

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****INTERIM APPLICATION NO.7907 OF 2025****IN****WRIT PETITION NO.876 OF 2025**

Imran Babu Usmani & Anr.

... Applicants/Intervenors

In the matter between

Irfan Rajmohammad Shaikh

... Petitioner.

V/s.

Thane Municipal Corporation & Ors.

... Respondents.

Mr. Jernold Xavier a/w Adv. Carina Xavier, Ms. Gouri Jadhav, Mr. Raj Amberkar, Ms. Richa Dubey i/by Mr. Sanjay M. for the Applicants/Intervenors.

Mr. Mayuresh Modgi for the Petitioner.

Ms. Chaitrali Deshmukh for Respondent Nos.1 to 3.

Ms. Dhruti Kapadia, AGP, for the Respondent Nos.4 and 5-State.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 5th May, 2025.

P.C.:-

1) Heard Mr. Modgi, learned Advocate for the Petitioner, Ms. Deshmukh, learned Advocate for the Respondent Nos.1, 2 and 3, and learned AGP Ms. Kapadia for the Respondent Nos.4 and 5.

2) This is an Application for intervention by the alleged land owner /owners of the writ building. It is the case of the Applicants that,

they purchased a lease property by way of an Agreement for Sale dated 22nd May, 2024 from Smt. Asifabi Abdulgani Shaikh. That, in pursuance of “House Repair Permission” dated 26th September, 2018 they are repairing the writ building and/or have already constructed the said building.

3) A bare perusal of the said Agreement for Sale dated 22nd May 2024 clearly indicates that, it is executed on a Stamp Paper of Rs.100/- and is only a notarized document. It is not a registered document. According to us, the said document has no sanctity in law. A further perusal of the house repair permission dated 26th September, 2018 indicates that, it is self eloquent and the said permission was granted only to repair the house of Smt. Asifabi Abdulgani Shaikh. The said permission nowhere permits the Applicants to construct a brand new building under the guise of repairs permission. In this background, it be noted here that, Exhibit ‘D’ (Colly.) to the Petition indicates that, under the guise of house repair, the Applicants demolished their earlier structure and have constructed a new ground plus one storey building with concrete and brick masonry with the pillars of the said building of steel.

4) This Petition is filed for taking lawful action against the said illegal writ structure of the Applicants.

5) This Court therefore put a query to the learned Advocate for the Applicants, as to whether the Applicants are having lawful permission/sanction from any Competent Authority to construct the writ

building to which the learned Advocate fairly submitted that, there is no such permission in existence. It clearly appears to us that the writ building is thoroughly illegal and unauthorized building.

6) The Supreme Court in the case of *Rajendra Kumar Barjatya and Anr. v/s. U.P. Avas Evam Vikas Parishad and Ors.* reported in 2024 SCC OnLine SC 3767; after considering a catena of decisions has held that illegal or unauthorised constructions cannot be perpetuated when made in contravention to Acts/Rules and must necessarily be demolished.

Paragraph 20 is reproduced hereunder for ready reference:

“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.”

6.1) Recently, the Hon’ble Supreme Court in the case of *Kaniz Ahmed v/s. Sabuddin & Ors.* reported in 2025 INSC 610 in *Petition for Special Leave to Appeal (C) Nos.12199-12200/2025*; in para 7 has held as under:

“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, WP (c) No. 10233 of 2024 (Delhi High Court)].”

7) After considering the settled law and upon perusing the entire record, it is apparent that, the writ building is thoroughly illegal and unauthorized structure. In view thereof, we see no reason to entertain the Application and is accordingly rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)