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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.190 OF 2026
WITH
INTERIM APPLICATION NO. 975 OF 2026

Naresh O. Jain

Appellant

.. (Org. Defendant No. 3)

Versus

Manoj Dattaram Akre & Ors.

Respondents

(R. Nos. 1 to 3 - Org. Plaintiffs
R. Nos. 4 & 5 - Org. Defendant
Nos. 1 & 2 &

.. R. 6 - Org. Defendant No. 4)

WITH
APPEAL FROM ORDER NO.258 OF 2026
WITH
INTERIM APPLICATION NO. 1652 OF 2026
WITH
INTERIM APPLICATION NO. 1654 OF 2026

Mumbai Municipal Corporation & Anr.

Appellants

.. (Org. Defendants)

Versus

Manoj Dattaram Akre & Ors.

Respondents

.. (Org. Plaintiffs)

.....

- Mr. Simil Purohit, Senior Advocate a/w Mr. Aadil Parsurampur, Mr. Kevin Pereira and Ms. Disha Jain i/by Mr. Viraj Jadhav, Advocates for Appellant in Appeal from Order No.190 of 2026.
- Mr. Sachin Vajale, Advocate for Respondent Nos.4 and 5 in Appeal from Order No.190 of 2026 and for Appellants in Appeal from Order No.258 of 2026.
- Mr. Kunal Bhanage i/by Mr. Sainand Chaugule & Mr. Akshay Pawar, Advocates for Respondent Nos.1 to 3 in Appeal from Order No.190 of 2026 and for Respondents in Appeal from Order No.258 of 2026.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2026

P.C.:

1. Heard Mr. Purohit, learned Senior Advocate for Appellant in Appeal From Order No.190 of 2026; Mr. Vajale, learned Advocate for Respondent Nos.4 and 5 in Appeal from Order No.190 of 2026 and for Appellants in Appeal from Order No.258 of 2026 and Mr. Bhanage, learned Advocate for Respondent Nos.1 to 3 in Appeal From Order No.190 of 2026 and for Respondents in Appeal From Order No.258 of 2026.

2. At the outset, Interim Application No.1652 of 2026 filed by the Municipal Corporation in Appeal From Order No.258 of 2026 seeking condonation of delay is allowed, considering the explanation offered and in order to enable adjudication of the Appeal from Order on merits. The delay of 6 years 358 days stands condoned. Interim Application is allowed and disposed.

3. Briefly stated, present proceedings arise out of dispute concerning structure bearing Room No. T/168 situated at Mangalwadi, Juhu Tara Road, Juhu, Mumbai upon property bearing City Survey No.1034 and 1034/1 to 24, Village Juhu, Taluka Andheri, Mumbai and action initiated by Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short '**the said Act**') in respect of the said structure alleged to be unauthorized.

3.1. Appellant in Appeal From Order No.190 of 2026 is owner and developer of larger property bearing Final Plot No.26 of Town Planning Scheme No.2, Santacruz having acquired said property under registered Conveyance dated 31.08.2005 for purposes of redevelopment. At relevant time, several occupants were residing upon said property and redevelopment of property was proposed after vacating existing occupants.

3.2. One of the structure at that time which was situated upon said property was Room No. T/168 occupied by Smt. Savitri Dattaram Akre, mother of Respondent Nos.1 to 3, alongwith Respondent Nos.1 to 3 and their family members. Said structure came within alignment of proposed widening of Juhu Tara Road which was undertaken by the Municipal Corporation.

3.3. Municipal Corporation carried out inventory and measurement proceedings in respect of structure bearing Room No. T/168 and thereafter the said structure being affected by road widening was demolished for purposes of road widening project. In lieu of demolition of said structure, two Permanent Alternate Accommodation / PAP tenements came to be allotted to Smt. Savitri Dattaram Akre on ownership basis, in respect of which possession is stated to have been taken and accepted by her and her family member.

3.4. According to the Appellants, after the original structure was demolished and after allotment of alternate accommodation, Respondent Nos.1 to 3 erected another structure adjoining / behind the original structure unauthorisedly without obtaining permission from the Competent Authority and relied upon the documents pertaining to the demolished structure bearing Room No. T/168 while seeking protection in respect of the said unauthorised structure.

3.5. Municipal Corporation thereafter initiated proceedings under Section 351 of the said Act in respect of the said structure alleging unauthorized construction. Speaking order dated 21.06.2012 was passed holding the said structure liable for demolition.

3.6. Respondent Nos.1 to 3 instituted L.C. Suit No.1475 of 2012 challenging action initiated under Section 351 of the said Act and seeking protection against demolition of the said suit structure.

