

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2174 OF 2024

- | | | | |
|----|--|---|-----------------|
| 1. | Snehdeep Krida Mandal, |] | |
| | a trust registered under the |] | |
| | Bombay Public Trsut Act, 1950 |] | |
| | BEARING register No. F-40744 |] | |
| | having address at 15, |] | |
| | Bhatwadi Hill Seva mandal, 1 st |] | |
| | floor, Ghatkopar (W) Mumbai |] | |
| | 400084 through its chairman |] | |
| | Pravin Krishna Bandivdekar. |] | |
| 2. | Ganesh Narayan Smant, |] | |
| | age 50 years, Occ. Business |] | |
| | residing at ½ Kranti Seva |] | |
| | Mandal Chawl, Bhatwadi |] | |
| | Ghatkoper (W), |] | |
| | Mumbai 400084. | | |
| 3. | Ganesh Harishchandra Sankpal, |] | |
| | residing at Gurav Chawl, |] | |
| | Room No.13, Hanuman |] | |
| | Nagar, Bhatwadi Ghatkopar |] | |
| | (W) Mumbai 400084. |] | |
| 4. | Maidan Bachav Samiti, |] | |
| | near Siddhi Ganesh Temple, R B |] | |
| | Kadam Road, Bhatwadi, |] | |
| | Ghatkopar (W) Mumbai |] | |
| | 400084 through its secretary, |] | |
| | Ganesh Samant |] | ...Petitioners. |

V/s

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signed by
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|----|-----------------------------|---|--|
| 1. | Maharashtra Housing & Area |] | |
| | Development Authority, Grih |] | |
| | Nirman Bhavan, Bandra (E), |] | |
| | Mumbai 400 050. |] | |
| 2. | Municipal Corporation of |] | |
| | Greater Mumbai having its |] | |
| | office at Municipal |] | |

- | | | |
|---------------------------------|---|-----------------|
| Corporation Building, P M |] | |
| Road, Mumbai 400001. |] | |
| 3. Akhil Bhatwadi Sarvajani |] | |
| Utsav Mandal, a Public Trust |] | |
| registered under the Bombay |] | |
| Public Trust Act 1950, and also |] | |
| a society registered under the |] | |
| societies Registration Act |] | |
| having office at Shree Siddhi |] | |
| Ganesh Mandir, Bhatwadi, |] | |
| Ghatkopar (E) Mumbai 400084. |] | ...Respondents. |

Mr. Akshay Patil a/w. Adv. Devika Madekar, Adv. Mayur Thorat i/by Adv. Sameer K. Sawant, for the Petitioners.

Mr. P. G. Lad a/w. Adv. Sayli Apte, Adv. Shreya Shah for Respondent No.1-MHADA.

Mr. Chaitanya Chavan a/w. Adv. Smita Tondwalkar, Adv. Rahul Rathod i/by Adv. Komal Punjabi for Respondent NO.2-BMC.

Mr. Viraj Parikh a/w. Adv. Tejas S. Mahamuni i/by Adv. S.G. Mahamuni for Respondent No.3

Mr. Vijaykumar Wagh, Asst. Engineer (B&F) 'N' Ward, present.

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

RESERVED ON : 12th March, 2025.

PRONOUNCED ON : 17th April, 2025.

JUDGMENT (Per Kamal Khata, J.):

- 1) This Petition under Article 226 of the Constitution of India is filed to challenge the arbitrary, capricious and patently illegal actions and omissions of Maharashtra Housing and Area Development Authority (MHADA)-Respondent No. 1 and Respondent No.2-BMC, regarding plot of land admeasuring 585 sq.mtrs. that is a part of Cadastral Survey No.68A in

Survey No.24, Hissa No.4(p) and 6(p) of Village Kirol, Ghatkopar (West), Mumbai 400084 (writ plot) permitting construction of a purported community hall on the large chunk of land, that was reserved as open space for playground (ROS 1.4) under Development Control and Promotion Regulation, 2034 (“DCPR”). The Petitioners are aggrieved as the authorities are depriving the residents of open space in the crowded area of Ghatkopar, Mumbai despite the reservation as open space for playground on the writ plot.

2) Heard Mr. Akshay Patil, learned Advocate for the Petitioner; Mr. P.G. Lad, learned Advocate for Respondent No.1-MHADA; Mr. Chaitanya Chavan, learned Advocate for Respondent No.2-BMC and Mr. Viraj Parikh, learned Advocate for Respondent No.3. Perusal entire record and the Affidavits in replies filed by the Respondents.

BRIEF FACTS:

3) Respondent No.3-Trust was registered in the year 1977 for celebrating Ganesh festival. A Ganesh Mandir was constructed on the writ plot and the balance open area was used for sports, religious programs, political meetings, social activities and recreational activities for senior citizens.

