

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10257 OF 2025

Mahesh Omprakash Pardeshi

...Petitioner

Vs

Pune Metropolitan Development Authority & Ors.

...Respondents

Dr. Uday Warunjikar i/b. Mr. Sumit Kate for Petitioner.

Mr. Ashwin Kapadnis with Mr. Vivek Rane for Respondent Nos.1 & 2.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 25 JULY 2025.

Oral Order (Per: G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs:-

“a) Be pleased to call for record and proceedings of the notice issued by Respondent No.2 dated 12/06/2025 issued by the and after going through the same and after satisfying its validity, legality and propriety, be pleased to quash and set aside the notice dated 12/06/2025 by exercising the power under Article 226 of the Constitution of India, 1950.

b) Be pleased to call for record and proceedings of the Appeal filed by the present petitioner dated 17.06.2025 before the Respondent No.1, and after satisfying its validity, legality and propriety, be pleased to direct the Respondent No.3 to direct the appeal within such time this Hon’ble Court may deem fit and proper.”

2. We find that respondent no.1 / Pune Metropolitan Development Authority (“PMDA”) had put the petitioner to notice in regard to the unauthorized and illegal construction in question vide notice dated 21 April 2025. The petitioner’s explanation was sought for. The petitioner, however, did not respond to the said communication. Thereafter, a notice dated 26 May 2025

was issued by the PMDA calling upon the petitioner to submit all materials in regard to the illegality of its construction/structures as set out in the said notice, which included demolition of wall of the adjoining society and the tin shed which the petitioner had put up. The petitioner, again did not respond to the said notice, as also did not attend the hearing on such notice which was scheduled to be held on 27 May 2025, on the ground that he was not available in Pune and was in Orissa, as pointed out by Dr. Warunjikar, learned counsel for the petitioner. This was informed to the concerned officer by whatsapp message. However, what is most important is that from 21 April 2025 till the impugned order came to be passed on 12 June 2025, no representation or any material was put up by the petitioner with the PMDA, to show that the construction in question as objected by the PMDA in any manner whatsoever was authorized, which was infact, clearly alleged to be on the land belonging to PMDA which was to be used for the purpose of road widening. Accordingly in the aforesaid circumstances, a detailed order came to be passed by the Additional Municipal Commissioner, PMDA, Pune on 12 June 2025 a copy of the same is placed on record by the PMDA, which has given a reference to the prior notice. The PMDA relied on the materials showing that the construction, which was put up by the petitioner on the PMDA's land, and the same was illegal as no permission whatsoever was granted to put up such construction. Accordingly, recording detailed reasons, following operative order was passed by the Additional Municipal Commissioner, PMDA:-

“(Official Translation of a photocopy of the Order being a Marked Portion, typewritten in Marathi)

ORDER

As per the findings of the Additional Municipal Commissioner drawn during the course of the hearing, the construction work carried out by Shri Mahesh Pardeshi on the area of the land bearing Gat No. 115 and 116, situated at Mouje Medankarwadi, Tal. Khed handed over to the Authority for road widening, is unauthorized and therefore, it is directed to take the action of removal of the said structure by the Encroachment Removal Department within 10 days of the date of this Order and to submit the Report in respect thereof to the undersigned.

(Signature Illegible)
Deepak Singla (I.A.S.)
Additional Metropolitan Commissioner,
Pune Metropolitan Region Development
Authority, Pune.”

3. The present proceedings were moved before this Court yesterday (24 July 2025) on the ground that the demolition action was scheduled for today in consequence of the order dated 12 June 2025 (*supra*) passed by the Additional Municipal Commissioner, PMDA, Pune. Yesterday (24 July 2025), we passed the following order:-

“1. Not on board. Upon mentioning taken on board.

2. At the request of the learned counsel for the Respondent Nos.1 and 2 - PMDA, stand over to 25th July 2025. To be listed on Supplementary List, on the ground that the demolition action is kept for tomorrow i.e on 25th July, 2025 and the structure in question is unauthorised structure.”

