

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

WRIT PETITION NO. 1802 OF 2025

Mubarak Ali Shaikh & Anr.

...Petitioners

Vs

Municipal Commissioner, Municipal Corporation
of Gr. Bombay & Ors.

...Respondents

Mr. Pradeep Havnur for the Petitioners.

Smt. R. M. Hajare i/by Smt. Komal Punjabi for Respondent Nos.1 to 4-BMC.

Mr. Muthhar Khan i/by Shivamsingh Deshmukh for Respondent No.5.

Mr. Rishikesh Chavan, Officer, JE (BF) H/W Ward is present.

**CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.**
DATE: 17 JUNE 2025.

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1. By the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioners seek the following substantive reliefs:-

- “a) this Hon’ble Court be pleased to issue a writ of Mandamus or Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing Respondent Nos.1 to 4 to demolish illegal/unauthorized two bungalows constructed by Respondent No.5, without obtaining necessary permission from the BMC;
- b) this Hon’ble Court be pleased to issue an appropriate writ directing the Respondent Nos.1 to 4 to take responsibility for allowing illegal/unauthorized two bungalows constructed by Respondent No.5, without obtaining necessary permission from the BMC;”

2. Heard Learned Counsel for the parties.

3. Mr. Havnur, Learned Counsel appearing on behalf of the Petitioners submits that the Petitioners have been constrained to file the present Petition on account of what he alleges is illegal and unauthorised construction put up by Respondent No.5. Mr. Havnur submits that the Petitioners are aggrieved by the illegal and unauthorised construction as they reside in the vicinity of the said construction.

4. Mr. Havnur then submits that despite lodging various complaints along with the photographs of the illegal and unauthorised construction with the Respondent Authorities, no action has been taken by the Respondent Authorities with regard to the complaints made by the Petitioners. It is thus submitted that the Petitioners have approached this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Mr. Khan, Learned Counsel appearing on behalf of Respondent No.5 raises a preliminary objection. He submits that the Petitioners have approached this Court by filing of the Petition which is entirely *mala fide* since the Petitioners have suppressed from this Court the fact that the Petitioners and Respondent No.5 are brothers as also that the Petitioners have filed an FIR against Respondent No.5, basis which Respondent No.5 is presently in incarceration. Mr. Khan submits that these facts ought to have been disclosed in the Petition, failing which, the Petitioners are disentitled to any equitable reliefs from this Court. Mr. Khan also denies that the construction is illegal or unauthorised and submits that the Petitioners have infact carried out illegal and unauthorised construction on their plot. He thus submits that the Petition be dismissed.

6. Smt. Hajare, Learned Counsel appearing on behalf of the Respondent Authorities submits that it is not in dispute that the Petitioners have made various complaints, which have been received and are under consideration. She thus submits that there is no merit in the Petitioners' grievance that the Respondent Authorities are not acting upon the same.

7. After having due regard to the rival contentions of the parties, what we find from the record is that the Petitioners have made complaints to the Respondent Authorities with regard to what the Petitioners alleged is the illegal construction on part of Respondent No.5. Hence, in our view, without delving into the rival contentions of the parties and the merits of the matter, it would be appropriate for the Respondent Authorities to hear and decide the complaints made by the Petitioners, which are annexed at Exhibits 'A' and 'B' to the Petition,

within a period of four weeks from the date on which copy of this order is available.

8. We make it clear that we have not expressed any opinion on the merits of what is stated in the complaints. The same are therefore to be decided independently, having due regard to the relevant provisions of law, more particularly the Mumbai Municipal Corporation Act, 1888.

9. The Writ Petition is accordingly disposed of in the aforesaid terms. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)