3.7. In Notice of Motion No.1537 of 2012 taken out in the said suit, learned City Civil Court by order dated 21.01.2019 granted temporary injunction restraining demolition of the suit structure till disposal of the suit.

3.8. Appellant in Appeal From Order No.190 of 2026 was not party to the said proceedings when the injunction order dated 21.01.2019 came to be passed and thereafter filed Chamber Summons No.1023 of 2025 seeking impleadment in the said suit proceedings,

which is pending.

3.9. In the meantime, Appellant in Appeal From Order No.190 of 2026 obtained redevelopment permissions including Intimation of Disapproval dated 31.07.2024 and Part Commencement Certificate dated 31.07.2025 in respect of redevelopment project proposed upon the larger property. According to the Appellant, redevelopment activities could not proceed due to subsistence of the injunction order and continued occupation of the unauthorised suit structure by Plaintiffs.

3.10. Thereafter, Writ Petition No.4083 of 2025 was filed in this Court concerning redevelopment of the said property and for razing the alleged unauthorized structure existing thereon. During hearing of the said Writ Petition, statement was made on behalf of Municipal Corporation that appropriate proceedings would be initiated before the learned City Civil Court for vacating / modification of the injunction order dated 21.01.2019.

3.11. Pursuant thereto, Municipal Corporation filed Notice of Motion No.4190 of 2025 under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (for short '**CPC**') for vacating / modification of the injunction order dated 21.01.2019, *inter alia*, contending that the original structure bearing Room No. T/168 was already demolished after allotment of alternate accommodation and the present structure

was an unauthorized structure subsequently erected by the sons of the original structure holder.

3.12. During pendency of proceedings before Trial Court, it is contended by the Appellant in Appeal From Order No.190 of 2026 and the Municipal Corporation in Appeal From Order No.258 of 2026 that both PAP tenements earlier allotted to Smt. Savitri Dattaram Akre were subsequently sold transferred by her to third parties after accepting possession thereof.

3.13. By order dated 13.01.2026 passed in Notice of Motion No.4190 of 2025 in L.C. Suit No.1475 of 2012, learned Trial Court rejected the prayer for vacating / modification of injunction and continued the interim protection operating in favour of Respondent Nos.1 to 3.

3.14. Being aggrieved by the order dated 13.01.2026, Appellant – owner / developer has preferred Appeal From Order No.190 of 2026.

3.15. Being aggrieved by the order dated 21.09.2019, Municipal Corporation and its officers have preferred Appeal From Order No.258 of 2026 before this Court.

3.16. By consent of parties, Appeal from Order is heard finally.

4. Mr. Purohit, learned Senior Advocate appearing for the Appellant in Appeal From Order No.190 of 2026, assailing the

impugned order dated 13.01.2026 passed by the learned City Civil Court in Notice of Motion No.4190 of 2025 in L.C. Suit No.1475 of 2012, would submit that learned Trial Court has failed to appreciate the material facts, statutory proceedings and subsequent developments placed on record and has erroneously continued interim protection in favour of an unauthorized structure.

4.1. He would submit that Appellant has relied upon the Written Statement filed on behalf of Defendant No.3 by Mrs. Priyanka Janak Jain, constituted attorney of the Appellant – Developer, on 17.12.2025 pursuant to impleadment of Defendant No.3 in the suit proceedings.

4.2. He would submit that Appellant is lawful owner and developer of the larger property bearing Final Plot No.26 of Town Planning Scheme No.2, Santacruz corresponding to City Survey Nos.1034 and 1034/1 to 24, Village Juhu, Taluka Andheri, Mumbai, having acquired title under registered Deed of Conveyance dated 31.08.2005 and that the said title is duly reflected in the municipal and revenue records.

4.3. He would submit that at the time of acquisition of the property, several structures occupied by approximately 43 occupants existed upon the larger property / land and redevelopment of the said property was thereafter proposed in accordance with law.

4.4. He would submit that one such structure was Room No.T/168 occupied by Smt. Savitri Dattaram Akre, mother of Respondent Nos.1 to 3, which structure came within the alignment of sanctioned road line of Juhu Tara Road widening of which was undertaken by the Municipal Corporation.

4.5. He would submit that Municipal Corporation conducted survey, inventory and measurement proceedings in respect of the said structure and thereafter initiated rehabilitation proceedings by issuing communications dated 30.07.2002 and 29.11.2002 calling upon Smt. Savitri Dattaram Akre to produce documents for purpose of considering her rehabilitation alternate accommodation.

4.6. He would submit that measurement of the structure was thereafter carried out on 12.11.2005 in the presence of Respondent Nos.1 to 3 and their family members and rehabilitation was sought for the entire family.