4. At the outset, Dr. Warunjikar has fairly stated that qua the construction in question no permission whatsoever has been obtained from the planning authority/PMDA. Dr. Warunjikar’s contention is that in relation to the property in question, a partition suit has been filed *interse* between the petitioner’s family member and therefore, the land in question being the subject matter of such partition suit which is pending, the PMDA ought not to take any action in regard

to the suit structure. However, at the same time, considering that no permission whatsoever was obtained in putting up such construction and which is sought to be demolished by the PMDA. Dr. Warunjikar would submit that it can be presumed that it is not a permanent structure, although commercial activities are being conducted by the petitioner in this structure, he submits that the petitioner can make an application for regularization.

5. Dr. Warunjikar's next contention is that there is breach of principles of natural justice, inasmuch as no opportunity was granted to the petitioner to respond to the notice dated 26 May 2025 and an order was passed on 12 June 2025. However, in making such submission, Dr. Warunjikar is unable to point out any material which the petitioner could immediately place on record, even when the petitioner missed the date of hearing of such notice dated 26 May 2025, which was on 27 May 2025 and admittedly it was preceded by a prior notice dated 21 April 2025. It is hence his submission that such order being in breach of the principles of natural justice needs to be quashed and set aside and no action can be taken. Dr. Warunjikar has also drawn our attention to the averments as made in the petition that the order dated 12 June 2025 is now subject matter of challenge before the Commissioner and a stay application has been preferred by the petitioner and for such reason, demolition action ought not to be undertaken.

6. On the other hand, learned counsel for the PMDA has placed on record a compilation of documents. He has submitted that all contentions as urged on behalf of the petitioner are untenable as sufficient opportunity was available to the

petitioner to respondent to both the notices, which was not availed by him. Also no material whatsoever was submitted with the PMDA at any point of time which would show that the construction of the nature, as complained and subject matter of the notice, was put up in legal and authorized manner i.e. that the construction was undertaken after obtaining appropriate permission. He submits that even the defence in regard to the partition suit is of no avail as it is clear that it is in fact, an encroachment on the land belonging to the PMDA, as clearly set out in the order dated 12 June 2025 passed by the Additional Metropolitan Commissioner, PMDA. He submits that this petition is the last minute attempt on the part of the petitioner to nullify the lawful actions which are set into motion, and an intimation of the demolition of such structure.

7. Having heard learned counsel for the parties and having perused the record, we find substance in the contentions as urged on behalf of the PMDA. We are not inclined to accept the contentions as urged by Dr. Warunjikar, as we are of the clear opinion that sufficient opportunity was available and/or granted to the petitioner after receipt of the notice dated 26 May 2025 to respond to such notices and place on record all available materials material before the order dated 12 June 2025 was passed by the PMDA, however, there is no such material with the petitioner.

8. What is most important is that at no point of time any permission/approval whatsoever was granted or pointed out either to the PMDA or before this Court to demonstrate that the construction which was put up, was legal or authorized.

9. We are also not pointed out that even assuming that the petitioner was to be granted a hearing, as to what would be the material which would be placed by the petitioner to show that such construction was legal and authorized. In fact there is no such material or a plea even on a paper to that effect in the present proceedings. Thus, the plea of any breach of principles of natural justice also appears to be a paper/technical plea. Such plea being taken in the present proceedings cannot be accepted in the absence of the petitioner satisfying the test of prejudice in making a grievance of any breach of the principle of natural justice as held in catena of the decisions. In this context, we may refer to a decision of the Division Bench of this Court in **Veena Estate Pvt. Ltd. vs. Commissioner of Income-Tax, Mumbai City-IX, Mumbai**¹ in which it has been held by the Division Bench that a technical plea of breach of principles of natural justice cannot be taken, unless a case of prejudice has been made out, and if no case of prejudice is made out, certainly a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. It is held that some real prejudice caused to the complainant is required to be demonstrated, it would held to be a well accepted principle of law. The relevant observations as made by the Court in such context are required to be noted:

