



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14459 OF 2024

Rahul Chandrakant Pawar ... Petitioner
Vs.
Thane Municipal Corporation & Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 1670 OF 2025
IN
WRIT PETITION NO. 14459 OF 2024

Vijaya Ashok Rai & Ors. ... Applicants
In the matter between
Rahul Chandrakant Pawar ... Petitioner
Vs.
Thane Municipal Corporation & Ors. ... Respondents

Mr. Yousuf Khan for the petitioner.
Mr. Ashutosh M. Kumbhakoni, Senior Advocate a/w. Mr. Mandar Limaye for the
respondent-Corporation.

CORAM: G. S. KULKARNI &
MANJUSHA DESHPANDE JJ.
DATED: 21 AUGUST, 2025

P.C.

1. We have heard Mr. Khan, learned counsel for the petitioner, Mr. Kumbhakoni, learned senior counsel along with Mr. Limaye for respondent no. 1- Thane Municipal Corporation (for short "**Municipal Corporation**")
2. The present petition concerns rank unauthorized construction as described in paragraph 3 of the petition, namely, a building situated at Vartak Nagar, Thane (W) 400 606 having the following boundaries:

To the East : Sai Chintamani Building
To the West: Vaishnavi Apartments
To the North: Sai Yog Apartments
To the South: Sai Chintamani Building
(Hereinafter referred to as the "Said Plot")

3. At the outset, we may observe that a co-ordinate Bench of this Court (A.S. Gadkari, J. & Kamal Khata, J.) on 30 January 2025 passed the following order recording the statement as made on behalf of the Municipal Corporation:

"1. Mr. Bubna, learned counsel appearing for respondents, on instructions from Mr. Bhalchandra Ghuge, Asst. Commissioner of Thane Municipal Corporation, submitted that, necessary action as per the law will be taken against the structure mentioned in prayer clause (a) of the petition. The said statement is accepted.

2. At this request, stand over to 27th February 2025."

4. It is not in dispute that the building in question was a rank unauthorized construction, i.e., constructed without any permission whatsoever from the Municipal Corporation. Accordingly, the Municipal Corporation has proceeded to take action to demolish the same.

5. Reply affidavit of Ms. Shaila S. Naik, Assistant Commissioner of Municipal Corporation is filed pointing out the steps which are being taken by the Municipal Corporation in demolishing the illegal structure of the building in question. It is stated that demolition process commenced on 13 February 2025 and the Municipal Corporation has demolished internal wall of 3rd and 4th floor of the said structure. It is stated that on 24th and 25th June 2025, the walls of the 2nd floor flats were demolished and the water and electricity connection were also disconnected. It is further stated that the building was made uninhabitable and as

on date there is no occupancy and the entire building has been vacated. It is further stated that on 24 June 2025, 9 slabs on the 1st floor and 7 slabs on the 2nd floor were demolished by tractor breaker and gas cutter and the entire walls of the flats on the 1st and 2nd floors were also demolished. The relevant contents of the said affidavit are required to be noted, which reads thus:

“3. I say that the Respondent-Corporation has issued notice under Section 260(1) and (2) of the Maharashtra Municipal Corporations Act, 1949 to the occupants of the said building on 18.01.2023, and a reasoned order dated 06.11.2023 was passed by Respondent No. 3 after giving an opportunity of hearing to the occupants of the said building, declaring the said structure illegal. I say that thereafter further notices under Section 269(1), (2), (3), and (4) dated 12.01.2024 were issued to the occupants of the said building for eviction. I say that thereafter notice under Section 268(5) of the Maharashtra Municipal Corporations Act, 1949 was issued to the Senior Police Inspector of Vartak Nagar Police Station for evicting the occupants of the said building. I say that thus due process of law has been followed by the Corporation.

4. I say that on 13.02.2025, the Corporation commenced demolition proceedings and demolished the internal walls of the 3rd and 4th floors of the said structure. I say that on 24.06.2025 and 25.06.2025 the walls of the 2nd floor flats were demolished and the water connection and electricity connection were disconnected. I say that thereafter the said building was made uninhabitable as on date in the writ structure the occupancy is not there as well as no one is staying.

5. I say that on 24.06.2025, 9 slabs on the 1st floor and 7 slabs on the 2nd floor were demolished by tractor breaker and gas cutter, and the entire walls of the flats on the 1st and 2nd floors were also demolished.