4.7. He would submit that pursuant to due approval granted by the competent authority, two Permanent Alternate Accommodation / PAP tenements came to be allotted to Smt. Savitri Dattaram Akre on ownership basis, namely Flat No.606 in Sukhananda Krupa Co-operative Housing Society, Santacruz (West), Mumbai by allotment letter dated 18.03.2006 and Flat No.01 in building known as Vaastu Riddhi, Andheri (East), Mumbai by allotment letter dated 27.05.2006.

He would submit that initially only one Rehabilitation flat was allotted, but on representation by the mother of private Respondents about the size of her structure and large family comprising the private Respondents and their children, the Municipal Corporation considering the case as a 'special case' and allotted one additional Rehabilitation flat.

4.8. He would submit that possession of both PAP tenements was admittedly accepted and acknowledged by Smt. Savitri Dattaram Akre and members of her family including Respondent Nos.1 to 3 and consequently the original structure bearing Room No.T/168 stood vacated and demolished and the road widening was implemented.

4.9. He would submit that after acceptance of alternate accommodation and demolition of the original structure, Respondent Nos.1 to 3 have allegedly erected another unauthorized structure adjoining / behind the demolished structure and are claiming protection in respect thereof by relying upon the documents relied upon by their mother for claiming the earlier two Rehabilitation Flats pertaining to the demolished structure.

4.10. He would submit that apart from the demolished structure bearing Room No.T/168, no other lawful or authorized structure existed upon the said property in occupation of Respondent Nos.1 to 3.

4.11. He would further submit that Respondent Nos.1 to 3 have failed to produce any public document or admissible material establishing lawful existence of the present structure prior to the relevant datum line / cut-off date and therefore no equitable protection could have been granted in their favour.

4.12. He would submit that Municipal Corporation had issued notice dated 10.03.2010 under Section 351 of the said Act and thereafter passed speaking orders dated 13.01.2011 and 21.06.2012 holding the structure to be unauthorized and liable for demolition after considering the replies and documents produced by Respondent Nos.1 to 3 and after following the due process of law.

4.13. He would submit that despite repeated proceedings instituted by Respondent Nos.1 to 3 seeking protection against demolition, no final adjudication recognizing legality of the structure has been rendered in their favour.

4.14. He would submit that the injunction order dated 21.01.2019 came to be passed without impleading the Appellant who is the lawful owner and developer of the property and therefore serious prejudice is caused to the Appellant.

4.15. He would submit that the Appellant thereafter filed Chamber Summons No.1023 of 2025 seeking impleadment as proper and necessary party and placed on record all material facts demonstrating

suppression on part of Respondent Nos.1 to 3.

4.16. He would submit that the Appellant has obtained redevelopment permissions including Intimation of Disapproval dated 31.07.2024 and Part Commencement Certificate dated 31.07.2025 and is ready to proceed with redevelopment of the larger property. However, redevelopment activities have been completely stalled due to continuance of the injunction order in respect of the private Respondents' unauthorized structure.

4.17. He would submit that continuance of injunction is causing grave financial prejudice, hardship and obstruction to redevelopment of the entire property and such circumstances squarely attract provisions of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 warranting modification or vacation of injunction.

4.18. He would submit that the learned Trial Court has failed to appreciate that once two Rehabilitation Flats had been accepted as alternate accommodation by the mother of private Respondents and possession thereof taken, no subsisting right survived in respect of the original structure and consequently no injunction could ever have been granted and / or continued in favour of Respondent Nos.1 to 3.

4.19. He would submit that Respondent Nos.1 to 3 have suppressed material facts including acceptance of alternate accommodation and subsequent transfer / alienation of PAP tenements

and have thereby disentitled themselves from equitable relief.

4.20. He would submit that the learned Trial Court has failed to accord due weight to the statutory speaking orders passed under Section 351 of the said Act declaring the structure unauthorized.

4.21. He would submit that the learned Trial Court has further erred in observing that merits cannot be examined while considering an application under Order XXXIX Rule 4 CPC, whereas the Court was duty bound to consider suppression of facts, abuse of due process, subsequent events and undue hardship to Appellant – owner.

4.22. He would submit that the learned Trial Court has also failed to consider observations made by this Court in Writ Petition No.4083 of 2025 dated 18.11.2025 permitting Municipal Corporation to take appropriate proceedings for vacating / modification of the injunction order dated 21.01.2019.

4.23. He would submit that continuance of injunction for more than seven years has the effect of granting final relief at the interim stage itself and is defeating lawful redevelopment and larger public interest in planned urban development.

4.24. He would therefore submit that the impugned order dated 13.01.2026 passed in Notice of Motion No.4190 of 2025 in L.C. Suit No.1475 of 2012 deserves to be quashed and set aside and the Notice

of Motion seeking vacating / modification of injunction dated 21.01.2019 deserves to be allowed.

