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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4953 OF 2025

Suhali Abdul Rahim Shaikh and anr.Petitioners

Versus

The Municipal Corporation of
Greater Mumbai and ors.Respondents

Mr. Shobhit Shukla for the Petitioners.

Ms. Vaishali Ugale i/b. Ms. Komal Punjabi for the Respondents –
BMC.

Mr. Mayur Khandeparkar a/w Mr. Hasan Mushabber i/b. Negandhi
Shah & Himayatullah for Respondent No.7.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.**

DATE : 06th JANUARY, 2026

P.C. :-

1. This matter was heard for sometime yesterday. Since we expressed disinclination, liberty was granted to the Petitioners to take instructions for withdrawal of the Writ Petition.

2. Today, when the matter is called out, the learned Advocate for the Petitioners submits that the Petitioners do not desire to withdraw this Petition.

3. The Petitioners have put forth prayer clauses (a), (b), (c), (d), and (e) as under :-

- (a) that the Hon'ble Court be pleased to exercise its power under Article 226 of the Constitution of India. by issuing a writ of mandamus directing the Respondent No. 1 to 5 to produce all papers, files and records in respect of the building known as Orchid Enclave managed by the Respondent No. 6 situated at Bellasis Road, Mumbai Central, Mumbai-400 008 and to give all the report with regard to Occupation Certificate in respect of the said building;*
- (b) the Respondent No. 1 to 4 be directed by writ of mandamus and/or any other appropriate writ for getting all the premises, flats and all the commercial premises in the said building Orchid Enclave managed by the Respondent No. 6 situated at Bellasis Road, Mumbai Central, Mumbai -400 008 vacated with the scheduled time in view of not having the Occupation Certificate under section 353(A) of the Mumbai Municipal Corporation Act;*
- (c) the Respondent No. 5 and its members should be prosecuted under section 353(A) of the Mumbai Municipal Corporation Act who are occupying their respective flats inspite of knowing the fact that there is no Occupation Certificate issued under section 353(A) of the Mumbai Municipal Corporation Act;*
- (d) the Respondent No. 5 and their members, flat purchasers and all those who are occupying their respective flats in the said building Orchid Enclave managed by the Respondent No. 6 situated at Bellasis Road, Mumbai Central, Mumbai 400 008 should be restrained by an order of this Hon'ble Court for residing, occupying in their respective flats in the said building Orchid Enclave managed*

by the Respondent No. 6 situated at Bellasis Road, Mumbai Central, Mumbai-400 008.

- e) The Respondent No. 1 to 7 be directed to complete the process of having the Occupation Certificate and to demolish all the illegal and unauthorized construction because of which the Occupation Certificate is not issued in respect of the said building i.e. **ORCHID ENCLAVE** managed by the Orchid Enclave Co-operative Housing Society Limited, situated at Bellasis Road, Mumbai Central, Mumbai – 400008;*

4. We have heard the learned Advocates for the Petitioners and the Respondent No.7.

5. The Petitioners are the Members of Respondent No.6 Society. The Society has signed the Consent Terms with Respondent No.7. The entire development of the property has been completed. Those persons entitled to occupy tenements have now been allotted the respective tenements and granted fit-out possession, which is a term used to mean that those who are entitled to the tenements would be permitted to carry out their internal furnishing in order to make their flats habitable. This is because the occupation certificate is yet to be granted to the building.

6. The learned Advocate for Respondent No.7 further submits that, in Commercial Suit No.1369 of 2018, Contempt Petition No.33 of 2024 was filed in a representative capacity on behalf of the Society. In the said Contempt Petition, vide order dated 16th April, 2025, the learned Single Judge has directed as under :-

1. *Pursuant to the order dated 19th March 2025, today when the matter is called out, Mr. Shanay Shah, learned Counsel, appearing for the Respondent No.1 tenders across the bar a communication dated 3rd April 2025 by the Respondent No.1 to the Executive Engineer of the Municipal Corporation for Greater Mumbai ("MCGM") requesting the respective departments to visit the suit premises and confirm that the unauthorized work in the building known as Enclave Wing 'A' and Wing 'B' have been removed as per the approved plan, so that the occupation certificate for the suit premises can be granted expeditiously.*
2. *Mr. Sarda, learned Counsel, appears for the Petitioners and submits that the said process will only delay the obtention of the occupation certificate and that the Respondents can personally inspect the suit premises and ascertain that the encroachment has already been removed and thereafter proceed to obtain the occupation certificate expeditiously.*
3. *Having heard the learned Counsel, this Court notes that the communication by the Respondent No.1 to the MCGM is dated 3rd April 2025, and today we are on the 16th April 2025. Accordingly, this Court expects that the MCGM will in a couple of weeks visit the suit premises to confirm that the unauthorized work/encroachment have*

been removed and present a report to this Court by the next date.

4. *Let a copy of this order be served upon the concerned department of the MCGM and let the concerned Counsel for the MCGM also be informed.*
5. *List on 5th May 2025.*
6. *Let the learned Counsel for the MCGM remain present in Court on next date with an update in the matter.*

7. The learned Advocate for Respondent No.7 further submits that after the MCGM carried out an inspection of the site, it noticed several deviations on the part of various occupants. The Petitioners are also identified as those who have indulged in illegalities and have resorted to deviation. As a result, the Corporation will now have to consider these circumstances while granting the Occupation Certificate. Nevertheless, this subject is *sub judice* before the learned Single Judge in the Commercial Suit along with Contempt Petition.

8. Since, the Petitioners are the Members of Respondent No.6 Society, a stand-alone Petition of this nature cannot be entertained and more so for the reason that the subject matter is

already before the learned Single Judge in pending proceedings.

9. In view of the above, **this Petition is dismissed.**

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)