3.1) Apparently, in 1994, Respondent No.3-Trust had illegally constructed ground + upper floor structure admeasuring 90 sq. mtrs. which

was let out on rent for small functions like engagement, naming ceremony etc. Thereafter, sometime in December 2023, Respondent No.3-Trust demolished the structure and started constructing new structure. A hoarding put up on the writ plot claimed that through the financial aid from the Member of Parliament ('MP') a 'community hall', under the Local Area Development Scheme, would be constructed by MHADA.

3.2) The Petitioners were informed that, Respondent No.3-Trust has purchased the writ plot from Zaverbhai Purshottam Nathu Charitable Trust, under the deed of conveyance dated 28th September, 2017. After obtaining the information, the Petitioner No.2 addressed letters to the local MP, MLA as well as the CEO of MHADA, requesting them to take cognizance of the reservation of open space for playground on the writ plot and not to permit illegal constructions thereon at the behest of Respondent No.3-Trust. They also requested to stop the illegal construction that had commenced on the writ plot that was reserved for Public purpose.

3.3) The Petitioners allege that, due to this illegal construction the debris blocked the sewerage lines and the wastewater started oozing out on the road causing hardships to the residents. Various letters were addressed by Petitioner No.2 requesting the authorities to take cognizance and stop the illegal construction of the proposed community hall.

3.4) On 27th February 2024, the Respondent No.1-MHADA by its letter advised Petitioners to apply to Respondent No.2 for conducting survey and handing over playground. Upon such application and information submitted to Respondent No.2-BMC, they on the same day, i.e. on 27th February 2024, called upon Respondent No.3 to handover the open plot of land by removing all illegal construction since the writ plot was reserved for playground as per DCPR with remark ROS 1.4.

3.5) The Petitioner No.4 by its letter dated 1st March, 2024 requested Respondent No.1-MHADA not to disburse the public fund since the Respondent No.2-BMC has directed Respondent No.3-Trust to handover the open space after removing the illegal construction thereon. The Petitioners through an Application under Right To Information Act, 2005 discovered that the amount of Rs.41,00,000/- was approved by Respondent No.1 for construction of Samaj Mandir on the writ plot for Respondent No.3-Trust . The Petitioners also discovered that the Respondent No.3-Trust have claimed the earlier illegal construction to be a school building being in a dilapidated condition, requiring urgent reconstruction. Pertinently, the said illegal construction was neither a school building nor was it in a dilapidated condition.

3.6) The Respondent No.1-MHADA by its letter dated 5th March 2024 addressed letters to the Petitioners stating that, the handing over of

the open plot does not come within the purview of Respondent No.1-MHADA and refused to interfere and stop the construction work of the community hall. The Respondent No.2 by their letters dated 12th March, 2024 and 28th March, 2024 directed Respondent No.3 to remove the illegal construction and hand it over to Respondent No.2 as the land was reserved for playground under DCPR 2034. Despite the communication, the Respondent No.3-Trust continued the illegal construction using public fund of Respondent No.1-MHADA. It is in these circumstances the Petitioners have filed the present Petition.

4) Mr. Akshay Patil for the Petitioners submitted that, the plot reserved as open space for playground under the DCPR 2034 with remark ROS 1.4 meant that only construction of toilets, gardeners rooms, security cabin, are permissible on the said plot and no other construction can be permitted. He submitted that, the permission for construction by Respondent No. 3-Trust was obtained on the basis of false information and false declarations submitted to the concerned Authorities. He asserted that, the Respondent No.3's Application dated 25th January, 2024 falsely claimed the earlier construction to be a school building in a dilapidated condition, requiring urgent reconstruction. He submitted that, the Respondent No.2, a Planning Authority by its letter dated 29th February 2024 had asked Respondent No.3 to hand over the open plot of land by removing the illegal

construction on the plot, as the same was reserved for playground under DCPR 2034 with remark ROS 1.4. He submitted that if this construction was not stopped the Petitioners action would be made *fait accompli* as the public funds would be utilized by Respondent No.1 for this illegal construction contrary to the reservation under the DCPR 2034. He submitted that, there are no documents to show evince/prove that the earlier structure was a school building. No structural audit was carried out either by BMC or MHADA declaring the structure as “dangerous” or “dilapidated” as required under the Statute. He submitted that, Ghatkopar (West) is very densely populated area and there is no other Public Ground available for this locality. That, the conveyance of writ plot in favour of the Respondent No.3 will have no effect or bearing on the reservation. The construction of community hall on the writ plot would amount to modifying the reservation which cannot be permitted. That, the Respondent No.1-MHADA has acted illegally and in a clandestine manner to create interest in favour of the Respondent No.3-Trust overlooking the provisions of DCPR 2034.

