



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8029 OF 2024

1. Mahendra Narsing Lonkar,
Age 41; yrs,

2. Ajit Narsing Lonkar,
Age: 39 yrs

Both R/at Bungalow No. 42,
Clover Hills Annexe Cooperative Housing Society,
Opposite Gold Gym,
Kondhwa Khurd, Pune.

...Petitioners

Versus

1. Pune Municipal Corporation,
Shivajinagar, Pune.

2. Designated Officer and Asst. Engineers
PWD, Zone No. 5, Shivajinagar, Pune

3. Designated Officer and Jr. Section Engineer
PWD, Zone No. 5, Shivajinagar, Pune.

...Respondents

Mr. Shailendra Kanetkar, for the Petitioners.
Mr. Abhijit Kulkarni, for the Respondents.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 9th MARCH 2026
PRONOUNCED ON : 26th MARCH 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 19th April 2024, passed by the learned District Judge, Pune in MCA No. 57 of 2024, whereby the Appeal preferred by the Petitioners-Plaintiffs against an order dated 9th February 2024 by the trial Court rejecting an Application for temporary injunction (Exhibit “5”), in RCS No. 881 of 2022, came to be dismissed.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 The Plaintiffs claim to be the owners of the land admeasuring 1H 72R, CTS No. 16A/1/1, situated at Kondhwa Khurd, Pune (the subject land). The subject land has been put to mixed-use. Portions of subject land are used for commercial purpose and sporting activities.

3.2 Plaintiffs asserted, on the subject land, abutting NIBM Road, prior to 15-16 years, in an area admeasuring 400 to 500 sq mtrs, approximately, the Plaintiffs have erected 21 tin-sheds (“suit sheds”). Those sheds have been given to various persons on licence to run establishments/businesses.

3.3 Pune Municipal Corporation (“PMC”)—Respondent No.1/Defendant No.1 had issued notices to the Petitioners under Maharashtra Municipal Corporations Act, 1949 (“the Act,1949”). However, upon being satisfied with the reply furnished by the Plaintiffs,

those notices were dropped. Yet, on 22nd March 2022, Defendant No.1 addressed notices to the occupants of the suit sheds, purportedly under Section 52 and 53(1)(a) of the Maharashtra Regional And Town Planning Act, 1966 (“the MRTP Act, 1966”) with an oblique motive to create panic amongst the occupants-Plaintiffs licencees. The said action of Defendant No.1, the Plaintiffs averred, was illegal, bad-in-law and null and void as notices were not issued to the Plaintiffs, who are the owners of the subject land on which the suit-sheds stand.

3.4 Questioning the legality and validity of the aforesaid notices on multi-fold grounds, the Plaintiffs approached the Civil Court at Pune, seeking a declaration that the notices addressed to 20 occupants were illegal and void and the Defendants had no right to take action against the suit- sheds on the basis of those notices. Consequential relief of injunction was also sought.

3.5 During the pendency of the suit, by amending the Plaint, the Plaintiffs also sought a declaration that the Plaintiffs were entitled to regularisation of the structures erected by the Plaintiffs under the provisions of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control), Act, 2001 (“the Gunthewari Act, 2001”).

3.6 In the said Suit, the Plaintiffs filed an Application for temporary injunction to restrain the Defendants from demolishing the suit-sheds

and/or otherwise interfering with the possession of the Plaintiffs and the occupants on the basis of the said notices. Initially by an order dated 12th April 2022, the learned Civil Judge granted ad-interim relief. However, by an order dated 9th February 2024, the learned Civil Judge was persuaded to reject the Application for temporary injunction observing, *inter alia*, that incontestably the suit-sheds were erected without obtaining the permission of the planning authority. It was also observed that the Plaintiffs failed to *prima facie* demonstrate that the suit structures warranted protection under the Gunthewari Act, 2001.

3.8 Being aggrieved, the Plaintiffs preferred an Appeal before the District Court. By the impugned judgment and order, the learned District Judge dismissed the Appeal finding no *prima facie* case in favour of the Plaintiffs for grant of injunction. Since the Plaintiffs had knowingly carried out the unauthorised development over the subject premises, neither the balance of convenience tilted in favour of the Plaintiffs nor the Plaintiffs would suffer irreparable loss in the event of refusal to grant injunction, reasoned the learned District Judge.

3.9 Being further aggrieved, the Plaintiffs have invoked the writ jurisdiction.

4. I have heard Mr. Shailendra Kanetkar, the learned Counsel for the Petitioners, and Mr. Abhijit Kulkarni, the learned Counsel for the

Respondents. The learned Counsel took the Court through the pleading and material on record.