5. Mr. Vajale, learned Advocate appearing for Respondent Nos.4 and 5 – Municipal Corporation and its officers in Appeal From Order No.190 of 2026, while opposing the submissions advanced on behalf of Respondent Nos. 1 to 3, would submit that the Municipal Corporation has relied upon the Affidavit / Written Statement affirmed by Mr. Sandesh Jodher, Assistant Engineer in the employment of the Municipal Corporation, setting out the factual and procedural background concerning the proceedings before the learned Trial Court.

5.1. He would submit that the Plaintiffs had instituted the suit challenging notice dated 31.05.2010 issued under Section 351 of the said Act and speaking order dated 21.06.2012 passed by the Assistant Commissioner directing demolition of the suit structure.

5.2. He would submit that the Municipal Corporation had thereafter taken out proceedings before the learned Trial Court seeking setting aside of the “No Reply” order dated 02.09.2024 passed in proceedings arising out of the Notice of Motion taken out by the Plaintiffs for striking out the defence pleaded in Written Statement dated 28.01.2013 filed on behalf of the Municipal Corporation.

5.3. He would submit that on 02.09.2024 the learned Trial Court passed “No Reply” order and thereafter the matter was adjourned from

time to time. He would submit that on 10.02.2025 Advocate appearing on behalf of the Municipal Corporation had remained present and sought time for hearing, however upon perusal of the Rojnama it was noticed that absence on behalf of the Defendants had been incorrectly recorded and the matter thereafter came to be posted for orders.

5.4. He would submit that the Municipal Corporation thereafter sought opportunity to place written submissions and oral arguments on record and contended that the proceedings ought to be decided on merits after granting adequate opportunity of hearing to the Defendants in accordance with principles of natural justice.

5.5. On merits of private Respondents' case for entitlement would submit that dispute pertains to structure bearing Room No.T/168 in respect whereof two Rehabilitation Flats as Permanent Alternate Accommodation / PAP tenements had already been allotted to the mother of Respondent Nos.1 to 3 against the said original Suit structure and therefore the Municipal Corporation was required to be heard fully on merits before any adverse order could be passed.

5.6. He would submit that the delay, if any, on part of the Municipal Corporation in filing reply proceedings was neither deliberate nor intentional but occurred due to administrative workload, pendency of large number of matters before the Legal Department and mixing of action papers with other records.

5.7. He would submit that unless opportunity was granted to the Municipal Corporation to place its defence on record, serious prejudice would be caused to the statutory authorities in proceedings concerning unauthorized construction and enforcement action initiated under Section 351 of the said Act.

5.8. He would therefore submit that Trial Court ought to have properly considered the defence and material placed on record by the Municipal Corporation while adjudicating the issue of continuance of interim protection in favour of the suit structure.

5.9. In regard to Appeal From Order No.258 of 2026, assailing impugned order dated 21.01.2019 passed by the learned City Civil Court in Notice of Motion No.1537 of 2012 in L.C. Suit No.1475 of 2012, he would submit that the impugned order is erroneous, contrary to law, facts and settled principles governing grant of equitable relief in respect of unauthorized constructions and therefore deserves to be quashed and set aside.

5.10. In this context, he would rely upon the Written Statement filed on behalf of the Municipal Corporation by Mr. Amol Shashikant Dalal, working as Sub Engineer Bldg – K/West in the employment of the Defendants, affirming the factual position on the basis of official Municipal records.

5.11. He would submit that the Respondents / Original Plaintiffs had failed to issue mandatory statutory notice under Section 527 of the Mumbai Municipal Corporation Act prior to institution of the suit and therefore the suit itself was not maintainable in law.

5.12. He would further submit that the suit notices and demolition proceedings initiated under Section 351 of the said Act are statutory and administrative actions taken in discharge of public duties and the learned Trial Court failed to appreciate the limited scope of interference in such proceedings.

5.13. He would submit that the original structure bearing Room No. T/168 situated at City Survey Nos.1034 and 1034/1, Mangalwadi, Juhu Tara Road, Santacruz (West), Mumbai, occupied by Smt. Savitri Dattaram Akre, mother of the Respondents, was affected by sanctioned road widening of Juhu Tara Road undertaken by the Municipal Corporation.

5.14. He would submit that pursuant to survey, inventory and measurement proceedings conducted by the Corporation, the said structure was found eligible for rehabilitation and alternate accommodation proceedings were accordingly initiated by issuance of communications dated 30.07.2002 and 29.11.2002 calling upon the occupants to produce relevant eligibility documents.

