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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17458 OF 2025

Ganesh Hanumant Gaikwad and Anr. ... Petitioners
Versus
State of Maharashtra Thr. Its Principal
Secretary Urban Development
Department & Ors. ... Respondents

Mr. Sujeet Karlekar i/b Mr. Bachate Pralhad Dnyanobarao, Advocates
for the Petitioners.

Mr. P. P. Kakade, Addl. GP a/s Ms. Priyanka Chavan, AGP for
Respondent Nos. 1 to 4.

Mr. Rohit Sakhdeo, Advocate for Respondent Nos. 6 & 7.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

DATE : 22nd DECEMBER, 2025

FINAL ORDER : (PER : ASHWIN D. BHOBE, J.)

1. Heard Mr. Sujeet Karlekar, learned Advocate for the
Petitioners, Mr. P. P. Kakade, Addl. GP for Respondent Nos. 1 to 4 and
Mr. Rohit Sakhdeo, Advocate for Respondent Nos. 6 & 7.

2. Petitioners by the present Petition under Article 226 of the
Constitution of India, assail the order dated 27.11.2025 passed by

Respondent No.7 - Tahsildar Cum Assistant Controller of Unauthorized Construction Demolition Department, Pune Metropolitan Region Development Authority (for short 'PMRDA'), Pune, directing removal of the Petitioners Ready Mix Concrete (RMC) Plant situated in the land bearing Gut No. 158 situated at Village Jambe, Tq. Mulshi, Dist. Pune.

3. Petitioners have setup a RMC Plant in the land bearing Gut No. 158 situated at Village Jambe, Tq. Mulshi, Dist. Pune. The Nirmalgram Grampanchayat, Jambe, Tq. Mulshi, Dist. Pune, has issued No-objection Certificate dated 18.10.2024. Maharashtra Pollution Control Board vide order dated 31.01.2025, has granted its Consent to Establish and Consent to Operate the Ready Mix Concrete Plant under Orange SSI Category.

4. By the impugned order dated 27.11.2025, issued by the Respondent No.7 in exercise of powers under Section 53(1) of the Maharashtra Regional & Planning Act, 1966 & Rules (for short 'MRTP Act, 1966') has directed removal of the RMC Plant, for want of permissions from the Respondent No.6.

5. Mr. Sujeet Karlekar, learned Advocate for the Petitioners

submits that the Petitioner No.1 is the owner of the said land bearing Gut No. 158. He submits that construction of building is not essential for a RMC plant. He by placing reliance on the Circular dated 28.11.2025 issued by the Maharashtra Pollution Control Board submits that building permission was not required. He however submits that out of abundant caution, upon receipt of the impugned order dated 27.11.2025 the Petitioners vide Application dated 02.12.2025 filed under Section 44 of the MRTP Act has sought for retention / regularization of the RMC Plant. He by relying on the provisions of Section 53 (3) of the MRTP Act, 1966 submits that pending consideration of such Application under Section 44 of the MRTP Act, 1966, the Petitioners would be entitled to retention of the building as also continuance of use. He therefore submits that the said Application for regularization filed by the Petitioners be directed to be considered by Respondent No.6 and pending consideration Respondent Nos.6 & 7 be restrained from taking coercive steps to implement the impugned order dated 27.11.2025.

6. Mr. Rohit Sakhdeo, learned Advocate for Respondent Nos. 6 & 7 has opposed the Petition on the ground that the RMC Plant erected by the Petitioners is unauthorized, for want of necessary permissions from the Respondent No. 6. He therefore justifies the impugned order

issued by Respondent No.7.

7. Petitioners have erected the RMC Plant in the land bearing Gut No. 158 situated at Village Jambe, Tq. Mulshi, Dist. Pune. Maharashtra Pollution Control Board has issued Consent to Establish as well as Consent to Operate under the provisions of Water (Prevention & Control of Pollution) Act, 1974 as well as under the Air Water (Prevention & Control of Pollution) Act, 1981. The said consent is valid upto 30.11.2026. Mr. Sujeet Karlekar, learned Advocate for the Petitioners submit that the Petitioners are operating the RMC plant in terms of the conditions imposed in the Consent to Establish and Operate dated 31.01.2025 issued by the Maharashtra Pollution Control Board.

8. Impugned Order dated 27.11.2025 is issued by the Respondent No.7 in exercise of powers under Section 53 (1) of the MRTP Act, 1966.

9. Provisions of Section 53 (1) to (3) of the MRTP Act, 1966 reads as follows :-

53. Power to require removal of unauthorized development :

[(1) (a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52. the Planning

Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve one months' notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.))]

(2) In particular, such notice may, for purposes of sub-section (1), require-

(a) the demolition or alteration of any building or works;

(b) the carrying out on land of any building or other operations;

(c) the discontinuance of any use of land.”

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any

building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.”

10. This Court in the case of ***Foresight Builders and Anr. Vs. The Municipal Corporation of Greater Mumbai and Ors.***¹ in paragraph No.2 has observed under :-

“It is well settled position in law that if a show-cause notice is issued under Section 53 and Section 55 of the MRTP Act, it is open for the person to make an application for regularisation under Section 44 of the said Act. If such an application is filed, the Competent Authority will have to consider the application on merits and in accordance with law. Needless to state that during this period, action under Section 53(1) cannot be taken by the Corporation.”

11. Application dated 02.12.2025 filed by the Petitioners under Section 44 of the MRTP Act, 1966 (at Exhibit-K Page No.65 of the paper book) seeking regularization, is pending before the Respondent No.6.

12. Considering the peculiar facts of this case and the provisions of Section 53 (3) of the MRTP Act, 1966, we dispose of the

¹ Writ Petition (L) No. 3443 of 2014 decided on 13.01.2015.

present Petition in terms of the following order :-

(a) Respondent No.6 shall consider and decide the Application dated 02.12.2025 filed by the Petitioners under Section 44 of the MRTTP Act, 1966, strictly in accordance with law and in terms of the applicable provisions of the Building Rules and Regulations. Such exercise shall be completed by the Respondent No.6 within 120 days from today i.e. on or before 23.04.2026. All the contentions of the parties are kept open.

(b) Decision of the Respondent No.6 shall be communicated to the Petitioners on or before 28.04.2026. Respondent No.6 to strictly comply with the timeline herein.

(c) In the event the Respondent No.6 allows the Application filed by the Petitioners under Section 44 of the MRTTP Act, 1966 and if any amounts / penalty is payable by the Petitioners for retention / regularization of the RMC plant, the Respondent No.6 is at liberty to demand and recover the said amount from the Petitioners. Petitioners

shall comply with the said requisition within 3 days from the receipt of such order.

(d) In the event the decision of Respondent No.6 on the said Application is adverse to the Petitioners, Petitioners are at liberty to pursue the Statutory remedies as available under the MRTP Act, 1966.

13. Respondent Nos. 6 & 7 shall not take any coercive steps in respect of the RMC Plant in the land bearing Gut No. 158 situated at Village Jambe, Tq. Mulshi, Dist. Pune till 28.04.2026.

14. **Writ Petition is disposed off** in the above said terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)