

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 17731 OF 2024

Majid Moinuddin Momin

...Petitioner

Vs.

1. The State of Maharashtra
2. The Commissioner,
Bhiwandi Nizampur City Municipal
Corporation
3. The Assistant Commissioner,
Ward Committee No. 4, Bhiwandi
Nizampur City Municipal
Corporation
4. The Deputy Commissioner
(Encroachment Illegal Construction
Department Bhiwandi City
Municipal Corporation, Bhiwandi)
5. The Additional Commissioner,
Bhiwandi Nizampur City
Municipal Corporation.
6. The Prabhag Adhikari, No. 4
Bhiwandi Nizampur City
Municipal Corporation
7. Shri Mohammad Shafique
Shamim Ahmed Ansari
8. Shri Abdul Jalil Haji Momin

Throu. Govt. Pleader
and Ors.

...Respondents

None for the Petitioner
Ms. R. A. Salunkhe – AGP for the Respondent-State
Ms. Sucheta D. Ghaisas – For Respondent Nos. 2 to 6.

**CORAM : M. S. KARNIK AND
S. M. MODAK, JJ.**

DATE : 18th MARCH 2026

P.C. (PER S. M. MODAK, J.) :-

1. Respondent No. 2-Bhiwandi Nizampur City Municipal Commission through its Commissioner and its officers-Respondent Nos. 3 to 6 in spite of observing that Respondent No. 7 has carried out RCC construction consisting of Ground + 1st floor by not maintaining the proper margin and hence unauthorized, has failed to take further action. That is why, the present petition is filed for issuing Writ of necessary Mandamus.

2. Respondent No. 1 is State of Maharashtra. Whereas Respondent Nos. 2 to 6 are the Corporation and its officers. The unauthorized construction is carried out on the land bearing new City Survey no. 7642 to 7649, old house no. 235, situated at old Gouripada, Bhiwandi,

Dist. - Thane. Petitioner contends that said land was purchased by one Abdul Jalil Haji Momin, who is Grandfather of the Petitioner in the name of Madarasa Islamiya Trust. The land was also mutated in the revenue record. He contends that building permission was granted by Planning authority on 06.03.2019 in the name of Madarasa Islamiya Trust through Respondent Nos. 7 and 8, page no. 25. It is for the purpose of construction of Ground + 4 storey building for the purpose of residential use. Petitioner contends that commercial use was not permitted, but still Respondent Nos. 7 and 8 have carried out construction of the commercial galas.

3. He complained to planning authority. The planning authority has issued notice to Respondent Nos. 7 and 8 dated 01.02.2023 and there is also order passed on 08.02.2023. The notices are on page nos. 49 and 50. Planning authority came to conclusion that construction was unauthorized, because there was no margin space kept. Hence, after calling for explanation and keeping the matter for hearing (Respondent Nos. 7 and 8 never attended) concluded that the construction is unauthorized. Once the planning authority has concluded that construction is unauthorized, the petition is filed.

4. It is the duty of the Corporation to implement the order dated 08.02.2023 subject to there being any legal impediment. Hence, the order :-

ORDER

- (i) The Writ Petition is allowed.
 - (ii) Respondent Nos. 2 to 6 are directed to demolish unauthorized construction as described in the order dated 08.02.2023 as early as possible by verifying about absence of legal impediment in implementing their decision.
 - (iii) If Respondent Nos. 7 and 8 will not demolish at their own cost, Respondent Nos. 2 to 6 are directed to demolish and entitled to recover the expenses of demolition from Respondent Nos. 7 and 8.
5. With the above observations, the Writ Petition is disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)