

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

WRIT PETITION NO. 2458 OF 2025

1. Arihant Co-operative Housing Society Ltd.	}	
2. Shree Co-operative Housing Society Limited	}	
3. Omkar Co-operative Housing Society Limited	}	
4. Gangadeep Co-operative Housing Society Ltd.	}	
5. Akashdeep Co-operative Housing Society Ltd.	}	
(All Co-operative Housing Societies registered	}	
under the Maharashtra Co-operative Societies	}	
Act, 1960).	}	
6. Shree Keshvji Nagar Co-operative Housing	}	
Societies Association Ltd.	}	
All having address at Plot of land bearing Survey	}	
No. 154 (Part), Hissa No. 1, City Survey No. 459	}	
at Keshavji Nagar, Bhattipada Road, Bhandup	}	
(West), Mumbai- 400 078	}	...Petitioners

Versus

1.The Municipal Corporation of Gr. Mumbai	}	
a statutory body is formed under the provisions	}	
of the Mumbai Municipal Corporation Act, 1888	}	
and having its address at 1, Mahapalika Marg,	}	
Bombay-400001	}	
2.The Asst. Municipal Commissioner, S Ward,	}	
Building Proposal Department Bhandup (West),	}	
Mumbai – 400 078	}	
3. National Education Society High School and	}	
Junior College, A registered Education Trust,	}	
having its address at NES Complex, National	}	
High School Marg, Bhandup (West),	}	
Mumbai 400 078.	}	...Respondents

Mr. J.S. Kini a/w Mr. Aum Kini i/b Ms Sapna Krishnappa for the Petitioners.

Mr. Vaibhav Gaikwad a/w Ms Meena Dhuri i/b Ms Komal Punjabi and Ms Rupali Adhate for the Respondent- BMC.

Mr. Amrut Joshi i/b Mr. Sanket Mungale for Respondent No. 3.

CORAM: G. S. KULKARNI &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 03rd SEPTEMBER 2025.
PRONOUNCED ON : 26th SEPTEMBER 2025.

Judgment : (Per Manjusha Deshpande, J.):-

1. The petitioners have approached this court with a prayer seeking directions to the respondent nos. 1 and 2, which reads thus:

“[a] That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other order, direction or Writ in the nature of Mandamus directing Respondents No.1 and 2 to decide the representation made by the Petitioners dated 28th November, 2024 being Exhibit A, within such period of time as this Hon'ble Court deems fit and proper.

[b] That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other order, direction or Writ in the nature of Mandamus directing Respondents No.1 and 2 to demolish the illegally created Turf on the R.G. area as well as all the illegal and unauthorised structures on the storm water drain at suit premises i.e., a piece of land admeasuring 12,605.95 sq. yards or thereabout i.e.10540.09 sq.mtr. bearing Survey No. 154 Hissa No. 1, CTS NO. 459/1 situated at Village Kanjur, Taluka Kurla as can be seen in the photographs at Exhibit A hereto.

[c] Rule and interim and ad-interim reliefs in terms of prayers clause [a] and [b] above.”

2. The brief facts shorn of unnecessary details leading to filing of the present writ petition are that petitioner nos. 1 to 5 are Co-

operative Housing Societies, who are members of petitioner no. 6- Association of the Housing Societies. The grievance of the petitioners is that respondent no. 3, has encroached upon the portion of their Recreational Ground (RG) area (hereinafter referred as "RG"), by constructing illegal and unauthorized structures on the storm-water drains area. Though the petitioners have made a representation to the respondent nos.1 and 2 to ventilate their grievances, however, it has remain unattended. Hence, the present writ petition is filed with the prayers as stated hereinabove.

3. According to the petitioners, on the failure of grant of conveyance in their favour, and the encroachment made by respondent no. 3, led the petitioners to file L.C. Suit No.2359 of 2014 in the City Civil Court at Bombay. In such suit, the petitioners filed an Interim Application for appointment of the Court Commissioner to ascertain the extent of encroachment made by the respondent no 3. In furtherance of the orders passed by the City, Civil Court, the D.I.L.R. authorities have conducted a survey and submitted a report, which discloses the extent of encroachment made by respondent no.3 on the RG area of the petitioners. According to the petitioners, the report filed by the D.I.L.R. clearly reflects, that there is an encroachment made by

respondent no.3 on the open space of petitioner nos. 1 to 5.

4. On the other hand, respondent no.3 also has filed L.C. Suit No.4497 of 2013 along with Notice of Motion No. 4277 of 2013, claiming that, the structures constructed by it were legal and tolerable, therefore liable to be regularized. However, a notice was issued by respondent nos. 1 and 2 under Section 351 of the Mumbai Municipal Corporation Act, 1888 against respondent no.3. After receiving the reply filed by respondent number no.3, a reasoned order is passed, directing respondent no.3, to remove the particular structures constructed by it as mentioned in the notice.