6. I say that on 25.06.2025, 10 slabs on the 3rd floor and 7 slabs on the 4th floor were demolished with the help of the tractor breaker and gas cutter.

7. I say that thus remaining offending structure will be demolished within 6 weeks from today and offending structure will be brought down to ground zero. I say that thus balance demolition work will be completed within six weeks. Hereto annexed and marked as Exhibit "A" are copies of the photographs showing demolition of slabs and walls.

6. Having perused the said affidavit filed on behalf of the Municipal Corporation as also having perused the photographs annexed to the affidavit, it appears that the demolition work is appropriately in progress. It is now required to be brought to “ground zero” as contended by Mr. Kumbhakoni. Mr. Kumbhakoni, on instructions, states that in a further time period of three weeks, the building shall be brought to “ground zero” and accordingly, an appropriate affidavit to that effect be placed on record of this Court along with photographs. We accept such statement of Mr. Kumbhakoni.

7. Before parting, we cannot overlook the petitioner’s case that such illegal construction on this plot of land, is not falling for consideration of this Court for the first time. It is submitted that earlier on the very plot of land, a building was illegally constructed, which was subject matter of challenge in Public Interest Litigation No. 35 of 2007 along with Public Interest Litigation No. 36 of 2007, which was adjudicated by Division Bench of this Court by an order dated 7 May 2009 in **Harit Vasai Saurakshan Committee vs. State of Maharashtra & Ors.** In such proceedings, the Division Bench passed an order directing demolition of the said building. The observations as made by the Division Bench in the said order need to be noted, which reads thus:

“1. The Commissioner, Thane Municipal Corporation along with its officials are present pursuant to the directions of this Court. On his instructions, Mr. Apte, the learned senior advocate appearing for Municipal Corporation states that tomorrow, Deputy Commissioner (Encroachment), Municipal Corporation who looks after the removal of encroachment and unauthorized construction would visit to the site at 10.00 hrs with all logistic support so that the unauthorized construction consisting of ground plus five floors alleged to be owned by Shri.

Chhaganlal at Lokmanya Nagar Pada No. 1, Thane (W) which was being constructed by one Shri. Satyan Kadam, a labour contractor would be demolished and razed to the ground.

2. We accept this statement and direct the Commissioner of Police, Thane to provide sufficient armed police force to the officials of Thane Municipal Corporation for extending protection and for preventing law and order problem at the site. The armed police force should consist of officials of all ranks including lady police officers with sufficient equipments to dispel any obstruction by the public at site.

3. We, make it clear that the demolition squad of police force would not be withdrawn till the demolition is completed. Considering the nature of unauthorized construction, we do not think it would take normally more than 5 hours to demolish the construction. We expect that the officials of the Municipal Corporation would also maintain accounts of all the expenses incurred for carrying out this demolition. These expenses should be recovered from the owner of unauthorized construction.

4. We expect the learned counsel for the Municipal Corporation to make a statement in this Court in respect of the progress made for demolition of construction at 3.00 p.m tomorrow i.e 8th May, 2009. We, however, make it clear that if officials of the Municipal Corporation want any other assistance from the Court, they should contact their counsel and request him to move the Court at any time during the Court hours as the petition will be kept on board on tomorrow i.e 8th May, 2009. We expect that the Commissioner of Police at the Police Headquarters in city of Thane and / or second in command (if Commissioner is not in town) would not put forth any excuse in the matter and if required, personally visit the site and supervise the demolition of unauthorized construction.

5. Mr. S.K. Shirole, the Police Sub-Inspector, Vartak Nagar, Thane Police Station is personally present in the Court. He undertakes to communicate the order of this Court to the Commissioner of Police, Thane.”

8. If what is contended on behalf of the petitioner is correct, then certainly it is a matter of serious concern for the Municipal Commissioner and more particularly, considering the averments as made by the petitioner in paragraph 5 of the memo of the Writ Petition, as to how such construction was again undertaken in the year 2017-18, and as to who are the said officials permitting such illegal construction and/or not taking actions as the law would mandate to

remove such unauthorized construction, are issues which fall for consideration of Municipal Commissioner.

9. It is for such reason, the Ward-wise Vigilance Committee appointed by the Municipal Commissioner under the orders passed by this Court need to be highly pro-active and ought not to delay in taking appropriate timely actions as per law against such unauthorized and illegal constructions of all kinds (see: **Subhadra Ramchandra Takle vs. State of Maharashtra & Ors.**¹. Mr. Kumbhakoni states that in the present case the action for demolition was delayed on account of an official of the Municipal Corporation, who is now suspended by the order passed by the Municipal Commissioner.

