



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

WRIT PETITION NO. 1953 OF 2025

Kannamwar Nagar Shree Krishna Cooperative
Housing Society Ltd.

... Petitioner

Vs.

The State of Maharashtra, through Dept. of Housing & Ors. ... Respondents

Mr. Shakeeb Shaikh a/w Bijal Parikh i/b Ashraf Diamondwala for Petitioner
Mr. R. Hakke Patil a/w Ms. Pushpa Yadav & Ms. Rupali Adhate for BMC
Ms. Vrushali Kabre, AGP for State R. No. 1
Mr. Akshay P. Shinde for R. No. 4 To 7
Paluck Bengali i/b VIS Legis Law Practice for R. No. 8
Mr. Ranjit Thorat, Sr. Adv. i/b Vinod D. Mahadik for R. No. 9, 12, 13 and 14
Ms. Shashikala Vardhamane i/b Bhushan Vardhamane for R. No. 10 (A 1 Juice
Centre)
Mr. Kuldeep Singh a/w J. Singh for R. No. 11, 16, 18, 20, 21, 23

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATED: 7 JULY, 2025

P.C.

1. This is a case of encroachment on the footpath abutting the petitioner's premises. We have seen the photographs. The encroachment has existed for sometime. Some of encroachers are now asserting legal rights claiming that they are entitled for a permanent alternate accommodation under the policies of the Municipal Corporation and/or the State Government, considering that such policies recognize their rights as encroachers of the footpath, to be entitled for a permanent alternate accommodation.
2. Be that as it may, we do not intend to delve on such issue. If there is an encroachment on the footpath and if the public at large is deprived of the benefits

of footpath, which is not the intention and object of the planning rules and regulations, then an appropriate action needs to be taken to remove the encroachment. However, what has happened here is something usual and quite routine to this jurisprudence, namely, that the encroachers have filed suit before the Civil Court and have obtained an interim protection. We are informed that the issue is now pending consideration in Appeal from Order before this Court.

3. The Municipal Corporation considering such encroachment ought to have taken appropriate action taking into consideration the decision of the Division Bench of this Court in **Jilani Building at Bhiwandi Vs. Bhiwandi Nizampur Municipal Corporation & Ors**¹. Wherein appropriate guidelines has been issued to the Civil Court not to grant injunction in respect of such unauthorized construction and encroachments.

4. Be that as it may, as the orders of the Civil Court are in operation, appropriate proceedings would be required to be taken by the Municipal Corporation to vacate the injunction and thereafter proceed to take action against those structures which have orders of temporary injunction in their favour. However, insofar as those encroachers, who have not approached the Court are concerned, they cannot claim any legal right whatsoever, it is hence the legal obligation and duty of the Municipal Corporation to forthwith remove the encroachment after following due procedure in law by issuance of prior notices, if not already issued and calling upon the encroachers to be evicted. To place the correct position in that regard on record, let an affidavit be filed on record so as to

1 (2022) SCC OnLine Bom 386

inform the Court, of the further action which Municipal Corporation would intend to take on the adjourned date of hearing.

5. We are informed by learned counsel for the Municipal Corporation that three structures are already demolished and an action in accordance with law needs to be taken against such encroachments.

6. We, however, clarify that already an action following due procedure of law to remove the encroachment is set into motion, if it is so, the same needs to be taken forward. All contentions of the parties in that regard are expressly kept open.

7. We may also observe that the petitioners are force to intervene in the pending suit and make a plea of removal of such encroachment and/or for vacating of protection, if any granted by the Civil Court in the pending proceedings. All contentions in that regard are expressly kept open.

8. Stand over to **21 July 2025 (H.O.B.)**.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI , J.)