



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15194 OF 2025

Sunrise Education Society

...Petitioner

V/s.

Murar Nasinhrav Kadam

...Respondent

Mr. S.S. Patwardhan *i/b. Mr. Saurabh Butala with Ms. Manvi Sharma, Mr. Pranil Vichare and Ms. Aishwarya Hinge for the Petitioner.*

Mr. Mahesh Vishwakarma *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 6 MAY 2026.

ORDER:

1) By this Petition, the Petitioner-Society challenges order dated 29 April 2025 passed by the District Judge, Panvel, dismissing Misc. Civil Appeal No.23 of 2024 and confirming the order dated 16 March 2024 passed by the Trial Court. By order dated 16 March 2024 passed on Application at Exhibit-32, the Trial Court had refused to vacate the *status-quo* granted in favour of the Plaintiff on 17 October 2023 by way of temporary injunction on Application at Exhibits 5 and 23.

2) The Petitioner is a Society engaged in the activities of education. It runs a school at Taloja, Taluka-Panvel, District-Raigad in the name Sunrise Education Society. For expanding activities of the school, the Petitioner decided to establish additional campus in the vicinity. The Respondent is the owner of land bearing Gat No.110/3/A, Account No.62,

admeasuring 0 Hecter, 30 R at village-Taloja within the limits of Panvel Municipal Corporation (**the suit property**) and was desirous of letting out the same. By registered Lease Deed dated 19 September 2019, the suit property is let out to the Petitioner by the Respondent for a tenure of 32 years. Petitioner paid security deposit of Rs. 50,00,000/-and took over possession of the suit property. The tenure of lease is from 1 September 2019 to 31 August 2051.

3) After execution of the lease, the Petitioner applied for issuance of commencement certificate to Panvel Municipal Corporation, which was issued on 9 October 2020. The Petitioner started construction of school building on the suit property. According to the Petitioner, since the Respondent failed to apply and secure permission for non-agricultural use of the suit property, the Petitioner secured the same from District Collector on 3 February 2022. According to the Petitioner securing permission and actual construction was delayed on account of Covid-19 restrictions. The Respondent claims to have terminated the Lease Deed by notice dated 18 January 2021.

4) In above background, the Respondent/Plaintiff instituted Special Civil Suit No.109 of 2021 in the Court of Civil Judge, Senior Division, Panvel seeking a declaration that the Lease Deed is terminated and for recovery of possession of the suit property. The Plaintiff filed application for temporary injunction at Exhibit-5 and an additional application at Exhibit-23 for maintenance of *status-quo*. Both the Applications were heard together by the Trial Court and by order dated 17 October 2023, the Trial Court directed maintenance of *status-quo* till further orders.

5) The Petitioner moved Application at Exhibit-32 for recall of order of *status-quo*, which is rejected by the Trial Court by order dated 16 March 2024. The Petitioner thereafter filed Misc. Civil Appeal No. 23 of 2024 before the District Judge. However, the Appeal is dismissed by order dated 29 April 2025. Aggrieved by the decisions of the Trial and the Appellate Courts, the Petitioner has filed the present Petition.

6) I have heard Mr. Patwardhan, the learned counsel appearing for the Petitioner/Defendant and Mr. Vishwakarma, the learned counsel appearing for the Respondent/Plaintiff. I have gone through the findings recorded by the Trial Court in orders dated 17 October 2023 and 16 March 2024 as well as of the Appellate Court in the order dated 29 April 2025. I have perused the records of the case filed alongwith the Petition as well as with the compilation tendered.

7) The Plaintiff does not dispute execution of registered Lease Deed dated 19 September 2019. As per the said Lease Deed, out of total land admeasuring 36 Ares, lease is granted only in respect of land admeasuring 30 Ares. The tenure of lease is for 32 years commencing from 1 September 2019 till 31 August 2051. The lease contemplated deposit of Rs.50,00,000/- payable in three installments and rent @Rs.25,000/- from the date of issuance of development permission, Rs.1,25,000/- from 1 April 2021 and Rs.10,50,000/- from 1 April 2022 with further escalations @5% per annum. Under the lease, the Petitioner/Defendant is granted right to construct school building at its own expenses.