5. Being aggrieved by the notice 28th August 2013 and the final order dated 29th November 2013 passed by respondent nos.1 and 2, respondent no. 3 filed suit, alongwith Notice of Motion in which protection is granted to the encroached structures by the City Civil Court at Bombay, vide order dated 18th April 2019. In the civil suit, the petitioners had filed Chamber Summons bearing No. 2845 of 2013, to implead them as party in the suit filed by respondent no.3, however, the Chamber Summons filed by them has been rejected. Hence vide order passed by the Bombay City Civil Court, the Authorities of the Municipal Corporation are restrained temporarily from acting upon the impugned notice dated 28th

August 2013, till the final disposal of the suit, as a result of the said protection order, the authorities are not proceeding against respondent no.3.

6. It is the contention of the petitioner, that the structures which have been mentioned in the notice dated 28th August 2013, are four classrooms and toilet blocks, admeasuring 70'10' x 31'4, with B.M. wall and AC sheet roof as shown in the sketch map. Although a protection is granted in favour of the respondent, to the extent of the area mentioned in the notice dated 28th August 2013, however, respondent no.3 has continued its encroachment spree, and now it extends to such an extent that it entrenches the storm-water drains of the entire area, causing stagnation of water resulting into spreading of various diseases, apart from the other problems that are caused due to water logging. Respondent no.3 has now converted the remaining portion of RG area belonging to the petitioners into a turf which is now fetching good amount of income at the cost of petitioner- societies, who continue to be deprived of their rightful enjoyment of the RG area. Considering the inconvenience caused and hazards of stagnant rainwater, due to the encroachment of respondent no. 3, the petitioners contend that they are constrained to approach this court having left with no other alternative.

7. Mr. J.S. Kini, learned counsel appearing for the petitioners submits that respondent no.3 is using the order passed by the Civil Court dated 18th April 2019, as a shield and is continuing to encroach upon the RG area of the petitioners. The protection granted to respondent no.3 is limited only to the extent of the portions mentioned in the notice issued by respondent nos.1 and 2 dated 28th August 2013. The encroachment made by respondent no.3, thereafter is not covered by the protection order. Yet respondent nos.1 and 2 are not proceeding to take any action against respondent no.3. It is submitted that although the petitioners had filed Chamber Summons, seeking permission to intervene in the matter, but having failed in their attempt, they are left with no other alternative.

8. Mr. Kini further submits that, it needs to be appreciated that as a result of inaction on the part of respondent nos.1 and 2, not only are they deprived of the enjoyment of the open space but are facing hardships on account of water logging, caused as a result of the unauthorized construction made by respondent no.3 on the storm-water drains area, the authorities of the Municipal Corporation are not able to clean the drains for passage and free flow of rainwater resulting into accumulation of rainwater, which remains stagnated, and is likely to spread various diseases during

the rainy season.

9. Mr. Kini has also drawn our attention to the communication of the Municipal Corporation dated 26th February 2020, wherein it is observed that the work of improvement of storm-water drains (SWD) of respondent no.3- High School is in progress, the SWD drain is encroached with compound wall and toilet block by the respondent no. 3- National Education Society, High School, due to which the work of construction of Nala wall could not be carried out. The Executive Engineer of the 'S' ward is requested to direct the staff to remove the encroachment, and to ensure that the work is completed within stipulated period. This internal communication is very much clear and unambiguous as regards encroachment made by respondent no. 3 is concerned. It is submitted that although it was incumbent upon respondent nos.1 and 2 to remove the encroachments made by respondent no.3, the respondent nos. 1 and 2 are avoiding to remove it, taking refuge of the interim protection granted by the City Civil Court dated 18th April 2019. It is next submitted that the subsequent encroachments were brought to the notice of respondent nos.1 and 2 by the petitioners vide representation dated 11th October 2023 and 31st October 2023, but they have failed to decide the representation filed by the petitioners or take any steps in

furtherance thereto. The petitioners have therefore approached this Court with the prayer as reproduced herein above. Since respondent nos.1 and 2 are sitting tight over the representation, which is kept pending since long, the petitioners have approached this Court with an innocuous prayer to decide representation filed by them. Hence, it is submitted that the writ petition deserves to be allowed by directing respondent nos.1 and 2 to decide the representation filed by the petitioners.