5. Mr. Kanetkar, the learned Counsel for the Petitioners submitted that the existence of the suit-sheds over the subject premises since long is rather indisputable. In such circumstances, the fact that the application of the Plaintiffs for regularisation under the provisions of Gunthewari Act, 2001 was unjustifiably rejected by Defendant No.1 cannot be a ground to deny the protection to the Plaintiffs.

6. Mr Kanetkar would urge that, the Plaintiffs have assailed the legality and correctness of the decision of Defendant No.1-Corporation to reject the regularisation of the structures under Gunthewari Act, 2001 in a separate proceeding. Thus, till the time, said proceeding is decided the Plaintiffs deserve to be protected lest the Plaintiffs would be left in the lurch. It was submitted that depending upon the outcome of the said challenge, the trial Court may eventually pass appropriate orders.

7. In contrast to this, Mr. Kulkarni, the learned Counsel for the Respondents, would submit that the Petitioners are not entitled to any indulgence whatsoever. Incontrovertibly, the suit-sheds have been erected unauthorisedly. The endeavour of the Plaintiffs to seek regularisation of the structures has failed. In this backdrop, according to Mr. Kulkarni, the suit seeking relief of declaration and injunction qua

the notices issued by Respondent No.1 under the provisions of Sections 52 and 53 (1)(a) of the MRTP Act, 1966 is clearly barred by the provisions contained in Section 149 of the MRTP Act, 1966. Even the challenge to the rejection of the regularisation application under Gunthewari Act, 2001 before a Civil Court is expressly barred by the provisions contained in Section 18 of the said Act, 2001, which gives finality to the order passed by any Planning Authority under the said Act, 2001 and bars a suit questioning the legality and correctness of such order. To buttress this submission, Mr. Kulkarni placed reliance on the judgment of this court in the case of **Nashik Municipality Corporation Vs Sunil Baburao Kshirsagar and Ors.**¹

8. Mr. Kulkarni would further submit that, the development being wholly unauthorised, it does not deserve to be protected under any circumstances. To lend support to this submission, Mr. Kulkarni placed reliance on the judgments of the Division Bench of this Court in the cases of **Jitendra Jaywant Sawant and Ors Vs The Deputy Collector & Anr**² and **Meenanath S/o Shivram Patil and Anr Vs Vivek S/o Balaram Deshmukh and Ors.**³

9. I have given careful consideration to the aforesaid submissions. In the context of the nature of the challenge before the Civil Court, the

1 Civil Revision Application No. 153 of 2016, decided on

2 Writ Petition (OS) No. 2432 of 2023, decided on 3rd February 2026.

3 Writ Petition (AS) No. 1807 of 2024, decided on 20th June 2025.

following facts appear to be beyond the pale of controversy. Firstly, the erection of the suit-sheds. Secondly, the said development having been carried out without obtaining the permission of the Planning Authority. Thirdly, on the own showing of the Plaintiffs, those suit-sheds are put for commercial use by the alleged licencees of the Plaintiffs. Fourthly, the factum of issuance of notices to the occupants of the suit-sheds. Fifthly, the fact that the Plaintiffs had made an application for regularisation of the development under the Gunthewari Act, 2001 and, lastly, the said proposal was rejected by Defendant No.1, on 23rd November 2022.

10. In the backdrop of the aforesaid incontrovertible facts, Mr. Kanetkar made an endeavour to persuade the Court to grant a limited protection to the Plaintiffs till the challenge to the order of rejection of the proposal for regularisation passed by the Planning Authority (D1) was determined. Mr. Kanetkar further submitted that, even in the impugned order, the learned District Judge had reckoned that the demolition of the suit-sheds in pursuance of the notices impugned in the suit will cause irreparable loss to the Plaintiffs. Therefore, in the peculiar facts of the case, the Petitioners deserve a limited protection, submitted Mr. Kanetkar.

11. The aforesaid submissions, canvassed by Mr. Kanetkar, appear to over simplify the issue. These submissions cannot be readily acceded to

for reasons more than one. First and foremost, the Court cannot lose sight of a glaring fact, which stares in the face, that the Plaintiffs have unauthorisedly erected as many as 21 suit-sheds. From the tenor of the Plaint one gets an impression that the Plaintiffs have audaciously asserted that not only the Plaintiffs have carried out unauthorised development over the subject premises but they have been commercially exploiting the same by giving those suit-sheds to various persons who run the commercial ventures/establishments therein. What is conspicuous by its absence in the Plaint is, an averment that, at any point of time, the Plaintiffs made any endeavour to seek the permission of the Planning Authority for the development or even for the regularisation of the development, in the manner envisaged by the provisions contained in Section 53 of the MRTP Act, 1966, till the institution of the suit.