5) He emphasized that Mr. Prakash Kondiba Gole being an employee of BMC in the Shops and Establishment department, has misused his position to engage in illegal construction on the writ plot. That is why no action was taken, nor were the grievances or complaints of the

Petitioners addressed. He relied on the judgment in the case of *Bangalore Medical Trust V/s. BS Muddappa reported in (1991) 4 SCC 54*, to submit that the open spaces in a congested urban environment would be of a fundamental importance. He submitted that, in the above circumstances the illegal construction ought to be demolished and the writ plot be handed over to Respondent No.2 who in turn should leave it as an open space for playground as per the reservation under DCPR 2034.

6) Mr. Lad for Respondent No.1 MHADA relied on the Affidavit of Mr. Ravindra Anandrao Patil dated 10th March 2025. He submitted that, the Mumbai Slum Improvement Board (“MSIB”) is appointed for taking up work of improvement in the slum area as per the object of MHADA. The MSIB is a nodal agency appointed for executing work which receives administrative approval from the Collector’s Office, Mumbai Suburban District particularly from the DPC. Relying on the said Affidavit he submitted that, the Respondent No.3-Trust had approached the M.P. who had recommended the work of construction of the community center on the writ plot through Mahanagarpalika Shetrat Mulbhut Soi Suvidhanchaya Vikasasathi Vishesh Tartud (U.D. Department Fund). It was on the basis of the recommendation of the then MP, the Collector’s Office had processed the work and prepared an estimate for approval of the DPC, who in turn had approved the construction of Samaj Mandir at Bhatwadi on the writ

plot as proposed by Respondent No.3-Trust.

6.1) The Mumbai Slum Improvement Board had approached the Assistant Municipal Commissioner, N Ward, for NOC by its letter dated 4th October, 2023. The necessary approval was granted by the DPC for construction of Samaj Mandir by its letter dated 31st October, 2023. By its letter dated 10th February 2024, the Respondent No.2-BMC informed the MSIB that, the land on which the Samaj Mandir was proposed was not of BMC and therefore asked to take an NOC from the concerned owner. In the meantime the Respondent No.3 issued the NOC by its letter dated 25th January, 2024 stating that, the existing building is 35 years old and in dilapidated condition and that they had no objection for construction of Samaj Mandir. He submitted that, the MSIB appointed M/s. M.M. Shewani as a contractor and issued work Order dated 21st February 2024. That, the MSIB had received a letter from Maidan Bachav Samiti dated 28th February, 2024 objecting to the construction of the Samaj Mandir. He further submitted that, the MSIB by its letter dated 12th June, 2024 had informed the Respondent No.2-BMC that, they had no objection for taking over the possession of the land reserved for playground. He hastened to submit that no monies have been paid to the contractor.

7) Mr. Chaitanya Chavan, learned counsel for Respondent No.2-BMC submitted that, upon receiving letter from the Respondent No.1-

MHADA on 4th October, 2023 requesting for a 'No Objection' for construction of Welfare Center on the writ plot, they informed them that, the writ plot was not belonging to the BMC and hence they could not issue the NOC. He also submitted that, having received letters dated 20th February, 2024 and 19th April, 2024 from the Secretary of the Maidan Bachav Samiti objecting to the construction work of Welfare Center, the BMC by its letters dated 28th March, 2024 and 11th June, 2024 had informed the Respondent No.3-Trust that, the subject plot was reserved for playground (ROS 1.4) as per DCPR 2034. Moreover, the Executive Engineer had visited the site and found that the MSIB had undertaken the construction work. They accordingly, made a complaint to Executive Engineer of MHADA slum board for necessary action. By their letters dated 12th March, 2024 and 28th March, 2024 they also informed the Respondent No.3-Trust to remove the encroachments and hand over the writ plot to the BMC. He accordingly submits that BMC had taken all necessary action in accordance with law.

8) This is yet another case which highlights the BMC's deliberate and willful inaction permitting illegal constructions. BMC simply stops after issuing notices and takes no preventive action to stop illegal construction. This inaction encourages and promotes illegal constructions. In this case it also involves MHADA.

9) This Petition was filed on 30th March, 2024 and was heard on various dates thereafter. The Respondents as usual had sought time to file Affidavits in response to the Petition which was granted. However, pending the hearing and disposal of this Petition, we were informed that the Respondent No.3-Trust had abused the process by filing a Suit in the City Civil Court and had obtained an injunction restraining the BMC from demolishing the structure pursuant to the Notices issued by BMC under Sections 351 and 354A of the Brihanmumbai Municipal Corporation Act, 1888. This is the usual modus operandi, by those who put up illegal constructions.

