

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

WRIT PETITION NO. 149 OF 2025

Drishti Hospitality Company Pvt. Ltd.	]	
and another	]	Petitioners
Vs		
The Municipal Corporation of Greater	]	
Mumbai and others	]	Respondents

Mr. Manoj Agiwal, for Petitioners.

Mr. Dhruvad Patil a/w Ms. Smita Tondwalkar i/b Ms. Komal Punjabi, for Respondents No.1 to 3 – BMC.

Dr. Milind Sathe, Senior Advocate a/w Mr. Karl Tamboly, Mr. Hrushi Narvekar a/w Mr. Samit Shukla, Mr. Siddharth Shah and Ms. Sayali Diwadkar i/b Trilegal, for Respondent No.4.

Mr. Madhukar Shelar, Assistant Engineer (B&F) 'D' Ward present.

Mr Vilas Yele, Sub Engineer (B&F) 'D' Ward present.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 20 JUNE 2025.

P.C.

1. We have heard learned Counsel for the parties on the backdrop of the order dated 9th May, 2025 passed by Co-ordinate Bench of this Court (Coram: A.S. Gadkari and Kamal Khata, JJ). The said order reads thus;

"1) In furtherance of Order dated 1" April, 2025, the Designated Officer/Executive Engineer (B&F) 'D' Ward, has submitted its Inspection Report dated 3rd April, 2025 through its Advocate on record. We have perused the Report.

1.1) Ms. S.V. Tondwalkar on instructions from Dilip Aahire, Designated Officer, Mr. Vilas Yele S.E. (B&F) and Mr. Kunal Khobragade, Sub-Engineer (BP) 'D' Ward, submitted that, it may take about 6 weeks time to demolish the said illegal structure including the RCC component thereof.

2) Mr. Tamboly, learned Advocate appearing for the Respondent No.4 on instructions submitted that, the Respondent No.4 will demolish the said illegal structure and restore it to its original position as per the sanctioned plan, within a period of 6 weeks from today by employing his own agency. That, the said demolition will be carried out as per the Report dated 8th May, 2025 submitted by the Designated Officer of BMC i.e. under the supervision of a Registered Structural Engineer.

2.1) Mr. Tamboly further submitted that, the Respondent No.4 will withdraw L.C. Suit No.2039 of 2023 impugning Notice under Section 35 of M.M.C Act from the file of the City Civil Court, Mumbai, by 17th June, 2025.

2.2) The aforesaid statements of Mr. Tamboly are accepted as undertaking to the Court.

3) Stand over to 18th June, 2025.

4) To be listed under the caption "for directions".

2. Learned Counsel for the petitioners has contended that respondent No.4 who is unauthorisedly occupying this objectionable part of the building is in breach of this order and no steps were taken to remove the objectionable construction. In responding to this contention, Dr. Sathe, learned Senior Advocate for respondent No.4 has argued that there was some difficulty on the part of respondent No.4 to undertake removal of the said structure and in this

regard, respondent No.4 had approached the structural Engineers (Mahimtura Consultants Pvt. Ltd.) who had inspected the objectionable structure and have furnished a report which opines that in view of the technical reasoning as set out in the said report and considering the ongoing repair works, demolition of the overhead tank and terrace structure is not advisable and recommended. It is opined that sealing the unauthorized portion as proposed is the most viable and appropriate alternative to meet both safety and compliance objectives.

3. The said report was discussed. Initially from the tenor of the submissions made on the report by Dr. Sathe, an impression was sought to be created that it would not be feasible at all to restore the *status quo ante* i.e to remove the unauthorized extension/construction undertaken in respect of such premises of respondent No.4. However, Dr. Sathe has fairly submitted that respondent No.4 is ready and willing to remove the said objectionable construction undertaken by respondent No.4 by drawing our attention to paragraph 9 of the additional affidavit filed on behalf of respondent No.4' dated 17th June, 2025 in which following statements are made;

“9. Whilst Respondent No. 4 is ready and willing to comply with the directions of this Hon'ble Court to demolish the said Structure in accordance with the BMC report dated 9th May 2025 and its undertaking recorded under the Order dated 9th May 2025, Respondent No. 4 fears and apprehends any threat to the life of the occupants and structural stability of the Mehta Mahal Building as stated in the reports submitted by ND2 Consultancy and Mahimtura, thereby impelling Respondent No. 4 with no option but to request this Hon'ble Court to relieve and

discharge Respondent No. 4 from its statement and undertaking recorded in this Hon'ble Court's Order dated 9th May 2025 and instead direct Respondent no. 2 to undertake the proposed demolition”.