12. Secondly, in the light of the aforesaid unauthorised development over the subject premises in a rather brazen manner, the assertions in the Plaint that the suit notices are illegal and bad-in-law are not sufficient to obviate the bar to the institution of the suit under Section 149 of the MRTP Act, 1966.

13. There is hardly any pleading and material which would substantiate the claim of the Plaintiffs that the Suit notices are null and void. Mere use of the expression that the suit notices are “illegal, bad-in-

law and void” and the assertion that the suit notices are a “nullity”, as a *mantra* do not confer jurisdiction on Civil Court. The reliance placed by Mr. Kulkarni on the judgment of this Court in the case of **Nashik Municipal Corporation (Supra)** wherein this Court has *inter alia* enunciated that “mere pleading of the word ‘nullity’ in the Plaint would not be sufficient and the Court must find out from reading of the entire averments in the Plaint as to whether a demonstrable case of nullity is made out or not” appears to be well-founded.

14. Neither there is any material to show that the impugned notices were in contravention of the provisions of MRTP Act, 1966 and the Municipal Corporation Act, 1949 or that the action was in breach of the fundamental principles of judicial process. Thus, the view of the Court below that the bar contained in the provisions of Section 149 of the MRTP Act, 1966, may be attracted cannot be faulted at.

15. Thirdly, even the purported challenge to the order of the Planning Authority rejecting the regularisation application under the Gunthewari Act, 2001 does not seem to be properly constituted. Section 18 of the Gunthewari Act, 2001 gives finality to the order passed by any Planning Authority under the said Act and bars a challenge thereto in any suit or other legal proceedings.

16. Even otherwise, as noted above, Mr. Kanetkar premised the claim for protection on the ground that the Plaintiffs have challenged the said order of the Planning Authority in an appropriate proceeding.

17. Lastly, the pivotal aspect of the approach to be adopted by the Courts in a matter of the present nature, where the development is unquestionably and completely unauthorised and even a prayer for regularisation of the development has been rejected by the Planning Authority. As of now, there is no semblance of the claim for regularisation or otherwise, to which the Plaintiffs can cling to.

18. The Supreme Court has enunciated in clear, unequivocal and no uncertain terms that the construction which is illegal has to be dealt with strictly and leniency shown towards unauthorised development may take the shape of misplaced sympathy.

19. In the case of **Rajendra Kumar Barjatya and Anr Vs U. P. Avas Evam Vikas Parishad and Ors**,⁴ after a survey of the authoritative precedents, the Supreme Court while enunciating the law, administered the caution in the following terse terms:

“19. In a catena of decisions, this Court has categorically held that illegally of unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under

⁴ 2024 SCC OnLine SC 3767.

the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction. The following decisions are of relevance and hence cited herein below to drive home the point that unauthorized constructions must be dealt with, with an iron hand and not kid gloves.”

20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions.”

20. In the case of **Kaniz Ahmed Vs Sabuddin and Ors**,⁵ after referring to the aforesaid pronouncement in the case of **Rajendra Kumar Barjatya and Anr (Supra)**, the Supreme Court again re-emphasised the strict approach to be adopted by the Court as under:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for

5 2025 SCC OnLine 995.

regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (C) No. 10233 of 2024 (Delhi High Court)]”

21. What accentuates the situation in the case at hand is the fact that even an application for regularisation of the development has been rejected by the Planning Authority. In these circumstances, the Courts below were well-within their rights in holding that the Plaintiffs failed

to make out any *prima facie* case, and in answering the parameters of balance of convenience and irreparable loss against the Plaintiffs.

22. It is trite, in exercise of the supervisory jurisdiction, this Court is not expected to review, re-appreciate and reweigh the material on the basis of which the Courts and Tribunals have exercised the discretion. This Court can legitimately interfere if the impugned orders are either perverse, suffer from patent illegality or have been passed by the Courts below in disregard of the settled principles of law. A profitable reference can be made to the Constitution Bench judgment of the Supreme Court in the case of **Rajendra Diwan Vs Pradeep Kumar Ranibala and Anr**,⁶ wherein the contours of the supervisory jurisdiction have been expounded as under:

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “in the cloak of an appeal in disguise”

86. In exercise of its extraordinary power of superintendence and/or judicial review under Article 226 and 227 of the Constitution of India, the High Courts

⁶ (2019) 20 SCC 143.

restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of law.”

(emphasis supplied)

23. The conspectus of the aforesaid consideration is that no interference is warranted in the impugned order. Nor the submission of Mr. Kanetkar for a limited protection merits countenance. Resultantly, the Petition deserves to be dismissed.

24. Hence, the following order:

: O R D E R :

- (i) Writ Petition stands dismissed with costs.
- (ii) Rule discharged.

[N. J. JAMADAR, J.]