10) By our Order dated 28th February, 2025 we have recorded that, despite the bar under Section 515A of BMC Act for the Civil Court in entertaining the Suit challenging Notices the City Civil Court had granted an injunction for demolition. Having heard the counsel we had passed the following Order:

“1) This is yet another unfortunate case wherein the Respondent No.3 by misusing the jurisdiction of City Civil Court, has filed Suit No. 0100478/2025. As usual, the Advocates appearing for BMC in City Civil Court did not oppose the grant of any relief and also failed to point out the decision of this Court in the case of Abdul Razzaq Sunesra v/s. Municipal Corporation of Greater Mumbai & Ors., (2014) 1 Mah LJ 275, upholding the constitutional validity of Section 515-A which bars jurisdiction of the Civil Court for entertaining a suit challenging notices under Sections 351 and 354-A of the BMC Act.

2) *We are not surprised by this situation, as it is a routine approach of the BMC before the Civil Courts. The intention of legislature in introducing Section 515-A has been discussed by the Division Bench of this Court in great detail in the said judgment of Abdul Razzaq Sunesra (supra).*

3) *We therefore call upon Advocate Mr. Rahul Rathod to furnish his explanation to this Court as to whether on the very first date of hearing i.e. on 24th February 2025 he pointed out the said decision to the learned Judge of the City Civil Court with a request not to grant any relief in favour of the Plaintiffs therein and if not why not.*

4) *The Advocate Mr. Rahul Rathod is directed to submit his response to this notice on or before 6th March, 2025.*

5) *The Prothonotary and Senior Master, High Court, Mumbai is directed to call for the original record of Suit No.0100478/2025 from the registry of the City Civil Court, Mumbai, on or before 6th March, 2025.*

6) *The Registrar, City Civil Court is directed to send the said record strictly in adherence to the provisions of Civil Manual.*

7) *Mr. Chaitanya Chavan appearing in the present Petition is directed to communicate this Order to Advocate Mr. Rahul Rathod to enable him to submit his response to the notice.*

8) *Stand over to 7th March, 2025."*

11) In pursuance to our Order dated 28th February, 2025 we had called for the original record of Suit filed by Respondent No.3-Trust from the City Civil Court for our perusal. Upon perusal of the Roznama of 24th February, 2025 we found that BMC Advocates as usual had simply sought time to file an Affidavit in reply. Neither the BMC's Officers nor their Advocate pointed out the settled law and the statutory bar as per Section 515A of the BMC Act.

12) The Respondent No.3 who is the Plaintiff in the Suit has

mislead and misguided the Court. Mr. Tejas Mahamuni the Respondent No.3's Advocate also represents the same party as the Plaintiff in the Suit filed in the City Civil Court. We find that Mr. Mahamuni has deliberately and with a malafide intention to procure a favourable Order not informed the City Civil Court that, the High Court is seized with the matter at hand pertaining to illegal structure constructed/erected by Respondent No.3. Though argued to the contrary before us, the failure to disclose is apparent, as there is no mention about the same in the Order passed by the learned Judge. We accordingly called upon Mr. Mahamuni to file his say on the allegation of abuse of the process. We also called upon the Advocates for the BMC to file an Affidavit to state why the provisions of law and the decisions of this Court upholding the constitutional validity of Section 515A of B.M.C. Act, were not pointed out to the learned Judge to assist him to take the proper decision.

12.1) We have perused the Affidavit of Mr. Mahamuni Advocate for the Respondent No.3. In his defense he claims that he has disclosed the filing and pendency of Writ Petition to the learned Judge of the City Civil Court and pointed out the Affidavit of the BMC in the Writ Petition that was annexed to the Plaint. He however submits that, it was wrong of him and an error of Judgment on his part to move the City Civil Court pending the hearing of the Writ Petition before this Court and consequently tenders an

unconditional apology for the same. He has stated so in his Affidavit. He also relies on the Affidavit of Mr. Prakash Kondiba Gole, the Secretary of Respondent No.3 who agrees and undertakes to withdraw the L.C. Suit No.429 of 2025 and also tenders an unconditional apology for having filed the Suit without taking permission of this Court. In this context, it would be necessary to reproduce the Order passed by the learned Judge of the City Civil Court to understand the reasons for our conclusions:

“24-02-2025

Coram Dr. Shri. S.D. Tawshikar, City Civil Court, Mumbai. (C.R.08) Matter pertains to C.R. No.09 NOB TOB By praecipe taken on board (Exh.5) Exh.1 Plaint. Exh.2 Vakalatnama. Exh.3 Address Memo. Exh.4 List of documents. Adv. S.G. Mahamuni for plaintiff present. He tendered draft Notice of Motion. O-Leave to register granted. Adv. Rahul Rathod for defendant No.1/ MCGM present. Adv. Sneha Bhangre for defendant No.2/MHADA present. Heard Mr. Mahamuni Ld. Adv. for plaintiff. He apprehends demolition action against the suit premises at the hands of defendant No.1/. Ld. Adv. for defendant No.1 is present. He seeks time to file reply. Ld. Adv. for defendant No.2 MHADA is present. She too seeks time to file reply. Mr. Mahamuni took this Court through all the documents annexed with the plaint. It transpires that, the suit premises i.e. Samaj Mandir is constructed on the land of plaintiff trust through MHADA by using funds made available by Government of Maharashtra. The impugned speaking order dated 11.02.2025 reveals the main objection of MCGM is about not seeking prior permission of MCGM before raising construction.

