

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2549 OF 2025

A.H. Wadia Trust & Ors.

... Petitioners.

V/s.

The State of Maharashtra & Ors.

... Respondents.

Mr. Abhishek Sawant a/w. Ms. Levi Rubens, Ms. Janvi Dutt, Ms. T. Kapadia & Mahesh Swami i/b. L.R. & Associates, Advocate for Petitioners.

Mr. Suraj Gupte, AGP for Respondent Nos. 1 and 5/State.

Mr. S.V. Tondwalkar i/b. Komal Punjabi, Advocate for Respondent-BMC.

Mr. Nivedan Torane, Asst. Engg. (B&F) 'L' Ward, BMC.

CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.

DATE : 2nd DECEMBER, 2025

P.C. :

1. A G+6 construction was erected on a plot, in which the Petitioners claim to have a right, title and interest. The said parcel of land is identified as Survey No. 275, Hissa No. 4 (Pt.), lease area 341.6 square var equivalent to 285.6 sq. mtrs. corresponding to CTS Nos. 152 and 152/1 to 9 admeasuring 197.49 sq. mtrs. at village Kurla Part-3,

Taluka Kurla, situated at Smt. Bububai Abdul Gafoor Chawl, Haji Karamat Ali Road, Qureshi Nagar, Mumbai – 400070 (hereinafter referred to as “the Writ Land”).

2. In the entire Petition, the contention of the Petitioners is that some unknown trespasser is encroaching on the said Writ Land and a construction of G+6 building has been erected by an unknown person/builder. In paragraph No. 15, the Petitioners state that they came to know of the aforesaid illegal construction on 2nd August, 2023. A formal written complaint was lodged with the office of the Respondent No. 4, which is the Assistant Commissioner of the Municipal Corporation of Greater Mumbai.

3. It is, therefore, prayed below paragraph No. 24 (a), (b), (c), (d) and (e) as under :

a. That this Hon'ble Court be pleased to pass a writ of Mandamus and/or a writ in the nature of Mandamus and/or any other appropriate writ, order and/or direction ordering and/or directing the Respondents to forthwith demolish the said illegal structure erected on the Petitioner's Land bearing Survey No. 275, Hissa No. 4 (Pt.), lease area 341.6 sq. var equivalent to 285.6 sq. mtrs corresponding to CTS Nos. 152 and 152/1 to 9 admeasuring 197.49 sq. mtrs (as per PR card) equivalent to 236.19 sq. yards.

of Village Kurla Part-3, Taluka Kurla situated at Smt. Bububai Abdul Gafoor Chawl, Haji Karamat Ali Road, Qureshi Nagar, Mumbai-400070;

b. That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to issue appropriate orders directing the Respondents to forthwith take necessary steps to demolish the said illegal construction on the said Land.

c. That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to issue appropriate directions to Respondents to provide a detailed report to this Hon'ble Court about the nature of said construction carried out so far, and the approvals /sanctions issued, if any, by the Respondents.

d. That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to issue appropriate directions to Respondents to forthwith take all necessary steps in accordance with the guidelines issued by the Hon'ble Supreme Court of India in the case of Municipal Corporation of Greater Mumbai vs M/s Sunbeam High Tech Developers Pvt Ltd (the Sunbeam Case) and Rajendra Kumar Barjatya Vs. U.P. Avas Evam Vikas Parishad & Ors., including to forthwith demolish the said illegal structure on the said Petitioner's Land bearing Survey No. 275, Hissa No. 4 (Pt.), lease area 341.6 sq. var equivalent to 285.6 sq. mtrs corresponding to CTS Nos. 152 and 152/1 to 9 admeasuring 285.7 sq. mtrs (as per PR card) equivalent to 341.69 sq. yards. of Village Kurla Part-3, Taluka Kurla.

e. For interim and ad-interim reliefs in terms of

Prayer Clause (b) to (d) above.

4. The Petitioners rely upon the following Judgments/orders :
 - (a) Writ Petition No. 2174 of 2024 (*Snehdeep Krida Mandal & Ors. v/s. Maharashtra Housing & Area Development Authority & Ors.*) delivered on 17th April, 2025.
 - (b) Civil Writ Petition No. 6730 of 2021 (*Nihal Ahmed Abdulla & Ors. v/s. Malegaon Municipal Corporation & Ors.*) delivered on 4th November, 2025.
 - (c) Order dated 5.7.2024 passed by this Court in Writ Petition No. 805 of 2023 & Connected Petition (*AH Wadia Trust & Ors. v/s. State of Maharashtra & Ors.*).
 - (d) Order dated 16.11.2022 passed by this Court in Writ Petition No. 3569 of 2022 (*A. H. Wadia Trust & Ors. v/s. State of Maharashtra & Ors.*).
 - (e) Judgment of the Hon'ble Supreme Court dated 17.12.2024 delivered in Civil Appeal No. 14604 of 2024 (*Rajendra Kumar Barjatya & Anr. v/s. U.P. Avas Evam Vikas Parishad & Ors.*).

5. The learned Advocate for the Corporation has taken instructions and submits that the Petitioner has not added the purported

encroacher who has constructed the G+6 building on the plot of the Petitioners, as a Respondent in this Petition.

6. It is further submitted that one Mr. Javed Valiuddin Kazi has preferred a Long Cause Suit No. 5313 of 2024. He has already challenged the notice issued by the Corporation invoking Section 354A of the Mumbai Municipal Corporation Act, by which the Corporation has indicated that the structure identified as Bububai Chawl (writ land), would be demolished. The Plaintiff has acquired an interim order dated 27th May, 2025 by which a recent order passed by the Corporation dated 6th May, 2025 for demolition of the property, has been stated by the Civil Court.

7. In the light of the above, since a Judicial Forum is already seized of the matter and since an interim protective order restraining the Corporation from demolition of the property has already been passed in favour of the Plaintiff, we do not find that this Court could issue a Writ of Mandamus and direct that the said protected building should be demolished.

8. We informed the learned Advocate for the Petitioners that in

such circumstances, this Court cannot issue a direction to demolish the property since a Judicial Court has already protected the Plaintiff against the demolition. The learned Advocate insisted that we should record the facts of this case and we should also consider the case law that he is citing, and pass an order.

9. Judicial discipline and propriety demands that though the Petitioner has approached this Court in our Writ jurisdiction, when a Judicial Court has been dealing with the cause taken up by the Petitioners and a protective order against demolition has been passed, we cannot issue an order of demolition ignoring such order of a Judicial Court. Considering the unusual insistence of the learned Advocate for the Petitioners, that we should pass an order, we are at pains to record that he is being inconsiderate. He continued to insist that we should pass the order in such a matter, which should actually not be entertained. We also informed him that we would be required to make certain observations on the facts of the case, if he insists that we should pass an order. He informed us that he has no instructions from the client to withdraw this Petition and an order be passed.

10. We find it unbelievable that the Petitioners did not realise

that a stranger is constructing a G+6 building on their plot. Apparently, this is a pretense. Moreover, since a Judicial Court is seized of the matter and the proposed action of the Corporation to demolish the property, has already been stayed and the Plaintiff who is alleged to be an encroacher, is protected against demolition, we are unable to entertain this Petition.

11. Hence, this **Writ Petition is dismissed.**

12. We could have imposed heavy costs on the Petitioners. However, we are not doing so in this case.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)