



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12146 OF 2024

Atul Digambarrao Chaudhari

...Petitioner

VERSUS

The State of Maharashtra and Others

...Respondents

AND

WRIT PETITION NO. 12148 OF 2024

AND

WRIT PETITION NO. 12149 OF 2024

(Not on board. Taken on board.)

AND

WRIT PETITION NO. 12145 OF 2024

(Not on board. Taken on board.)

- Mr. Narwade Narayan B., Advocate for the Petitioner.
- Mr. S. D. Ghayal, Addl. GP for Respondent-State in WP/12146/2026.
- Mr. A.A.A. Khan, AGP for Respondent-State in WP/12148/2026.
- Mrs. M.L. Sangit, AGP for Respondent-State in WP/12149/2026.
- Mrs. B. G. Gunjal, AGP for Respondent-State in WP/12145/2026.
- Mr. Sambhaji S. Tope, Advocate for Respondent Nos.2 to 5 in all petitions.

CORAM : AJIT B. KADETHANKAR, J.

DATE : MARCH 10, 2026

P. C. :

1. Writ Petition Nos.12149 of 2024 and 12145 are taken on record at the request of learned counsel for the parties.
2. A suit has been instituted by the petitioners challenging an action initiated by the Chhatrapati Sambhajinagar Municipal Corporation taking recourse to Section 478 of the Maharashtra

Municipal Corporation Act. The petitioners contend to have been put in possession by the land developer, for valuable consideration.

3. Mr. Narwade, learned counsel for the petitioner would submit that although there is no formal agreement of sale in between the builder and the petitioners, it is a matter of fact that a handsome amount was paid by the petitioners to the builder for the purpose of purchasing the commercial shops. He places reliance on a copy of the possession receipt as also the copy of receipt executed by the builder in favour of the petitioners towards the amount paid by them.

4. He submit that the builder is in controversy with the Municipal Corporation and the Corporation has initiated an action against the builder. The action has been initiated by taking recourse to Section 478 of the Act, as observed (supra). Mr. Narwade, learned counsel contends that the petitioners are not at any fault but have been victims of the wrong allegedly done by the builder. He would submit that the petitioners have even filed separate civil proceedings in the competent Court calling upon the builder to execute a registered sale deed in their favour in respect of the shops sought to be purchased by them.

5. In the suit challenging the action under Section 478 of the Maharashtra Municipal Corporations Act, the petitioners filed applications under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908. Upon hearing the parties the learned Trial Court, however, rejected the said applications and appeals preferred by the petitioners before the learned District Court also did not serve any purpose for the petitioners. However, a limited relief to the extent of granting status quo for the limited time was granted.

6. The petitioners, as such, approached this Court vide the present petitions. This Court vide order dated 30th October 2024 observed as follows :

“4. Petitioners are in possession of suit shops. Order of status quo is operational till 06.11.2024. Without going into the merits, I propose to extend order of status quo. Status quo granted by lower Court is extended till the next date.”

7. Mr. Narwade, learned counsel for the petitioners, was at pains to contend that the petitioners are the real sufferers of the controversy in between the Corporation and the builder. He would submit that the petitioners are *bona fide* purchasers of the subject matter of properties and have paid the valuable handsome

consideration to the builder for the purpose of purchasing those properties. He would submit that the purchasers like the petitioners are always in the dark as to whether the builder has carried out the construction exactly in accordance with the construction permission that is granted by the Municipal Corporation.

8. His next limb of argument is that even if it is the stand of the Municipal Corporation that the subject matter shops forms part of the illegal construction purportedly carried out by the construction company / builder, such construction could not have been carried out overnight. He would further submit that it was the duty of the Municipal Corporation officials to monitor the ongoing construction and to raise objections rightly and at right time if any illegal considerations contrary to the permission has been noticed on going.

9. Mr. Narwade, learned counsel for the petitioners further submit that considering all these aspects, the petitioners possession deserves to be protected.