10. These are the vital concerns which keep haunting the Municipal officers and the public at large considering rampant/brazen unauthorized construction being undertaken by unscrupulous elements who have no regard for law. Thus, the situation warrants that the concerned officials meticulously adhere to a continuous regime of vigilance and/or municipal alertness not only to avoid illegal constructions being undertaken but also to weed out/remove the unauthorized and illegal constructions.

11. We are certain that considering the spate of proceedings which are routinely coming before the Court not only from the municipal jurisdiction of the Thane Municipal Corporation but also several other Corporations, it is of utmost necessity that the Municipal Commissioners of the respective Corporations resort

1 Writ Petition No. 5898 of 2025 decided on 12 June 2025

to all necessary actions as the law would mandate, to remove such unauthorized and illegal constructions. We are also quite sure that as canvassed by Mr. Kumbhakoni, the endeavour of the Municipal Commissioner of the Thane Municipal Corporation is to make Thane as an ideal, being a city with no unauthorized and illegal constructions.

12. We may reiterate the observations as made by this Court in many of the earlier decisions, that if timely action to remove illegal and unauthorized constructions is not taken, the day is not too far that the situation is completely irreversible and irreparable. An approach of sustaining such constructions and/or any inaction to deal with the same as per law, for whatever reasons, on which we need not delve, would be destructive of the implementation of rules and regulations governing town planning. This would also amount to bringing about a regime contrary to the meticulous adherence of the well-settled norms and jurisprudence of town planning, i.e, to only permit lawful and authorized constructions. Any non-adherence to such principles and the legal requirements thereof would bring about a situation of there being no rule of law in matters of construction and development.

13. These are issues which would touch the lives of every resident at Thane. We may also observe that such illegal construction and the occupancy of such illegal construction brings about a serious impact on the limited infrastructure facilities and valuable resources available to the public at large, which are required to be used legitimately and optimally. Any defiance and/or deviation in following

such acceptable norms recognized by law, would have an adverse impact on the legitimate expectations and legal rights of those who occupy authorized buildings/constructions. It is, therefore, an onerous obligation and responsibility on the Municipal Corporation and its officers not to create two categories of citizens, firstly, a category of citizens who occupy legitimate premises in authorized constructions and secondly, those who occupy rank unauthorized constructions. The rights of persons occupying illegal constructions qua the valuable resources and infrastructural facilities can never be recognized. Resources like water and electricity, as also, common public amenities like gardens, playgrounds etc. are available/created only for those occupying authorized buildings/constructions in planned layouts.

14. Any lackadaisical approach on behalf of the Municipal Corporation in this regard would directly amount to waste of such valuable resources and infrastructure. The approach of the Municipal Corporation, hence, ought to be aimed to perceive only authorized, legal and legitimate growth of the city and not to have 'demons of large scale unauthorized constructions', which are destructive of a systematic and planned development of the city. It is, therefore, appropriate that such illegality is nipped at the bud. This more importantly also considering the vital interest of those innocent persons who are likely to purchase premises in unauthorized constructions.

15. Considering the avalanche of proceedings reaching the Courts on such issues from different municipal jurisdictions, it is high time that the Urban

Development Department of the State Government ought not to be a mute spectator. To overcome the rampant illegalities in matters of development and construction within the jurisdiction of all the planning authorities in the State, the Urban Development Department of the State Government needs to step in by notifying a comprehensive and/or a robust policy, to be uniformly implemented to deal with unauthorized constructions of the contemporary times, if the same is not already framed. Such policy/guidelines if already framed needs to be revamped considering the empirical materials on such issues and the mountains of difficulties faced by the large planning authorities on this front. Such policy needs to be effectively and meticulously followed by all the Planning authorities on day-to-day basis. In the absence of a drastic approach to curb unauthorized and illegal constructions, the future of the fast growing towns would be nothing but a colossal failure in achieving the ideals of lawful and appropriate town planning, resulting in a chaos and disaster being faced for the generations to come.

16. With the aforesaid observations, we dispose of this petition. No costs.

17. In view of disposal of Writ Petition, Interim Application would not survive. It is accordingly disposed of.

18. The proceedings are made returnable on **11 September 2025** for recording compliance.

(MANJUSHA DESHPANDE , J.)

(G. S. KULKARNI , J.)