8) There is no dispute to the position that after execution of the lease, Panvel Municipal Corporation issued development permission on 9 October 2020. According to the Petitioner/Defendant, issuance of commencement certificate got delayed on account of Covid-19 pandemic. There is also no dispute to the position that the Petitioner commenced the construction of school building at the suit property and the RCC skeletal of the entire building upto three floors is already ready. However, the *status-quo* order passed by the Trial Court on 17 October 2023 has prevented the Petitioner from completing construction of the building. The Trial Court has refused to vacate the *status-quo* order and that the Appellate Court has confirmed both the decisions of the Trial Court.

9) Perusal of the first order dated 17 October 2023 passed on Applications at Exhibits 5 and 23 would indicate that the Trial Court has not recorded a single reason for granting the order of *status-quo*. Though the order runs into 8 pages, first 7 pages thereof are devoted in recording facts and submissions. The reasons are to be found only in paragraph 12 of the Order, which reads thus:

१२. सदर वादीने प्रथमदर्शनी केस तसेच मनाईहुकूम न दिल्यास वादीचे पैशाने न भरून येणारे नुकसान होईल हे शाबीत करणे वादीची जबाबदारी होती. याशिवाय, सदर न्यायाचा तराजू देखील वादीच्या बाजूने झुकलेला आहे हे वादीनी शाबीत करणे आवश्यक होते. थोडक्यात, सदर प्रकरणातील वादपत्राचे अवलोकन केले असता त्यातील मागण्यांनुसार केवळ भाडेकरार रद्द करण्याचा आदेश प्रतिवादीच्या विरोधात करण्याची मुख्य मागणी केली आहे. त्यामध्ये प्रतिवादी विरुद्ध मनाईहुकूम मिळवण्याची मागणी नाही. सदर प्रकरणाचे अवलोकन केले असता डिसेंबर २०२२ रोजी महानगरपालिकेने वाद मिळकतीमधील बांधकामावरील स्थगिती उठविण्याचे आदेश दिलेले होते. सदर बांधकाम निकृष्ट | असल्याबाबत सद्यपरिस्थितीत वादीतर्फे कोणताही कागदोपत्री पुरावा दाखल नाही. पनवेल महानगरपालिकेतर्फे देखील स्ट्रक्चरल इंजिनियरचा अहवाल प्रकरणात दाखल नाही. प्रतिवादीच्या म्हणण्यानुसार, शाळेत ४०० हून अधिक मुले शिक्षण घेत आहेत ही बाब वादीने नाकारलेली नाही. अशा परिस्थितीत, उपलब्ध कागदपत्रांवरून बांधकाम थांबविण्याच्या मनाईहुकूमाच्या आदेशाऐवजी वादीने दाखल केलेला 'जैसे थे' परिस्थिती ठेवण्याचा आदेश करणे योग्य आहे. त्यामुळे किमान बांधकामाबाबत अधिकृत अहवाल न्यायालयासमोर येईपर्यंत या प्रकरणात दोन्ही पक्षांनी आहे ती परिस्थिती राखून ठेवावी असा आदेश करणे योग्य ठरेल व त्याअनुषंगाने मनाईहुकूमाचा तसेच 'जैसे थे' परिस्थिती

ठेवण्याचा अर्ज निकाली काढणे योग्य ठरेल. म्हणून मी मुद्दा क्र. १ ते ३ चे उत्तर त्याप्रमाणे देवून मुद्दा क्र. ४ करिता खालील आदेश पारीत करते-

10) The above findings indicate that the Trial Court has *prima facie* ruled in favour of the Petitioner/Defendant and thought it appropriate not to grant temporary injunction in favour of the Plaintiff. However, because temporary injunction could not be granted, the Trial Court has thought it appropriate to pass an order of *status-quo*. This approach of the Trial Court is unknown to law. If no case was made out by the Plaintiff for grant of temporary injunction, the Trial Court ought to have dismissed the Application at Exhibit-5. However, the said application is partly allowed by directing maintenance of *status-quo*. Mere fact of 400 children taking education in the school could not have been a reason for directing maintenance of *status-quo*. The Trial Court has also erred in conducting an enquiry into the validity of construction. The decision for *status-quo* is taken awaiting the report about validity of construction. This approach is again totally erroneous. In my view, therefore, order dated 17 October 2023 passed by the Trial Court on Applications at Exhibits 5 and 23 is grossly erroneous and deserves to be set aside.