5.15. He would submit that measurements of the structure admeasuring approximately 926.25 sq. ft. were carried out on 12.11.2005 in the presence of the Respondents and their family members and the measurements were accepted by all concerned including the Respondents herein.

5.16. He would submit that upon representations made by Smt. Savitri Dattaram Akre on behalf of the entire family including the Respondents, the Municipal Corporation allotted two Flats as Permanent Alternate Accommodation (for short '**PAA**') tenements on ownership basis, namely Flat No.606 in Sukhananda Krupa Co-operative Housing Society, Santacruz (West) and Flat No.01 in Vaastu Riddhi, Andheri (East).

5.17. He would submit that though ordinarily only one Project Affected Person (for short '**PAP**') tenement is allotted to one family, the Corporation, considering the representation made by the Respondents' mother regarding the large family including the private Respondents residing in the structure, sought special sanction and were therefore allotted additional PAP tenement in favour of the family.

5.18. He would submit that possession of both PAP tenements was admittedly accepted by Smt. Savitri Dattaram Akre and all family members including the private Respondents and consequently the original structure bearing Room No.T/168 was vacated and

demolished in accordance with due process of law for road widening purposes.

5.19. He would submit that after demolition of the original structure and acceptance of alternate accommodation, the private Respondents have illegally erected a fresh unauthorized structure adjoining / behind the demolished structure without obtaining any sanction, approval or permission from the competent authority.

5.20. He would submit that the Respondents are attempting to establish authenticity of the newly erected unauthorized structure by relying upon documents pertaining exclusively to the old demolished structure in respect whereof rehabilitation benefit has already been granted and accepted by them.

5.21. He would submit that apart from the demolished structure bearing No. T/168, no separate or independent lawful structure existed on the said property in occupation of the Respondents and no material establishing authorization or existence of the present structure prior to the datum line has been produced by them.

5.22. He would submit that the learned Trial Court failed to appreciate that the Respondents have suppressed material facts regarding allotment and acceptance of two Rehabilitation Flats as PAP tenements while instituting proceedings before the City Civil Court and this Court and have abused the due process of law.

5.23. He would submit that earlier Civil suits being L.C. Suit Nos.940 of 2008, 941 of 2008 and 942 of 2008 seeking protection against demolition were dismissed by the City Civil Court by order dated 30.09.2008 and the subsequent Appeal From Order Nos.994 of 2009, 995 of 2009 and 996 of 2009 were also dismissed by this Court on 10.03.2010.

5.24. He would submit that while dismissing the aforesaid Appeals, this Court specifically observed that the Respondents had suppressed the fact that their mother had already been allotted two alternate premises and further observed that the Respondents had reconstructed structures behind the earlier site and were dishonestly attempting to seek further benefits under the rehabilitation policy.

5.25. He would submit that thereafter, upon inspection dated 03.04.2010, the Corporation detected unauthorized construction comprising room with brick masonry walls, G.I. sheet walls and A.C. sheet roofing and consequently issued notice dated 31.05.2010 under Section 351 of the said Act.

5.26. He would submit that after considering the replies and documents submitted by the Respondents, the Assistant Commissioner, K/West Ward, passed detailed speaking demolition orders dated 28.06.2011 and thereafter reasoned order dated 21.06.2012 holding that the structure was unauthorized and liable for demolition.

5.27. He would submit that repeated proceedings thereafter instituted by the Respondents challenging the demolition action, including L.C. Suit No.303 of 2011 and Appeal From Order Nos.169 of 2011 and 428 of 2011, did not culminate in any final adjudication recognizing legality of the structure and interim reliefs sought by the Respondents were repeatedly refused.

5.28. He would submit that the Respondents ultimately withdrew the earlier proceedings with liberty to make representations before the Municipal Corporation and the said representations also came to be rejected by reasoned orders passed after due consideration of all documents relied upon by the Respondents.

5.29. He would submit that the learned Trial Court failed to accord due weight to the statutory findings recorded by the competent municipal authorities under Section 351 of the said Act declaring the structure unauthorized and failed to appreciate that the Respondents had not produced any sanctioned plan, commencement permission or authorization whatsoever in respect of the present structure.

5.30. He would submit that the learned Trial Court erroneously drew adverse inference against the Corporation for alleged non-production of demolition photographs and demolition register despite overwhelming documentary evidence establishing allotment and acceptance of alternate accommodation in lieu of demolition of the

original structure.

5.31. He would submit that subsequent developments have further established the mala fide conduct of the Respondents inasmuch as both PAP tenements allotted to the family were subsequently alienated / transferred by the Respondents and their mother to third parties after accepting rehabilitation benefits.