However Mr. Mahamuni points out letter dated 10.02.2024 issued by Assistant Commissioner N Ward of MCGM address to MHADA explaining inability of MCGM to issue NOC to carry out construction on the suit premises. It is the stand of the MCGM that, the NOC needs to be taken from the owner of plot or competent authority. It further appears that, a long drawn procedure was followed before carrying out the construction work, MCGM prima facie seems to be aware about the same. Therefore, the suit structure per se cannot be said to be illegal. Hence, it needs to be protected till filing reply by defendant/MCGM. Hence, I pass ad-interim order as under In view of the above, the defendant No.1/MCGM is hereby temporarily restrained from taking action against the suit premises based on the speaking order dated 11.02.2025 till further order. Issue writ of summons as per rules. Matter adjourned for filing reply to NM to 28.02.2025. I/c Judge.”

12.2) A mere perusal of the Order would reveal that Respondent No.3's Advocate had not pointed out that, the Writ Petition is filed in this Court regarding same illegal structure and the reply to the Petition filed by the BMC, to the learned Judge of City Civil Court. According to us, if the Order had incorrectly recorded or not recorded a fact, plea or conduct that transpired, it ought to have been brought to the attention of the Court, while the matter was still fresh, to correct the record. We can only accept the Order as it reads and cannot imply or accept contentions raised across the bar that are not recorded in the Order. We are bound to accept the wordings of the Order as recorded, as they are conclusive and

unquestionable. Our view gets support from the decision of Supreme Court in the case of State of *Maharashtra vs Ramdas Shrinivas Nayak and Anr.* reported in (1982) 2 SCC 463, which enumerates as under:-

*“4. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the judges recorded in their judgement, as to what transpired in court. We cannot allow the statement of judges to be contradicted by statements at the Bar or by affidavit and other evidence. **If the judges say in their judgement that something was done, said or admitted before them, that has to be the last word on the subject. The principal is well- settled that the statements of fact as to what transpired at the hearing, recorded in the judgement of the court, are conclusive of the fact so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have their record corrected. If no such step is taken, the matter must necessarily end there.***

13) The Order is self-explanatory. We are unable to accept that, Mr. Mahamuni has pointed out about the High Court being seized of the same subject matter. We also cannot accept that he mentioned about the BMC's

stand in the Petition as alleged or the bar under Section 515A of BMC Act or the judgments upholding the constitutional validity of Section 515A of BMC Act and the jurisdiction of City Civil Court to entertain the suit as filed. The BMC's Advocate too has failed to point out all of the above which would have assisted the learned Judge to arrive at a correct conclusion. Evidently, the learned Judge was unaware of the law and the Judgments of this Court regarding bar under Section 515A of the BMC Act and the decision of this Court upholding its Constitutional validity.

14) In the case of *Abdul Razzaq Sunesra vs Municipal Corporation of Greater Mumbai and others* reported in 2013 SCC OnLine Bom 832, Dr. Chandrachud, in paragraphs Nos. 11,17,19 observed that:

“11. Ordinarily a Civil Court under the provisions of section 9 of the Code of Civil Procedure, 1908, shall have the jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. The conferment of jurisdiction on Civil Courts to try suits of a civil nature is, therefore, subject to a law which may be enacted by the competent legislature either expressly barring the jurisdiction or impliedly taking away the jurisdiction of the Court. There is nothing uncommon, as a first principle of law, in a competent legislature barring the jurisdiction of a Civil Court to entertain a civil suit of a specified nature. The legislature in the State of Maharashtra has introduced section 515-A to exclude the jurisdiction of the Civil Court in matters involving demolition of unauthorized constructions in order to obviate the inordinately long delays that were occasioned in the

taking of steps against illegal structures and constructions due to the pendency of suits before the Civil Courts. The legislature was entitled to take cognizance of these delays and to enact a suitable statutory provision. In the judgment in Dhulabhai etc. v. State of M.P., 1969 Mh.L.J. (S.C.) 1 : AIR 1969 SC 78, the Supreme Court summarized the principles of law governing the interpretation of finality clauses and statutory provisions ousting the jurisdiction of Civil Courts. In regard to the express bar of jurisdiction, the principle enunciated in the judgment of the Supreme Court is as follows:

“35(2). Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

17. *The State of Maharashtra and more particularly its urban areas are plagued by a menace of unauthorized constructions. The object of introducing section 515-A was to ensure that recourse to civil remedies is not utilized with a view to abuse the process as would generally result when those responsible for unauthorized constructions use every possible means to*

ensure that a delay takes place in the disposal of proceedings, once a stay is obtained. In this background, the legislative provision cannot be regarded as being arbitrary.

