

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 9490 OF 2025

IN

WRIT PETITION NO.4210 OF 2025

Noor Aslam Alauddin Khan

...Applicant

Versus

Feroz Talukdar Khan

...Respondent

Mr. Raj K. Awasthi a/w Ali Ahmed Parvi, Ms. Bushra Sayed i/b. Moin Khan,
for the Applicant.

Mr. Vishal Hegde a/w i/b. R.P. Shirole a/w Aishwarya Jose a/w Ms. Anuja Apte
a/w Rohit Maurya, Advocate for Petitioner.

Mr. J. G. Aradwad (Reddy), for the Respondent - TMC.

**CORAM : G. S. KULKARNI &
ARIF S. DOCTOR, JJ.**

DATE : 2 JULY 2025

P.C.:

1. Not on board. Upon mentioning taken on board.
2. This is an Interim Application filed by respondent no.2 in the aforesaid Writ Petition whereby a prayer is made that the judgment dated 18 June 2025 rendered by this Court in the Writ Petition be recalled. In our clear opinion, such contention is a second bite at the cherry inasmuch as clearly averred in the petition respondent nos.2 and 3 had undertaken brazen illegal construction without obtaining a scratch of permission from the Municipal Corporation, in fact, such construction was part of large scale illegal construction which had fell for consideration of this Court in

the proceedings of Writ Petition No.5898 of 2025 in the case of **Smt. Subhadra Ramchandra Takle vs. State of Maharashtra & Ors.** decided by an order dated 12 June 2025 permitting the Thane Municipal Corporation to take appropriate steps as per law to demolish 17 buildings. In the present case also related to the illegal construction, which was considered by this Court on similar lines, in the judgment under review.

3. We may observe that the decision of this Court in Smt. Subhadra Ramchandra Takle was not interfered by the Supreme Court as seen from the order dated 16 June 2025 in SLP (C) Diary No(s).33024/2025. This Court in rendering the judgment under review dated 18 June 2025 has followed in mandate of law as rendered by the Supreme Court in a recent judgment in the case of **Rajendra Kumar Barjatya and Anr. vs. U.P. Avas Evam Vikas Parishad & Ors.**¹ as also in **Kaniz Ahmed vs. Sabuddin & Ors.**² wherein the Supreme Court has held it to be a settled principle of law, that regularization of rank of illegal construction ought not to be permitted. The relevant paragraphs of the judgment of this Court which are required to be noted are paragraphs 16, 17, 18, 19 and 20 which reads thus:-

“16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction

1 2024 SCC OnLine 3767

2 2025 SCC OnLine SC 995

which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.

17. We may refer to the decision of the Supreme Court in **Mahendra Baburao Mahadik & Ors. Vs. Subhash Krishna Kanitkar & Ors.**³ rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

“37. The Municipal Council is a 'local authority' as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTP Act.”

(emphasis supplied)

18. In **Kaalkaa Real Estates Pvt. Ltd. & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors.**⁴, in the context of regularization of

³ (2005) 4 SCC 99

⁴ 2022 SCC OnLine Bom 2536

unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed that this is not the intention of the legislature that in making the regularization provisions under the MRTTP Act, including the penal provisions (referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve condonation of the illegality.

19. In a recent decision of the Supreme Court in **Rajendra Kumar Barjatya & Anr. Vs. U. P. Avas Evam Vikas Parishad & Ors.**⁵, the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.

“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.”

20. In a recent decision of the Supreme Court in **Kaniz Ahmed Vs. Sabuddin & Ors.**⁶ deprecating regularization of illegal construction, the Supreme Court made the following observations:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for

regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

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, W.P. (c) No. 10233 of 2024 (Delhi High Court)]”*

4. We may observe that the only contention urged on behalf of the review applicant is that applicant has filed an application for regularization, which was also the contention which was raised by the respondent no.3 in the writ petition. As observed in paragraph 7 of the said judgment, the Court referring to the settled position in law held that if such construction being not permitted to be dealt as per law a regime of total lawlessness and illegality of persons who have resources undertake illegal constructions would emerge, and then to seek regularization of such construction, which was not permitted in law.

5. Also it is very apparent to note the plea which is taken by the petitioner that petitioner was not aware that the construction is illegal although he claims to be the owner of the land is wholly untenable. If that be so, it is available for the petitioner as a landlord to initiate appropriate proceedings against the developer, to claim that the developer had no legal right whatsoever in regard to the illegal construction undertaken by the developer and much less to seek any the regularization. Any regularization interest can only be by a person who has legitimate reasons and not on such false pleas.

6. In the present case, indisputably the entire construction was illegal and unauthorized. In the context of such plea as urged by the applicant, reliance is sought to be placed on the decision of the Supreme Court in the matter of **Re: Directions in the matter of demolition of structures**⁷. However, in the facts of the present case, in our clear opinion, such decision would not assist the applicant as the Municipal Corporation has already taken recourse to the procedure known to law to remove the unauthorized construction.

7. We also observe that in fact, all contentions which are being urged by the applicant was the case of respondent no.3. Both respondent nos.3 and 2 have jointly undertaken construction and for such reason, by this

⁷ 2024 SCC Online 3291

application, a second bite at the cherry is what is contemplated. Thus, this application is an abuse of the process of law.

8. We are informed by Mr. Reddy, learned counsel for Municipal Corporation that substantial demolition was already progressed, which is also confirmed by learned counsel for the applicant. The process of law to remove the unauthorized illegal construction cannot be halted and that too at the behest of such applicant whose interest was represented by respondent no.3. Application is wholly without merit. It is accordingly rejected. No costs.

[ARIF S. DOCTOR, J.]

[G. S. KULKARNI, J.]