

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 4127 OF 2025

Ashwini Kumar Gupta

...Petitioner

Vs.

Bhiwandi Nizampur
City Municipal Corporation
and Ors.

...Respondents

Ms. Sadhna Singh - Advocate for the Petitioner
Adv. Shraddha Pawar i/by Adv. Dilip Bodake - for the Respondent No.
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CORAM : M. S. KARNIK AND
S. M. MODAK, JJ.

DATE : 18th MARCH 2026

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

1. After hearing the learned counsel for the Petitioner, this Court directed to issue notice to the Respondents as per order dated 26.03.2025. Respondent No. 1-Bhiwandi Nizampur City Municipal Corporation appeared through their learned advocate. Notice on Respondent No. 2 could not be served for want of sufficient address. When we have heard learned advocate for the Petitioner and learned advocate for Respondent No. 1 and gone through the record, we find

the petition can be disposed of by issuing necessary directions as sought by the Petitioner.

2. From the papers annexed to the petition, it is clear that there is notice issued by Respondent No. 1-Corporation to Respondent No. 2 by referring Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (In short, 'MRTP' Act) on 30.07.2024, thereby asking him to stop the construction, otherwise FIR will be lodged. There is further notice issued by Respondent No. 1 to Respondent No. 2 dated 29.08.2024, by referring provisions of Section 52 to Section 55 of the MRTP Act and provisions of Section 260 (1A)(a)(b) of the Maharashtra Municipal Corporation Act, 1949. Respondent No. 2 was asked to produce the documents and appear before the Assistant Municipal Commissioner, Ward No. 2. He has not turned up.

3. Assistant Municipal Commissioner as per his order dated 19.09.2024 has observed construction was carried out without permission and hence he was asked to remove the construction at his own cost within 15 days, otherwise it will be removed and the expenses will be recovered from him. All this correspondence is preceded by the spot inspection report which records R.C.C. construction consisting of Ground + 1st floor was carried out and the column work for erection of

second slab was noticed.

4. This construction was carried out at village Nagaon, House No. 853/2, Gaibinagar, Bhiwandi, District Thane, by Respondent No. 2. On this background, the Petitioner has approached this Court for issuance of Writ of Mandamus to both the Respondents to demolish the unauthorized construction. He has referred about the order passed by this Court in PIL No. 80 of 2013 about action to be taken in respect of unauthorized construction carried out within the limits of Bhiwandi Nizampur City Municipal Corporation.

5. It is no doubt true it is responsibility of the Planning authority to take action against unauthorized construction, when the Petitioner who is citizen has informed about unauthorized construction to Respondent No. 1 and particularly when they conducted about unauthorized construction on the basis of inquiry. It is case of the Petitioner that in spite of order dated 19.09.2024 further action is not taken. Even he has brought it to the notice of the Municipal Commissioner and Assistant Municipal Commissioner as per his letter dated 02.12.2024.

6. We could have waited the service of notice on Respondent No. 2 but the papers annexed to the petition discloses about the inquiry

conducted by the Planning authority. Ultimately, it is Planning authority who has to decide whether construction is authorized or not.

7. So case for Writ of Mandamus is made out. Respondent No. 1 to ascertain, 'whether there is any legal impediment for demolishing unauthorized construction?'.

8. Hence, the order :-

ORDER

- (i) The Writ Petition is allowed.
 - (ii) Respondent Nos. 1 and 2 are directed to demolish unauthorized construction as described in the order dated 29.08.2024 as early as possible by verifying about absence of legal impediment in implementing their decision and demolish unauthorized construction.
 - (iii) If Respondent No. 2 will not demolish at his own cost, Respondent No. 1 is entitled to recover the expenses of demolition from Respondent No. 2.
9. With the above observations, the Writ Petition is disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)