19. Having regard to these well settled principles, it is not possible to accede to the submission that the bar of jurisdiction which has been enacted by section 515-A of Mumbai Municipal Corporation Act, 1888, as amended, is arbitrary or unconstitutional. The provisions of sections 351 and 354-A contain adequate safeguards, both procedural and substantive, to ensure due notice, an opportunity to represent, the consideration of the cause shown and an application of mind to relevant and germane circumstances. A reasoned order must be passed. The legislature was, in our view, acting in the public interest in ensuring that the urgent need of taking expeditious action against unauthorized constructions does not get lost in a maze of dilatory remedies in Civil Courts.”

15) Subsequently, in the case of *Abdul Karim Ahmed Mansoori V/s. Municipal Corporation of Greater Mumbai* reported in (2014) (1) Mh. L.J. 227 the division bench in paragraph 10 has clarified the duty of the Court which is quoted herein below for ready reference:

“10. At this stage, we must take note of the apprehension expressed by Mr. Sakhare, learned Senior Counsel appearing for the Municipal Corporation. His submission is that if this process is permitted in all matters, parties like the Petitioner would request the Civil Court to brush aside the bar under Section 515A or would not take any note of it. We do not think that the Civil Court would be influenced by our order and clarification given today to this extent and as apprehended by Mr. Sakhare.

In every individual case depending upon the pleadings, the issue of jurisdiction would have to be decided by the Civil Court. The applicability of Section 515A and the issue of jurisdiction must be, therefore, gone into, dealt with and decided in each case depending on the pleas raised by parties. The law is well settled inasmuch as the learned Judge will have to decide the issue of jurisdiction by considering the averments in the plaint. If the averments in the plaint do not make out any case which would enable the Court to apply the legal principles set out above, he would then apply the provision in question, namely, Section 515A and return an appropriate finding on the point of jurisdiction depending on the materials placed before him. It is not as if by our clarification and enabling parties to file a Civil Suit, that we have observed that the bar should be ignored or should not be taken note of. The Civil Court is obliged to take note of the provision and the statutory bar whenever that plea is raised by the Corporation before it. In such circumstances, no further clarification is needed. All that we state and observe is that we have not expressed any opinion on the rival contentions including on the point of jurisdiction of the Civil Court in this matter. Even if the Petitioner seeks to revive the Suit as it is still pending and seek interim relief therein, the Corporation can raise the plea of jurisdiction and the learned Judge should consider and decide in accordance with law.”

- 16) Therefore, in our view, when a Civil Court receives a plaint and an application for interim relief—such as a stay or status quo order—challenging notices issued by the Municipal Corporation under Sections 351 or 354 of the BMC Act, or under similar provisions (*pari materia*) of the

Maharashtra Municipal Corporations Act, 1949 it must first determine whether the parties have exhausted the statutory remedies available to them. This includes pursuing the appropriate mechanisms for grievance redressal before seeking judicial intervention.

17) The Trial Court must also address the issue of jurisdiction by examining the averments in the plaint. If these do not warrant the application of the legal principles in question, then provisions analogous to Section 515A of the BMC Act or Section 433A of the MMC Act, 1949, must be considered. Importantly, the Civil Court is duty-bound to take cognizance of the statutory provisions and any legal bar—whether or not such an objection is raised by any party thereto. Finally, the Civil Court must keep in mind the principles of law enumerated by the Division Bench of this Court in the case of *Abdul Razzaq Sunesra* (supra).

18) We find that, both the Respondent No.3 and the concerned Authorities namely MHADA and BMC were responsible for these illegal constructions. Yet again the Officers of BMC have failed to inform and instruct their Advocates to point out the correct facts and the law. Suppression of material facts and the law from the Court has led to the City Civil Court passing Orders, overreaching the Orders of the High Court. This is unacceptable and will not be tolerated.

19) The Advocates are Officers of the Court first. It is their

bounden duty to bring out the true and correct facts before the Court and not to mislead the Court into passing erroneous Orders. According to us, the Advocate for Respondent No.3 is clearly at fault of suppression of material facts and has mislead the Civil Court to procure an Order of injunction in favour of his clients, the Respondent No.3-Trust herein, behind the back of the High Court though the High Court was seized of the matter as noted earlier.