10. Mr. Vaibhav Gaikwad, learned counsel appearing for respondent nos.1 and 2 submits that, insofar as the prayers made by the petitioners are concerned, the representation made by the petitioners is bereft of any details. However, fact remains that the respondent nos. 1 and 2 have already taken cognizance of the earlier complaint filed against respondent no.3. The learned counsel submits that, as far as the second prayer seeking direction to demolish the turf laid on the RG area and to demolish structures created on storm-water drains on the suit premises is concerned, the respondents had already issued notice under Section 351 of the Mumbai Municipal Corporation Act on 28th August 2013, to respondent no. 3, informing of the unauthorized construction undertaken of four classrooms and toilet block without permission. By such notice respondent no. 3 was called

upon to produce documentary evidence showing existence of the noticed structure prior to the datum line. Respondent no.3 has responded to the notice and after taking into consideration the reply filed by respondent no.3, as well as the documentary evidence available and a speaking order dated 29th November 2013 was passed by the Assistant Engineer 'S' ward, directing to remove the structure since respondent no.3 has failed to produce documentary evidence showing existence and authenticity of the notice structure. Unfortunately, before the respondent could proceed in furtherance of the order passed on 29th November 2013, respondent no.3 has filed L.C. Suit No. 4497 of 2013, before the City Civil Court at Bombay which is confirmed, vide order dated 18th April 2019. The respondents are restrained from taking any action in pursuance of the notice dated 28th August 2013 and order dated 29th November 2013.

11. Being aggrieved by the said order, the applicant has also filed Appeal from order challenging the order passed by the City Civil Court at Bombay. However, the Appeal from Order No. 28119 of 2019 is still pending before this Court.

12. It is further submitted that in view of the complaint filed by the petitioners, the staff of the respondent No.2 has inspected the site under reference on 21st February 2025, alongwith the Assistant

Engineer, 'S' Ward and found that the toilet and the side compound wall are constructed on the storm-water drains. However, considering the pending suit and the interim order of protection granted in favour of respondent no.3, the respondents are refraining from taking any coercive action against respondent no.3. It is also submitted that some portion of the crest area which is covered with turf is open to sky and the nylon or transparent nets which are permissible on the grounds for practicing cricket, hence it cannot be treated as construction as per the policy of the Bombay Municipal Corporation. It is therefore submitted that respondent nos.1 and 2 have already taken timely action against respondent no.3.

13. We have heard the respective parties at length. Having perused the record, it is evident that though the petitioners had filed a complaint of encroachment made by respondent no.3 on the RG area of the petitioners, the same was acted upon, by taking cognizance of the same, by issuing a notice under Section 351 of the Mumbai Municipal Corporation Act by the respondent no.3. Upon receiving the explanation given to the said notice by respondent no.3, an order directing to remove the unauthorized construction was passed. Before any steps could be taken by respondent nos.1 and 2 in furtherance of the order passed by them

on 29th November 2013, an order directing respondent nos. 1 and 2 not to take any steps in furtherance of the Show Cause Notice dated 28th August 2013, as well the impugned order dated 29th November 2013 has been passed by the City, Civil Court at Bombay.

14. During the course of hearing, the petitioners have placed on record an order passed by this Court in Interim Application No.8193 of 2025 in First Appeal No. 982 of 2025 dated 9th May 2025. On perusal of the said order, it appears that the suit filed by respondent no. 3 has been dismissed, however, the injunction was continued for a period of five weeks after disposal of the suit, which was about to expire on 30th May 2025. Since the order of injunction was operating during the trial, it was continued by this Court till the next date. The matter was directed to be listed for further consideration on 19th June 2025. It is the categorical stand of the petitioners that, respondent Nos. 1 and 2 are taking advantage of the order passed by the Bombay City Civil Court, when, in fact, the injunction is restricted only to the extent of structures mentioned in the notice and, therefore, the encroachment made thereafter are not protected by the order passed by the City Civil Court, Bombay. The Petitioners have placed on record the photographs of the encroached area, which

shows that there is a turf which does not form part of the structures mentioned in the impugned notice.

15. Considering that the suit filed by the petitioners being L.C. Suit No.2359 of 2014 for substantive relief against respondent no.3 is still pending before the concerned Court, therefore relief as prayed in prayer clause (b) cannot be granted. However, in our opinion, it would be appropriate to direct respondent no. 2 to decide the representation made by the petitioner dated 28th November 2024 within a period of eight weeks from the date of this order, by granting an opportunity of a hearing to all the affected parties.
16. Needless to state, that the affected parties are at liberty to place on record of respondent no. 2, documents in support of their respective claims. After hearing the respective parties, respondent nos. 1 and 2 shall pass appropriate order in accordance with law, on its own merits, preferably within a period of eight weeks.
17. With the aforementioned directions, the Writ petition stands disposed of.

(MANJUSHA DESHPANDE, J.)

(G. S. KULKARNI, J.)

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signed by
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