11) The Petitioner/Defendant applied for vacation of *status-quo* order by filing application at Exhibit-32. That application is rejected by the Trial Court on 16 March 2024. While considering the prayer for vacation of *status-quo* order, the Trial Court has conducted enquiry into validity of construction. The Municipal Corporation has admittedly issued commencement certificate. The Commencement Certificate is always issued initially upto plinth level and after plinth checking certificate, the CC is extended further. The Petitioner relied upon the report of the

Architect about plinth checking. The Trial Court has refused to take into consideration the said report on the ground that the appointment of the Architect was made by the Municipal Corporation. The Trial Court has further recorded a finding that the Petitioner could not prove that the construction carried out by it is in accordance with the permission issued by the Municipal Corporation. The Trial Court has recorded following findings in paragraph 12 of the order dated 16 March 2024 on application at Exhibit-32:

12. वादीने सदरचा दावा भाडेकरार रद्द करून मिळणेकरिता दाखल केलेला आहे. सदर त्या अनुषंगाने प्रतिवादींनी सनराईज एज्युकेशन सोसायटी या नावाने करार करताना बजाज एज्युकेशन सोसायटी ही त्यांचीच शाखा असल्याचे किंवा त्यांना शाळा बांधून चालू करण्याचा अधिकार देण्याचे नमूद केलेले नाही. सदर भाडेकरार रद्द होणेस पात्र आहे किंवा नाही हा पुराव्यावर निश्चित होणारा मुद्दा आहे. सदर प्रतिवादीने स्ट्रक्चर स्टॅबिलिटी रिपोर्ट वास्तुकल्प या तज्ञाकडून दाखल केलेला असून सदर तज्ञाची नेमणूक महानगरपालिकेने केल्याचे नमूद केले आहे. बांधकाम सुरु करण्याच्या परवानगीमध्ये तळमजला अधिक तीन मजल्यांचे बांधकाम नमूद करूनही प्लिंथ लेवलपर्यंत प्रत्यक्षात बांधकामाची परवानगी देवून त्याच्या पाहणीनंतरच प्लिंथ कंप्लीशन सर्टीफिकेट दिले जाईल नमूद केले आहे. याशिवाय, सदर काम पूर्ण झाल्यानंतर अर्जदाराने महानगरपालिकेकडून काम पूर्ण झाल्याचा लेखी अर्ज करावयाचा आहे. तसेच, त्याप्रमाणे ऑक्युपन्सी सर्टीफिकेट मिळवायचे आहे. अशा प्रकारे सूचना नमूद केलेल्या आहेत. सदर त्यानुषंगाने मान्यता मिळालेल्या आराखड्याला अटी व शर्तीच्या अधीन राहून परवानगी मिळालेली आहे. प्रतिवादींनी दाखल केलेल्या स्ट्रक्चर स्टॅबिलिटी अहवालाचे अवलोकन केले असता सदर तिस-या मजल्यापर्यंतचे काम हे त्याने दिलेल्या डिझाईनप्रमाणे पूर्ण झाल्याबाबत व सुरक्षित (व स्थिर असल्याबाबतचा अहवाल दिल्याचे दिसून येते. परंतु, सदरचे काम महानगरपालिकेने दिलेल्या मंजूर नकाशाप्रमाणे पूर्व परवानगी घेवून केल्याबाबत सदर नकाशावरून अवलोकन होत नाही. अशा परिस्थितीत, या प्रकरणात मंजूर केलेले जैसे थे आदेश सध्यातरी रद्द करणे न्यायाचे होणार नाही. त्यामुळे मी सदर अर्जावर खालील आदेश पारीत करते-