19.1) We are unable to accept the unconditional apology tendered by Mr. Mahamuni. Affidavits are only like lip service. There is a growing trend of filing such Suits and obtaining injunctions on notices by suppressing material facts and law. This vindicates the apprehension expressed by the counsel for BMC in the case of *Abdul Karim Ahmed Mansoori (supra)* in paragraph No.10 as mentioned hereinabove. We see an urgent need to stem this. We therefore refer his case to the Bar Council of Maharashtra and Goa to take necessary action for professional misconduct against Mr. Mahamuni as per Section 35 of Advocates Act, 1961.

20) We find that this is a gross case of illegal and unauthorised construction. The Respondent No.3 has failed to produce any documentary evidence to prove that the earlier structure demolished was an authorized structure in the first place. We have in the case of *High Court on its Own Motion V/s. State of Maharashtra, Through Principal Secretary and Others,*

reported in *2024 SCC OnLine Bom 918*, held that, a party cannot claim to be entitled to construct without due permissions from the concerned Authorities and have rejected the contentions that, if they are owners of their land they can construct without seeking permissions.

21) This is a clear case where the purported trustees of the Trust have used their influence with the MP and the local Authorities to construct an illegal structure with public funds. It is extremely fortunate that the public funds so sanctioned for the construction have not been disbursed to the contractor. In our view MSIB was wrong in even granting the work Order to the contractor without having verified the sanctions and permissions granted for such construction. The MHADA is a Planning Authority and it cannot shrug off its responsibility and permit illegal construction or at least to ensure that the structure for which they had sanctioned funds was indeed authorized with sanctioned plans by the concerned Authorities.

22) The Affidavit of MSIB is also a sad story. MHADA cannot be seen to be passing the buck onto BMC by simply stating that, they did what they were asked to do. It is the duty of MHADA to see that the construction was an authorized construction in the least. The sanctioning of funds by MHADA certainly gives an impression, as it did to the BMC and all concerned, that the structure was indeed an authorized structure. MHADA

has even failed to check whether the construction was being carried out on BMC land or private land. According to us, public funds could be spent for public purposes on public land and not lands owned by private entities.

23) We are also unable to accept the stand of the BMC. We cannot understand how the BMC, who is being forewarned and informed through various communications that, there is illegal construction going on a land that is reserved for a playground under the DCPR 2034 permit the construction being completed by Respondent No.3-Trust.

24) In *Rajendra Kumar Barjatya and another vs U.P. Avas Evam Vikas Parishad & Others* reported in 2024 SCC OnLine SC 3767 in paragraph 20 this Court has held:

“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.”

- 25) According to us, the BMC ought to have sprung into action immediately upon receiving on such a complaint and not waited for several

months to take appropriate action. We find the inaction clearly as dereliction of duty on the part of the BMC Officers.

The questions that arise in our mind are:-

- (1) How, since 1994, illegal construction was permitted and tolerated, which officers were involved and why no action was taken?
- (2) Why no action was initiated, when due to the illegal construction the debris blocked the sewerage lines and waste water started oozing out on the road?
- (3) Why no steps were taken since 27th February 2024 when MHADA called upon BMC to handover plot by removing illegal construction?
- (4) What steps were taken by BMC to verify the declarations made in Respondent Nos.3's application dated 25th January 2024?
- (5) Why no action should be taken against Mr. Prakash Gole (Shops & Establishment) Department who has abused his position in the BMC?

25.1) An oral unconditional apology tendered by Mr. Chavan for the concerned officers is rejected because it appears only to be a lip service. We expect that the Municipal Commissioner to take action against all concerned officers for abuse of their post and misrepresentation before Court. He being a public servant ought to have known the law and the bar under Section 515A of BMC Act. The BMC is duty bound to protect the

public lands, to protect the rights of citizens under the statute and the implementation of the statutes in its true letter and spirit. The BMC ought to have verified the permissions obtained by the Respondent No.3-Trust even before the construction was started. It ought to have checked its record whether or not any notice was issued by Respondent No.3 to the BMC for such a construction as per the provisions of the BMC Act. We find that, the provisions of the BMC Act, to permit construction, are not complied with in most cases and the persons are permitted, by BMC's sheer inaction, to start and complete construction of the illegal/unauthorised structure in the State and particularly in Mumbai.

26) The communications from either public or law-abiding citizens as such are completely ignored by the BMCs Officers. This frustrates the law-abiding citizens who are conscious of the illegalities being committed around them and are trying to prevent them. The Officers of the BMC are duty bound and must respond to the communications received from a citizen of this country. Their officer ought to acknowledge complainants and inform them through any electronic form i.e. by SMS, WhatsApp or email about the actions taken, so as to keep them abreast. This is sheer courtesy that is expected from a public officer. It would be sheer dereliction of their duties if they failed to communicate by either electronic media or in writing to the complainant the action initiated by them. It is possible that, the BMC

do not have sufficient staff to overlook every square foot of their jurisdiction. It is therefore extremely necessary for them to be vigilant and take due cognizance of the complaints received through public participation and thereby stem the growth of illegal construction which are plaguing the city since decades.

