IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.5337 OF 2024

Surendra Shah,]
Adult of Mumbai,]
Indian Inhabitant, Sole Proprietor of]
M/s. Shree Sai Shraddha Associates]
having office at Shop Nos.1 and 2,]
L. T. Road, Opposite Vrandavan Hotel,]
Borivali (West), Mumbai – 400 092.] ...Petitioner.

V/s.

1. Brihanmumbai Municipal Corporation]
Having its office at Mahapalika Marg,]
Near C.S.T.M., Mumbai – 4000 001.]

2. Executive Engineer, having address at]
office of Executive Engineer,]
(Building and Factory), P/North Ward]
Near Liberty Garden, Mamletdarwadi,]
Malad (West), Mumbai – 400 064.]

3. Assistant Engineer,]
P/North Ward,]
Near Liberty Garden, Mamletdarwadi,]
Malad (W), Mumbai – 400 064.]

4. Arvind Badriprasad Yadav,]
Adult of Mumbai, Indian Inhabitant,]
Occ.-business, residing at]
Yadav Niwas, 1st Floor, 27,]
Jitendra Road, Malad (East),]
Mumbai – 400 097.]

5. Madhumati Arvind Yadav,]
Adult of Mumbai, Indian Inhabitant,]
Occ. Housewife, residing at 27,]
Yadav Cottage, Jitendra Road,]
Malad (East), Mumbai – 400 097.]

SUMEDH NAMDEO SONAWANE
Digitally signed by SUMEDH NAMDEO SONAWANE
Date: 2025.06.20 19:59:16 +0530

6. Rameshchandra Arvind Yadv.]

7. Kamlesh Arvind Yadav.]

8. Awdhesh Arvind Yadav.]
All Adults of Mumbai,]
Indian Inhabitant, Occ.-business,]
residing at Yadav Niwas, 1st Floor,]
27, Jitendra Road, Malad (East),]
Mumbai – 400 097.] … Respondents

Mr. Naushad Engineer. Senior counsel a/w. Adv. Pooja Kane i/by aDv. Yogesh Adhia for the Petitioner.

Mr. Chaitanya Chavan a/w. Adv. Rupali Adhate, Adv. Rupali Patil i/by Adv. Komal Punjabi for Respondent Nos.1 to 3-BMC.

Mr. Vishal Kanade i/by Adv. Ramakant Yadav for Respondent Nos.4 to 8.

Mr. Adate, Asst. Engg., Building and Factory Dept, P/N Ward, BMC, present.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 2nd May, 2025.
PRONOUNCED ON : 20th June, 2025.

Judgment (Per : Kamal Khata, J) :-

1) Rule. Rule made returnable forthwith and disposed off finally with the consent of learned Advocates for the respective parties.

2) By this Petition under Article 226 of the Constitution of India, the Petitioner, being the owner of the writ land, seeks a writ of mandamus directing Respondent Nos. 1 to 3—namely, the Brihanmumbai Municipal

Corporation (“BMC”) and its Officers—to immediately proceed with the demolition of all illegal constructions on the ‘writ land’. The writ land is described as Land No. 13, Survey No. 156 (part), Hissa No. 6 (part), corresponding to CTS No. 27, admeasuring 921 square yards or 771.60 square meters, situated at Village Pahadi, Haji Bapu Road, Malad (East), Mumbai–400097.

3) We have heard the counsel for the parties and perused the record.

4) The BMC, through Mr. Sagar Rane, Executive Engineer, B & F Department, P/North Ward, has filed an Affidavit dated 2nd May 2025. The affidavit states that on 18th March 2025, the BMC issued a Speaking Order declaring the said structure illegal and directing its removal within 15 days. It also discloses that, Respondent No.4 filed a suit bearing L.C. Suit No.1590 of 2016 before the City Civil Court, Dindoshi where the BMC sought dismissal of the Suit on the ground that it challenges Notices issued under Sections 351 and 354A of the Mumbai Municipal Corporation Act, 1888 (“BMC Act”) and is barred by Section 515A of the BMC Act. The BMC has further filed an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”), challenging the maintainability of the Suit as barred by Section 515A of the BMC Act. No interim relief has been granted in the Suit.

5) In recent pronouncements of the Supreme Court in the case of *Rajendra Kumar Barjatia & Anr. vs. U.P. Avas Evam Vikas Parishad & Ors.*

reported in *2024 SCC OnLine SC 3767* and in the case of *Kaniz Ahmed vs. Sabuddin & Ors.* reported in *2025 INSC 610*, the Supreme Court has clearly directed that as follows:

a) the constructions which are audaciously put up without any building planning approval cannot be encouraged.

b) if any violation is brought to the Notice of the Courts, it must be curtailed with iron hands and any leniency afforded to them would amount to showing misplaced sympathy.

c) that laxity on the part of the Authorities concerned in performing their obligations under the Act cannot be used as a shield to defend action against the illegal/unauthorized constructions.

d) the High Courts must adopt a strict approach while dealing with the cases of illegal construction and should not readily engage themselves in judicial regularization of buildings erected without requisite permissions of the competent Authority.

e) there is a need for maintaining a firm stance that emanates not only from the inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force to facilitate the well-being of all concerned.

f) the law ought not to come to the rescue of those who flout its rigors as allowing the same might result in flourishing the culture of impunity.

6) We are bound by the observations of the Supreme Court and the ratio laid down in the aforesaid two Judgments. We see no reason to protect the illegalities.

7) With a view to grant an opportunity, we inquired with the learned counsel Mr. Vishal Kanade, appearing for Respondent Nos.4 to 8, to show any sanctioned plan permitting them to construct the writ structures. He very fairly conceded that, there were none.

8) Accordingly, we have no basis to protect these structures which are illegal. Illegalities are incurable as observed by the Hon'ble Supreme Court in the case of *K. Ramdas Shenoy vs. The Chief Officers, Town Municipal Council, Udipi & Ors.* reported in *(1974) 2 SCC 506.*

9) Considering the above, the Petition is made absolute in terms of prayer clause (a).

9.1) The BMC is directed to demolish the said illegal structures on the writ land, as soon as possible and in any event within a period of four weeks from the date of of uploading of this Judgment on the Official website of High Court, Bombay.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.).**