12) I am of the view that the Trial Court has egregiously erred in instituting an enquiry into validity of construction. The Trial Court did not possess necessary expertise for verifying as to whether construction is as per development permission or not. Once the construction is complete and an application for occupancy certificate is made, engineer of the Municipal Corporation inspects the construction and verifies whether it conforms to the development permission. The Occupancy Certificate is thereafter issued by the Municipal Corporation. In the

present case, since the construction is not complete, no occasion arose for applying for Occupancy Certificate. Before completing the construction and before applying for occupancy certificate, the Trial Court interdicted the construction. Thus, what is expected to be done by the Engineer of the Municipal Corporation post completion of construction is sought to be done by the Trial Court, that too at interlocutory stage. Thus, even order dated 16 March 2024 passed by the Trial Court is grossly erroneous and deserves to be set aside.

13) Coming to the Order passed by the Appellate Court dated 29 April 2025, the same is essentially premised on findings relating to unauthorised construction and creation of sublease. Both the findings recorded by the Appellate Court are clearly erroneous. The Appellate Court has recorded finding that documents presented for securing permission are forged. However, the basis on which the said finding is recorded is unclear. Findings recorded by the Appellate Court on the issue of unauthorised construction are as under:

9. Initially, it was open land of 30R of the suit premises at the time of lease agreement. The defendant has commenced the construction work. However the corporation has granted permission of construction to the extent of plinth level however on perusal of the photographs and the submission, it appears that the construction of the school is nearing three floors. The said construction is against the order of construction granted by the Corporation. Even the corporation has stopped the said work of construction.

10. The defence taken by defendant that permission of construction till plinth level amounts to construction further is absolutely not made out. At the time of permission of construction, the documents which were presented by the defendant to the corporation are forged. On that count at the prayer of landlord, direction of investigation vide Section 156(3) of the Code of Criminal Procedure is passed by learned magistrate for the said forgery of the signature of landlord to the documents presented before corporation.

11. In the light of submission coupled with documents placed on record, prima facie, the said construction of the school carried by the defendant is unauthorized. Hence, I answer Point No. II in the affirmative.

14) Thus, the Appellate Court has branded the construction as unauthorised only because the construction exceeded plinth level and because the Panvel Municipal Corporation stayed the construction. So far as the issuance of notice by Panvel Municipal Corporation directing stoppage of construction is concerned, the same appears to have been issued mainly on account of complaints made by the Plaintiff. I have gone through order dated 6 January 2021 passed by the Assistant Director of Town Planning, Panvel Municipal Corporation, which is passed after conduct of hearing between rival parties. The sole reason recorded by the Municipal Corporation is about pendency of Special Civil Suit No. 109 of 2021. The conclusions recorded and order passed by the Municipal Corporation are as under:

निष्कर्ष - मौजे तळोजे मजकूर येथील सर्व्हे नं. ११०/३/अ हा भूखंड भूखंडधारक श्री. कदम यांनी मॅ. सनराईज एज्यु सोसा. यांस ३० वर्षांच्या भाडेपट्ट्याने शाळेसाठी दिलेली आहे. त्यानुसार सदर भूखंडान शाळेच्या बांधकामास मंजुरी दिलेली आहे. सदर भूखंड भाडेकराराच्या अटीचा व इतर बाबत भंग केल्याबाबत तक्रार केल्यामुळे त्यानुसार संबंधितांना महानगरपालिकेने सुनावणी कामी पत्र दिले. सदरच्या सुनावणी मध्ये दिवाणी न्यायालय स्पे.मु.नं. १०९/२०२१ दावा दाखल असल्याचे कागदपत्र सादर केले आहे. आदेश - मौजे - तळोजे मजकूर येथील सर्व्हे नं. ११०/३/अ च्या भाडेकरारातील शर्तीबाबत तसेच इतर अर्जाबाबत दिवाणी न्यायालयातील स्पे.मु.नं. १०९/२०२१ मधील निर्णयापर्यंत व महाराष्ट्र महसुल अधिनियमाचे कलम ४२ब अन्वये कार्यवाही होईपर्यंत सदर भूखंडावरील बांधकाम स्थगित ठेवणेत यावी.