4. Dr. Sathe has submitted that indisputedly the objectionable construction is illegal, it is unauthorized and his clients would not have any objection whatsoever for removal of the same, however, his submission is that considering the report of the structural Engineer as obtained by the respondent No.4, it may not be possible for his clients to undertake the work and it needs to be undertaken by the Municipal Corporation.

5. We find that the facts are quite peculiar. The part of the encroachment or unauthorized use by respondent No.4 is of a abandoned water tank which was originally constructed. Thereafter, there were modifications of the building laterly. Originally the building in question was of nine floors and now, as it stands is extended by loading of an additional FSI upto 13 floors. An occupation certificate up to 13 floors is stated to have been granted in the year 1969.

6. Be that as it may, it appears to be not in dispute that the abandoned water tank could never have been, in any manner, punctured (wall broken) so as to make an access to enter the water tank area to be converted and utilized as a habitable area. However, it appears that the water tank itself on one of it's side was broken and/or punctured so as to utilize the hollow area of the water tank to

be office/commercial premises. This is just to be believed. Photographs of the water tank and the further extended illegal portion are placed on record as also a map is placed on record on behalf of respondent No.4 wherein we find that there is unauthorized extension of a cabin area 4.32'x4.58' in the toilet block of 3.81x2.81 and there is a lobby of 1.00'x2.81' meters and the entire area of the water tank is 4.32'x7.60' meters has been encroached. Thus, a total area of approximately 64 square meters equal to 650 square feet has been illegally converted into a habitable area and, more particularly, in such building which are commercial premises in a prime locality at Opera House, Charni Road, Mumbai. This is the extent of such unimaginable, ingenuity and illegality.

7. In the aforesaid circumstances, as respondent No.4 has completely left it to the Municipal Corporation to remove the illegal extension which is marked as yellow in the plan submitted (marked "X" for identification) and the use of the water tank as a habitable area to be discontinued, the Municipal Corporation would be required to construct a wall so as to restore the water tank to its original position by closing the access and sealing the same so that the abandoned water tank is restored as per the original sanctioned plans.

8. We do not find that there is any impediment in removing the extended portion marked in yellow in the plan. In such context, we refer from the report submitted by Mahimtura Consultants Pvt Ltd that such illegal construction of

a brick wall and such extended portion is not something integral to the building. What is integral to the building is the water tank and which is required to be restored by installing the removed wall which, in our opinion, ought not to cause any danger to the existing structure as use of the said water tank as commercial premises is required to be completely discontinued and sealed.

9. We accordingly direct the Corporation to undertake the removal and restoration work as expeditiously as possible and that the same be completed within three weeks from today. Let a report in that regard be placed on record on the adjourned date of hearing. The entire work being undertaken by the Municipal Corporation shall be at the cost of respondent No.4. Respondent No.4 is directed to deposit with the Municipal Corporation an amount of Rs.10,00,000/- within one week from today and if further amounts are required to be paid, the Court shall direct respondent No.4 to make such additional payments.

10. Apart from this, this Court would also consider the contention of the petitioners that such brazen illegality ought to be taken seriously and further compensatory cost needs to be imposed on respondent No.4. We shall hear the parties in that regard on the adjourned date of hearing and pass appropriate orders.

11. We accordingly adjourn the proceedings to 11th July, 2025. (High on Board).

12. Needless to observe that respondent No.4 as also any another person concerned with the building shall extend all co-operation to the Municipal Officers in undertaking the said work and they shall remain present at the time of the work being carried out by the Agencies of the Municipal Corporation.

13. Parties to act on the authenticated copy of this order.

[ARIF S. DOCTOR, J.]

[G. S. KULKARNI, J.]