5.32. He would submit that the Appellants have also placed on record photographs, rough sketches and subsequent inspection material demonstrating that the present unauthorized structure is situated beyond the road line and constitutes a separate newly erected structure raised after demolition of the original premises.

5.33. He would submit that recent proceedings in Writ Petition No.4083 of 2025 before this Court concerning unauthorized structures erected by the Respondents further necessitated filing of additional proceedings and additional Written Statement before the Trial Court pursuant to observations made by this Court by order dated 18.11.2025.

5.34. He would submit that the Respondents have approached the Court with unclean hands, suppressed material facts regarding acceptance and subsequent sale of PAP tenements and are attempting to misuse documents pertaining to the demolished structure to seek protection for an entirely unauthorized construction.

5.35. He would therefore submit that the impugned order dated 21.01.2019 making the Notice of Motion absolute is unsustainable in law, contrary to the material on record and liable to be quashed and set aside.

6. *PER CONTRA*, Mr. Bhanage, learned Advocate appearing for Respondent Nos.1 to 3 in Appeal From Order No.190 of 2026, while opposing the Appeal and supporting the impugned order dated 13.01.2026, would submit that the Respondents have consistently maintained from inception that the present suit structures are separate, independent and existing structures and are not structures newly erected after demolition proceedings, as alleged by the Appellant and the Municipal Corporation.

6.1. He would submit that the Respondents have filed detailed pleadings including Affidavit in Rejoinder on behalf of the Plaintiffs affirmed by Mr. Deepak Dattaram Akré on 22.03.2013 in Notice of Motion No.1537 of 2012 in L.C. Suit No.1475 of 2012.

6.2. He would submit that the Respondents have specifically contended that originally structure bearing Room No.T/168 consisted of five rooms, out of which three rooms situated at the upper level were demolished for purposes of road widening, whereas the present suit structures comprising remaining rooms situated at lower level were never demolished and continued to exist independently.

6.3. He would submit that the Respondents have relied upon City Survey plans and contemporaneous photographs from the year 2008 onwards to demonstrate that the present suit structures are situated at a substantially lower level than the widened road and that access to the structures is from below the road level through an existing staircase. He would therefore submit that the allegation that the suit structures were newly erected after demolition of old structure is factually incorrect and stands falsified from the physical topography reflected in the photographs placed on record.

6.4. He would submit that the Municipal Corporation failed to produce demolition reports, photographs or contemporaneous records showing actual demolition of the present suit structures, despite specific directions issued by the learned Trial Court by orders dated 09.07.2012 and 18.07.2012. He would submit that adverse inference was therefore liable to be drawn against the Municipal Corporation for non-production of the best possible evidence.

6.5. He would submit that although extensive reliance is placed by the Appellant upon allotment of PAP tenements to the Respondents' mother, the same pertained only to the structures demolished for road widening and not to the present suit structures. He would submit that the mere fact that the mother of the Respondents accepted alternate accommodation cannot automatically extinguish independent

possessory or occupancy rights claimed by the Respondents in respect of the remaining structures.

6.6. He would submit that the learned Trial Court has correctly appreciated that the rival claims as to whether the suit structures were pre-existing structures or subsequent unauthorized constructions can only be conclusively determined after parties lead evidence at trial and such disputed factual issues cannot be finally adjudicated at interlocutory stage.

6.7. He would submit that the impugned speaking order dated 21.06.2012 proceeds upon erroneous assumption that Respondent Nos.1 to 3 and their mother constituted one joint family occupying one composite structure and that alternate accommodation granted to the mother automatically covered the rights of the Respondents. He would submit that the said findings are contrary to documentary material including City Survey records and tenancy details.

6.8. He would submit that names of the Respondents are independently reflected in the list of occupants/tenants annexed to the Conveyance Deed dated 31.08.2005 executed in favour of the developer and therefore the contention that the Respondents had no independent structures or rights is incorrect and contrary to record.

6.9. He would submit that the Respondents have specifically contended that no evidence has been produced to establish that the

Respondents themselves accepted alternate accommodation and that the allotment made to their mother cannot be treated as surrender of the Respondents' alleged independent structures.

6.10. He would submit that the learned Trial Court rightly considered that if interim protection was refused and the structures demolished during pendency of the suit, the entire suit itself would become infructuous and irreparable prejudice would be caused to the Respondents. He would submit that balance of convenience therefore lies in preserving the structures till adjudication of the suit.

6.11. He would submit that according to the Respondents the suit structures are in existence since prior to the datum line / prior to 1962 and that the Municipal Corporation has failed to conclusively establish that the suit structures are freshly erected unauthorized constructions.