15) Thus, the Municipal Corporation stayed the construction only on account of pendency of Suit and filing of complaints by the Plaintiff. The order does not indicate that the construction is contrary to the development permission. Thus, the nature of enquiry conducted by the

Appellate Court is perfunctory and findings of unauthorised construction recorded by it are perverse.

16) It must also be noted that the whole inquiry into validity of construction by the Trial and the Appellate Courts was entirely unnecessary. The Suit is not for removal of construction. The remit of inquiry in the suit is about correctness of termination of lease. There is no allegation in the Plaint that the construction is contrary to the development permission. The plaint indicates that the lease is terminated on the grounds of failure to commence construction, demolition of chawl on balance 6 *Guntha* land, handing over school to Bajaj Trust, non-payment of rent, procuring electricity meter in the name of Omkaresh Infra and inferior quality of construction. There is a difference in concept of quality of construction and validity of construction. The Trial and Appellate Courts have erroneously ventured in the aspect of validity of construction.

17) So far as the finding of breach of terms of lease agreement is concerned, the Appellate Court has held that the lessee has subleased the suit property to third party -Sushma Bajaj Educational Trust. I have gone through the Agreement of Franchise dated 17 March 2020 executed between the Petitioner and Sushma Baja Educational Trust. Under that Agreement, the Petitioner has availed services of Sushma Bajaj Educational Trust for using its brand name (*Bajaj International School*). Under the Agreement, Sushma Bajaj Educational Trust has agreed to provide various services for operating the School. Under the Agreement the Bajaj Trust has right to appoint the Principal of the school. Thus, under the Franchise Agreement the Petitioner was supposed to pay fees

to Bajaj Trust for rendering of services. On the basis of the Agreement of Franchise executed for the purpose of using brand name 'Bajaj International School', it cannot be *prima facie* concluded that there is any sublease. For attracting students to its school, it is permissible for schools to go for branding exercise under which a popular brand-name is used by paying license fees to another entity who has earned name in the market. For letting use of the brand-name, the brand owner can impose conditions for maintaining a particular level of teaching in the school and for that purpose may take part in academic structure of the school by appointing the Principal, teachers, or deciding the curriculum, etc. In the Franchise Agreement, it is specifically provided that '*All financial Assets and liabilities will be owned by the second part. Land Building and other cost of any infrastructure will have to be borne by the second party*'. Such an arrangement, in the facts of the case, would not tantamount to subleasing as incorrectly recorded by the Appellate Court. Thus, the order passed by the Appellate Court is also unsustainable and liable to be set aside.

18) In my view therefore, the Plaintiff failed to establish *prima facie* case for grant of any injunctive relief in its favour. The test of irreparable loss is against the Plaintiff as completion of construction of school would enure to the benefit of the Plaintiff. The balance of convenience is in favour of Defendant and against the Plaintiff. Therefore no case was made out for grant of temporary injunction in favour of the Plaintiff.

19) Mr. Vishwakarma has complained about non-payment of lease rental by the Petitioner. Mr. Patwardhan submitted that since the school is not permitted to be operated on account of *status-quo* order, rent for

some period is not paid. On instructions, he makes a statement that the entire arrears of rent shall be deposited before the Trial Court on a without prejudice basis within a period of six weeks. Mr. Patwardhan also makes a statement that the school shall not be operated in the building without securing the Occupancy Certificate. This would ensure that the construction would conform to the development permission.

20) I accordingly, proceed to pass the following order:

- (i) Orders passed by the Trial Court dated 17 October 2023 passed on Applications at Exhibits-5 and 23 and dated 16 March 2024 passed on application at Exhibit-32 as well as order dated 29 April 2025 passed by the District Judge, Panvel, in Misc. Civil Appeal No.23 of 2024 are set aside.
- (ii) The Petitioner shall deposit entire arrears of rent in respect of the suit property in the Trial Court within a period of six weeks and such deposit shall be without prejudice to rights and contentions of the Petitioner.
- (iii) The Petitioner commence activities of the school only after securing Occupancy Certificate in respect of the building.
- (iv) The Trial Court shall proceed to decide the Suit uninfluenced by the observations made in the order.

21) The Writ Petition is allowed in above terms. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]