

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9276 OF 2024**

Javed Nazeer Shaikh ... Petitioner.
V/s.
Thane Municipal Corporation & Ors. ... Respondents.

WITH
INTERIM APPLICATION NO.6587 OF 2025
IN
WRIT PETITION NO.9276 OF 2024

Sheru Gani Qureshi ... Applicant
IN THE MATTER BETWEEN
Javed Nazeer Shaikh ... Petitioner.
V/s.
Thane Municipal Corporation & Ors. ... Respondents.

WITH
INTERIM APPLICATION NO.3130 OF 2025
IN
WRIT PETITION NO.9276 OF 2024

Javed Nazeer Shaikh ... Applicant.
IN THE MATTER BETWEEN
Javed Nazeer Shaikh ... Petitioner.
V/s.
Thane Municipal Corporation & Ors. ... Respondents.

Mr. Mayuresh Modgi for the Petitioner and for the Applicant in IA/3130/2025.

Mr. Ajit Pitale a/w. Adv. Siddharth Pitale for the Respondent-TMC.

Mr. Pranil K. Sonawane a/w. Adv. Raj Chourasia, Adv. Deepak H. for Respondent No.7 and for Applicant in IA/6587/2025.

Mr. K.B. Dighe, Addl. G.P. a/w. Adv. Rupali Shinde, AGP for Respondent Nos.6 & 8-State.

Mr. Bhalchandra Ghuge, Asst. Municipal Commissioner (in charge), TMC, present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
DATE : 25th March, 2025.**

P.C.:-

1) Our Order dated 3rd March 2025 is self eloquent. We have categorically held that, the structure erected by Respondent No.7 is thoroughly unauthorized and illegal structure/building. The Respondent No.7 challenged the said Order before the Hon'ble Supreme Court by way of Special Leave to Appeal (C) No(s). 7270-7071/2025.

1.1) The Hon'ble Supreme Court in its Order dated 21th March, 2025 held as under:

“1. We are not inclined to interfere with the judgment and order passed by the High Court. After some argument Mr. P.B. Suresh, learned senior counsel seeks to withdraw the Special Leave Petition to approach the High court by way of an application for granting some time. Without expressing any opinion on the matter, we permit the petitioner to withdraw the Special Leave Petition. If order of demolition is not passed and implemented, no such action will be taken till 24.03.2025.

2. We make it clear that it is completely for the High Court to pass such order as it deems fit and proper. We are not expressing any opinion.

3. The Special Leave Petition is accordingly dismissed as withdrawn.”

2) Present Petition was taken up for hearing yesterday i.e. on 24th

March 2025, when learned Advocate appearing for Respondent No.7 had informed us that the Petitioner has again moved the Supreme Court for speaking to the minutes of Order dated 21st March, 2025. Today, he produced on record the Order dated 24th March, 2025 passed by the Hon'ble Supreme Court in the same Special Leave to Appeal (C) No(s). 7270-7071/2025.

2.1) Paragraph No.2 of Order dated 24th March, 2025 reads as under:

"2. The Order dated 21.03.2025 is modified and shall be read as under:

"1. We are not inclined to interfere with the judgment and order passed by the High Court. After some argument Mr. PB. Suresh, learned senior counsel seeks to withdraw the Special Leave Petition(s) to approach the High court for appropriate directions. Without expressing any opinion on the matter, we permit the petitioner to withdraw the Special Leave Petition(s). If order of demolition is not passed and implemented, no such action will be taken till 24.03.2025.

2. We make it clear that it is completely for the High Court to pass such order as it deems fit and proper. We are not expressing any opinion.

3. The Special Leave Petitions are accordingly dismissed as withdrawn."

3) Today also we gave an opportunity to the learned Advocate for Respondent No.7 to either produce or point out any document on record permitting him to construct the writ premises on the Collector's land which is admittedly belonging to the Government. Except producing the basic document granting approval or sanction to construct the writ property, he produced all irrelevant and redundant documents.

4) Shri Saurabh Rao, the Commissioner of Respondent No.1 has filed an Affidavit dated 15th March 2025, confirming in paragraph No.5 that, the offending structure is erected without any valid permission by Respondent No.7. It is stated that, top terrace shed has been demolished and removed between 5th March, 2025 to 7th March, 2025.

5) Once the writ property is constructed without any valid approval and is held to be patently unauthorized and illegal structure by a competent Authority, it is the duty of the Commissioner and the subordinates of Respondent No.1 to immediately take necessary action for removal of the said structure. This is to be done not only for maintaining planned development but also establishing the prevalence of rule of law in the State.

6) The Hon'ble Supreme Court in the case of *Rajendra Kumar Barjatya & Anr. vs. UP Awas Evam Vikas Parishad & Ors.* in *Civil Appeal No.14604 of 2024 and connected Appeals* reported in *2024 SCC OnLine SC*

3767 in paragraph No.20 has held as under:

“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.”

7) The Commissioner of Respondent-Corporation in his Affidavit dated 15th March, 2025 has resorted to specious pleas and various excuses for not taking legal action to its logical end. If Respondent No.7 is creating or threatening to create a law and order problem or situation, it is the duty of Respondent No.1 to call for adequate number of police force to maintain it. It is the bounden duty of law enforcing agencies to not only maintain law

and order situation but also to engrain in the minds of the citizens to follow the rule of the law, prevailing in our country. The Respondent No.7 cannot be heard to say that, he will not follow the rule of law and will take it in his own hands.

8) In view thereof, we direct the Respondent No.1 to reinitiate action of demolition of illegal structure of the Respondent No.7 erected on the Government land and complete it within one week from the date of receipt of present Order.

9) We asked questions to Mr. Bhalchandra Ghuge, Assistant Commissioner that according to him how many days would it take to demolish the suit structure. To this his response was that, it may take four weeks. We then asked him what was the area to be demolished and how many labourers would be employed. In response he stated that the area is around 1,500 sq. ft. and around 20 labourers would be employed. Since the answer for the time taken of demolish was not palatable, we put it to him if around 50 persons are to be employed for carrying out demolition would it not take lesser time, he maintained a conspicuous silence. After observing his demeanor, this Court is convinced that, the Assistant Commissioner was giving incorrect and vague answers with a view to grant sufficient time to Respondent No.7 and thereby protect his illegal structure.

10) We are therefore compelled to direct the Commissioner of Respondent No.1 to initiate necessary action against Mr. Bhalchandra

Ghuge, Assistant Commissioner for his conduct and inaction that i.e. protecting the illegalities committed by Respondent No.7.

11) As the Assistant Commissioner of Respondent No.1 has expressed apprehension of maintenance of law and order situation at the writ property, we direct the Commissioner of Police, Thane to provide adequate number of police personnel for the Commissioner of Respondent No.1 to perform his lawful duty, without assigning unreasonable excuses in that behalf.

12) Writ Petition is accordingly allowed in the aforesaid terms.

13) In view of the disposal of the Petition, Interim Applications do not survive and are also disposed off.

14) List the Petition on 4th April, 2025 under the caption 'for compliance'.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)