10. Per contra, Mr. Tope, learned counsel for the Municipal Corporation would vehemently oppose the maintainability of the suit itself and, on facts as well supports the findings rendered by the

Municipal Corporation. Mr. Tope, learned counsel, invites my attention to Section 433A of the Maharashtra Municipal Corporation Act, which read thus :

“433A. *Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer, under Section 260, 261, 264, 267 or 478 shall not be questioned in any suit or other legal proceedings.”*

11. Mr. Tope, learned counsel, takes me to the prayer clauses of the plaintiff in the suit. The prayer clause (b) in the suit would clearly reveals that the petitioners have sought a declaration that the notice / order issued by the Chhatrapati Sambhajnagar Municipal Corporation to the builder. The notice issued under Section 478(1) be declared as invalid and not binding on the petitioners.

12. Referring to the provision and the prayer clauses in the plaint, Mr. Tope, learned counsel would submit that the suit itself is barred by the provisions of law. As such, Mr. Tope, learned counsel would further relied upon Section 263 A of Act, which read thus :

“263A. *(1) If any hut or shed erected or constructed before the appointed day is contrary to the provisions of any rules or bye-laws relating to the erection or construction of huts or sheds, and it appears to the Commissioner that it is necessary in the public interest that such hut or shed or any part thereof be demolished or altered, the*

Commissioner may by written notice require the owner thereof to demolish or alter such hut or shed or any part thereof, or on or before such date, as may be specified in such notice, by writing subscribed by the owner or an agent duly authorised in that behalf and addressed to the Commissioner, show a sufficient cause why such hut or shed should not be demolished or so altered.

(2) If such person fails to show sufficient cause to the satisfaction of the Commissioner why such hut or shed or any part thereof should not be demolished or so altered, he shall demolish or alter the hut or shed within such time as he is required so to do by the Commissioner ; and if he fails to do so, the Commissioner may demolish or alter the hut or shed.

(3) The Commissioner shall pay compensation to every person who sustains loss or damage by the demolition or alteration as aforesaid of any hut or shed (including any cost of demolition or alteration)."

13. Mr. Tope, learned counsel further advances the argument that, in any case, unless an occupancy certificate is granted by the competent authority under the Maharashtra Municipal Corporation Act, even the builder is not authorized to execute any possession receipt in favour of any prospective purchaser. He would thus submit that the purported handing over of possession by the builder to the petitioners is also not permissible even *prima facie* in law.

14. Mr. Tope, learned counsel would submit that the petitioners have not arrayed the builder as a party respondent to the civil suit as also in the writ petitions. The last argument of Mr. Tope, learned counsel for the Municipal Corporation, is that the concerned builder had indeed applied to the Municipal Corporation seeking permission to initiate a construction project and the permission of development was duly granted by the Corporation. However, on a complaint, it was revealed that the said builder had carried out construction contrary to the construction permission and the development plan approved by the Municipal Corporation. As such, this constrained the Municipal Corporation to initiate appropriate action under Section 478 of the Maharashtra Municipal Corporation Act.

15. He would submit that inaction on the part of the Corporation to initiate such action, despite having knowledge of such illegal activity of a builder, would amount to failure to discharge the official duty of the Municipal Corporation Authority. With this, Mr. Tope, learned counsel for the Municipal Corporation, prays for dismissal of the writ petition.

16. I have heard extensively the parties on all aspects of the matter. After arguing this matter for some time, Mr. Narwade, learned

counsel for the petitioners, seeks leave to withdraw the writ petitions. He submits that the petitioners desire to initiate appropriate legal proceedings as are permissible in law in the pending litigation or otherwise. In any case he requests that considering that the petitioners are *bona fide* purchasers, who have been put in possession of the subject matter property upon payment of valuable consideration to the builder, and in view of the status quo granted by the learned District Court as also extended by this Court, which is operating till today, the same be extended by a further period of 1 month.

17. Leave to withdraw the writ petitions are granted. The writ petitions stand disposed of as withdrawn.

18. The status quo granted by this Court earlier shall continue for further 15 days. The Trial Court is requested to make every endeavour to conclude the trial as early as possible. The parties undertake not to seek unnecessary adjournments in the matter.

19. It is clarified that nothing observed in this order shall have any effect on the ongoing civil proceedings in between the parties. All writ petitions stand disposed of.

(AJIT B. KADETHANKAR, J.)