6.12. He would further submit that the impugned notice under Section 351 of the said Act and consequential speaking orders are vitiated by non-consideration of material documents produced by the Respondents and by erroneous clubbing of the Respondents' structures with the demolished structures of their mother.

6.13. He would submit that the Respondents have specifically alleged that the action initiated by the Municipal Corporation was at the instance of the developer with an intention to avoid granting alternate accommodation to the Respondents and to remove the

structures obstructing redevelopment.

6.14. He would submit that no complaint was lodged by the owner/developer immediately after alleged demolition alleging that fresh unauthorized construction had been erected and there is no contemporaneous material showing that any newly constructed structure came into existence after road widening.

6.15. He would submit that the learned Trial Court has exercised discretionary jurisdiction after considering the material placed before it and no case for interference under appellate jurisdiction is made out unless the discretion exercised is shown to be arbitrary or perverse.

6.16. He would therefore submit that the impugned order dated 13.01.2026 does not warrant interference and Appeal From Order No.190 of 2026 deserves to be dismissed.

6.17. In Appeal From Order No.258 of 2026, Mr. Bhanage reiterates his submissions made in Appeal From Order No.190 of 2026. For brevity sake same are not repeated herein. He has persuaded me to take cognizance of his submissions made in Appeal No.190 of 2026.

7. I have heard Mr. Purohit, learned Senior Advocate for Appellant in Appeal From Order No.190 of 2026; Mr. Vajale, learned Advocate for Appellants in Appeal From Order No.258 of 2026 and Mr. Bhanage, learned Advocate for Respondent Nos.1 to 3 in Appeal From

Order No.190 of 2026 and for Respondents in Appeal From Order No.258 of 2026 and perused the record of the case. Submissions made by the learned Advocates at the bar has received due consideration of the Court.

8. At the outset, upon consideration of the rival submissions, pleadings and material placed on record, it is evident that the present Appeals From Order arise out of a long-standing dispute concerning the structure bearing Room No. T/168 situated at Mangalwadi, Juhu Tara Road, Juhu, Mumbai, and the action initiated by the Municipal Corporation under Section 351 of the said Act alleging unauthorized construction. The controversy essentially turns on the nature of the existing structure, the effect of earlier demolition and rehabilitation proceedings, and the legality of the continuance of interim protection granted by the learned Trial Court.

9. It is an admitted position that proceedings under Section 351 of the said Act were initiated against the subject structure and culminated in speaking orders dated 21.06.2012 holding the structure to be unauthorized and liable for demolition. It is further not in dispute that Respondent Nos.1 to 3 instituted L.C. Suit No.1475 of 2012 challenging the said action and obtained interim protection by order dated 21.01.2019 restraining demolition of the suit structure till disposal of the suit.

10. The principal issue which arises for consideration is whether, in light of the subsequent developments placed on record, including alleged acceptance of Permanent Alternate Accommodation (PAP) tenements, alleged demolition of the original structure during road widening, and initiation of redevelopment by the Appellant, the continuance of interim injunction is justified or whether the same warrants interference under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908.

11. It is well settled that while considering an application under Order XXXIX Rule 4 CPC, the Court is empowered not only to examine the correctness of the earlier order but also to take into account subsequent events, suppression of material facts, and any circumstances which render continuance of injunction inequitable or oppressive. The jurisdiction under the said provision is essentially corrective in nature and is intended to prevent abuse of interim relief.

12. On perusal of the record, it *prima facie* emerges that the original structure bearing Room No. T/168 was subject matter of road widening by the Municipal Corporation, and in lieu thereof, Permanent Alternate Accommodation was admittedly allotted to Smt. Savitri Dattaram Akre, mother of Respondent Nos.1 to 3, which fact is supported by municipal rehabilitation proceedings placed on record. The Appellant as well as the Municipal Corporation have specifically

contended that after acceptance of such alternate accommodation, the original structure ceased to exist and what is now sought to be protected is a subsequently erected unauthorized construction.

13. On the other hand, Respondent Nos.1 to 3 have disputed the aforesaid position and have contended that the suit structure is an existing and independent structure which was never demolished and continues to exist from prior to the road widening alignment. It is their case that the issue as to whether the present structure is newly erected or pre-existing is a seriously disputed question of fact which can only be adjudicated after evidence is led at trial. This is also so held by the Trial Court. However by granting injunction, the entire redevelopment is stalled. The private Respondents will ultimately succeed or fail on the strength of their evidence. *Prima facie*, the evidence presented before Court is such that the injunction deserves to be vacated for more than one reason.

14. It is also evident that the Appellant has placed on record redevelopment permissions including Intimation of Disapproval dated 31.07.2024 and Part Commencement Certificate dated 31.07.2025 and has contended that continuance of injunction is effectively stalling redevelopment of the entire property, thereby causing grave prejudice not only to the Appellant but also affecting larger public interest in planned urban development.