27) As observed by us in our previous Orders these illegal constructions completely jeopardize the planned development of the city and drain the existing resources. We find that the law-abiding citizens who have authorized structures are faced with several difficulties and shortages since the resources are being shared by these illegal constructions. According to us once an action is initiated by the BMC through its Officers, these Officers must communicate the action to their Advocates immediately. We are unable to accept that, in this digital era the BMC's Officers are unable to communicate with their Advocates for giving instructions well in time. We therefore are unable to accept the apologies or excuses for not having been able to give instructions to their Advocates. This inaction only leads us to believe that the Officers themselves have interests in permitting illegal constructions for reasons best known to them only. We do not find any logical reason for the Officer not being able to telephonically instruct the Advocate appearing in the matter to oppose the grant of an injunction, allowing the BMC Authorities to demolish the construction. In most cases

these injunctions remain in force on account of the huge backlog which the Courts are burdened with. As a result the illegalities perpetuate. Despite there being settled law and statutory provisions which are entirely unambiguous.

28) In view of the above deliberation we direct that:-

28.1) We do not find fault with the recently appointed Advocate Shri Rahul Rathod who appeared for the BMC before the Bombay City Civil Court. We accept the explanation tendered by him on Affidavit, however, we simply caution him to be updated with the law.

28.2) The concerned Officers Mr. Dnyaneshwar Ukirde, Mr. Gajanan V. Bellale and Mr. Wagh of the BMC too are responsible for dereliction of their duty. Mr. Ukirde the Assistance Engineer (Maintenance) being the affiant of the BMC's reply dated 29th July 2024 was aware of the entire matter. So also Mr. Bellale, Assistance Commissioner, the affiant of Affidavit dated 28th February 2025. Each of them were and are duty bound to ensure and inform the BMC's Advocate, that the Writ Petition on the same subject matter and the issue between the same parties is pending before the High Court. By withholding true facts from their Advocate, they have attempted to overreach this Court and thereby undermining the dignity of this Court. According to us the Municipal Commissioner of Respondent No.2 must take appropriate action against each of the Officers in accordance with

prevailing laws including action under Section 64C of the BMC Act immediately.

28.3) The CEO of MHADA must initiate an enquiry in this matter and take appropriate action against all such persons responsible for granting this work Order dated 21st February 2024.

29) In view of the above, we pass the following order:

- (i) Petition is made absolute in terms of prayer clauses (a), (b) and (c).
- (ii) We direct the Respondent No.2 to demolish the illegal construction carried out by Respondent No.3 within a period of one week from the date of uploading of the present Order on the official website of the High Court of Bombay. We also direct the Respondent No.2 to retain this writ plot as an open space as per the Reservation under DCPR 2034 and not to permit any construction on the writ plot.
- (iii) We call upon the Municipal Commissioner of BMC to take appropriate action against the erring Officers including Mr. Prakash Kondiba Gole in accordance with prevailing laws including action under Section 64C of the BMC Act and file a compliance report in this Court within a period

of six months from the date of uploading of the present Order on the official website of the High Court of Bombay and explain what action has been taken.

- (iv) We also call upon the CEO MHADA to initiate an inquiry against the concerned Officers for having permitted/sanctioning approval of Public Funds for illegal construction against the erring Officers and file a compliance Affidavit in this court within a period of six months.
- (v) We direct the Bar Council of Maharashtra and Goa to initiate necessary action against Mr. Mahamuni under Section 35 of the Advocates Act, 1961.
- (vi) We also direct the BMC to look into the complaints made by Respondent No.3 against the Petitioners having carried out illegal constructions and take necessary action and file a compliance report within six months from the date of uploading this Order on the official website of High Court, Mumbai.
- (vii) The Petition is accordingly allowed in the above terms with no Order as to costs.

30) After pronouncement of Judgment, Mr. Patil, learned Advocate appearing for the Petitioner informed us that on 18th March, 2025 as per statement made before this Court, the officers of BMC in fact attempted to demolish the unauthorized writ structure. However, since it was resisted by the members of Respondent No.3 therefore it could not be demolished.

30.1) We are unable to accept such a situation. According to us the concerned officers of BMC ought to have sought necessary police assistance to perform their lawful duty as per Section 522 of the BMC Act

31) As we have now pronounced the Judgment, it is imperative for the Authorities of the BMC to comply with our Judgment within the stipulated period. In view of the Affidavit filed by Mr. Prakash Kondiba Gole dated 11th March, 2025 we permit Respondent No.3 to withdraw the Suit that is now before us. The Suit is accordingly disposed off.

32) We direct the Registrar of City Civil Court, Mumbai to incorporate necessary entry in the Register of Disposal after notifying our directions to the concerned learned Judge seized of the said Suit.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)..