel for the Petitioner was requested to take instructions as to whether Flat Nos.301 and 304 still exist.

12. Learned Counsel for the Petitioners, after taking instructions from the office bearers of Petitioner No.3, submits that the said structures have already been demolished.

13. In this view of the matter, at this stage, the application for grant of temporary injunction to restrain the Corporation from acting upon the notice impugned in the suit, does not merit any consideration. Even otherwise, the observations of the Division Bench with regard to the nature of the constructions (extracted above), are clear and explicit. The courts below have found that there was no permission for erection of the subject structures.

14. In this view of the matter, and, especially the subsequent developments, which indicate that, the subject structures do not exist, there is no propriety in entertaining the Petition.

15. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)