15. In this backdrop, it is necessary to consider whether the learned Trial Court was justified in continuing the injunction despite the material indicating subsequent developments and alleged suppression of facts. *Prima facie*, the learned Trial Court appears to have proceeded on the basis that the disputed issues require trial and therefore declined to vacate the injunction. However, in doing so, the factual circumstances, effect of subsequent events, particularly the rehabilitation proceedings and redevelopment permissions, does not appear to have been adequately considered by the Trial Court.

16. In the considered view of this Court, the continuance of an injunction for an inordinately long period, particularly in matters involving alleged unauthorized constructions, cannot result in conferment of a *de facto* final relief at the interlocutory stage. Equitable relief of injunction must always remain subject to reconsideration when circumstances materially change or when continuation thereof results in manifest injustice.

17. Having regard to the totality of circumstances, this Court is of the view that the impugned order dated 13.01.2026 warrants interference. The balance of convenience, *prima facie*, tilts in favour of permitting the Appellant and the Municipal Corporation to proceed in accordance with law, subject to final adjudication of the Suit.

18. On overall consideration of the facts and circumstances in the present case continuation of injunction order is *prima facie* detrimental and prejudicial to redevelopment undertaken by the owner / landlord / Developer. Substantial overwhelming *prima facie* documentary evidence placed before me impels me to pass this order and vacate the injunction. Record shows that earlier Civil Suits filed in the year 2008 by the private Respondents and their family members with regard to the same Suit structure have been comprehensively dismissed in 2012. Present Suit is filed to challenge fresh 351 Notice and Speaking order. Findings returned by the Trial Court to continue injunction is based on weak *prima facie* evidence and adverse inference which cannot be sustained. Trial Court holds that if the Suit structure is demolished, Suit will become infructuous, however that cannot be the case. Trial Court holds that photographs are not produced by Corporation, *inter alia*, proving the earlier demolition and therefore private Respondents' case is to be believed. This finding is not sustainable because there is no denial about private Respondents receiving two rehabilitation flats as alternate accommodation and PAP in lieu of the original structure, however they claim that those were allotted to their mother. In such strong circumstances which are *prima facie* revolt against the private Respondents, redevelopment cannot be stalled by the continuation of the injunction order. Private Respondents' case does not inspire any confidence of the Court.

Nevertheless their right to prove their case in trial on the basis of their evidence is kept open in accordance with law. In such circumstances, the injunction deserves to be vacated forthwith and Redevelopment needs to be proceeded.

19. In view of the findings recorded hereinabove and for the reasons stated, this Court is of the considered opinion that the impugned orders dated 21.01.2019 and 13.01.2026 cannot be sustained in law. The learned Trial Court has failed to adequately appreciate the effect of the statutory proceedings under Section 351 of the said Act, the factual circumstances *prima facie* brought on record, and the consequences of continuation of interim protection in respect of the subject structure.

20. These observations and findings herein are *prima facie* on the basis of the documentary material evidence placed before the Court. In view of the above observations and findings, the Appeals from Order, therefore, deserve to be allowed. Both Appeals from Orders are allowed, however all contentions of Plaintiffs before the Trial Court in the pending Suit proceeding No.1475 of 2012 are kept open to be proved in evidence at trial. Considering the long pendency of the Suit, the same is expedited.

21. Consequently, the Interim Applications taken out therein are also required to be disposed of in terms of the operative directions

passed hereinabove. Notice of Motion No.1537 of 2012 is disposed. Notice of Motion No.4190 of 2025 stands allowed. Injunction order dated 21.01.2019 is vacated. Corporation can proceed with the demolition of the Suit structure in accordance with law. Plaintiffs to cooperate. All contentions of Plaintiffs for entitlement in lieu of Suit structure are kept open in Trial / Suit.

22. Appeal From Order No.190 of 2026 and Appeal From Order No.258 of 2026 stand allowed and disposed in the above terms. Interim Application Nos.975 of 2026; 1652 of 2026 and 1654 of 2026 are accordingly disposed.

[MILIND N. JADHAV, J.]

23. After the order is pronounced, Mr. Chaugule, learned Advocate for Respondent Nos. 1 to 3 in AO 190/2026 and holding for Advocate Mr. Bhanage persuades the Court to continue the interim stay granted by learned Trial Court to enable the Respondents to challenge the legality and validity of this order. I have considered his request. However, in view of the strong facts and circumstances on the basis of which this order is passed, I am not inclined to accept the request made by Mr. Chaugule. Hence, request for stay is declined.

[MILIND N. JADHAV, J.]

Ajay

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