“41. It is a settled principle of law that any breach of the principles of natural justice cannot be addressed by a straitjacket formula. Any complaint of breach of principles of natural justice would be required to be considered in the facts of the case. When the facts of the case would demonstrate it, to be an undisputed position, that no real prejudice was caused to a party aggrieved by an order, being alleged to be breach of the principles of natural justice, the court would certainly not interfere. Such complaint and/or a genuine grievance of the breach of principles of natural justice accompanied with the prejudice it would cause, is required to be made with utmost promptness. Any delay in making such complaint

¹ 2024 SCC OnLine Bom 77

or raising a grievance would give rise to a position that such grievance is either not genuine or is belated and/or a technical plea being agitated. In *Kanwar Natwar Singh v. Directorate of Enforcement* [(2011) 330 ITR 374 (SC); (2010) 160 Comp Cas 301 (SC); (2010) 13 SCC 255.], the Supreme Court while observing on the test of real prejudice, observed that there is no such thing as “technical infringement of natural justice”, as what is necessarily to be seen is that there must have been caused some real prejudice to the complainant. It was observed that the requirements of natural justice must depend inter alia as involved in the facts and circumstances of the case and the nature of the inquiry, etc. The relevant observations of the Supreme Court are required to be noted which read thus (page 387 of 330 ITR):

“26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified ? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.”

(emphasis supplied)

49. In a recent decision of the Supreme Court in *Madhyamam Broadcasting Limited v. Union of India* [2023 SCC OnLine SC 366; (2023) 3 Bom CR 685.] the law in regard to the compliance of principles of natural justice and the test of prejudice which is required to be met by a party, complaining of the breach of principles of natural justice have been reiterated. In paragraph 42 of the said decision, the court has observed that the party alleging violation of the principles of natural justice is required to prove that the administrative action has violated the principles of natural justice and such non-compliance of the requirement of natural justice has prejudiced a party. It was observed that the courts, while assessing prejudice, need to determine if compliance of the principles of natural justice, could have benefited the party in securing a just outcome. The court further observed that non-compliance of every facet and component of natural justice does not render the procedure unreasonable and the claimant must prove that the effect of non-compliance of a component of natural justice is so grave that the core of the right to a fair trial is infringed while making an argument from a component-facet perspective.

.....

51. Thus, the principles of law as laid down by the Supreme Court are clear, that mere breach of principles of natural justice is not in itself a prejudice and in fact it is de facto prejudice which is required to be proved.....”

10. Even a plea of regularization that the temporary structure can be permitted to be regularized, is wholly untenable considering the well settled principles of law as laid down by the Supreme Court in a recent judgment in **Kaniz Ahmed versus Sabuddin & Ors.**² herein the Supreme Court has made following observations:-

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

11. We, in a recent decision in **Feroz Talukdar Khan Versus The Municipal Commissioner, Thane Municipal Corporation & Anr.** (Civil Writ Petition No. 4210 of 2025), the Division Bench considered several decisions of the Supreme Court and this Court in rejecting the plea of such regularization being available in respect of the brazen illegal construction. In **Feroz Talukdar Khan**, the Division

2 2025 INSC 610

Bench made the following observations:-

“16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.”

12. Insofar as the contention in regard to the partition suit is concerned, the PMDA has nothing to do with the partition suit. Even if there is a decree in the partition suit, the petitioner would be entitled to execute the decree in the manner known to law. The decree however would relate to the family property and not the property of the third parties. A plea to include any property within the ambit of suit is the prerogative of the plaintiff and subject to the rights of any defendants.

13. For the aforesaid reasons, the petition is wholly devoid of merits. It is accordingly rejected. No costs.

14. Ad-interim order, if any passed earlier, shall stand vacated.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)