



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

WRIT PETITION NO.3602 OF 2022

- | | | | |
|----|---|---|-----------------|
| 1. | Hiroo Tuljaram Shahani |] | |
| | Aged: 74 years, Occ.: retired. |] | |
| 2. | Jyoti Hiroo Shahani, |] | |
| | Aged: 67 years, Occ. Retired, |] | |
| | Both residing at 14/A, Ground Floor, |] | |
| | New Hindustan CHSL, Plot No.272, 36 th |] | |
| | Road, Bandra (West), Mumbai 400 050. |] | ...Petitioners. |

V/s.

- | | | | |
|----|--|---|------------------|
| 1. | The State of Maharashtra |] | |
| | represented through Government |] | |
| | Pleader, OS, High Court, Bombay. |] | |
| 2. | The Municipal Corporation of |] | |
| | Greater Mumbai, a statutory |] | |
| | authority having its headquarters at |] | |
| | MCGM Headquarters, Opp. CSMT, |] | |
| | Mahapalika Marg, Mumbai 400 001 |] | |
| | and Ward Office at H/W Ward Office |] | |
| | Bldg., 2 nd Hasnabad Lane, Khar |] | |
| | (West), Mumbai 400 052. |] | ... Respondents. |

**WITH
SHOW CAUSE NOTICE NO.3 OF 2025
IN
WRIT PETITION NO.3602 OF 2022**

- | | | | |
|----|---|---|-----------------|
| 1. | Hiroo Tuljaram Shahani |] | |
| | Aged: 74 years, Occ.: retired. |] | |
| 2. | Jyoti Hiroo Shahani, |] | |
| | Aged: 67 years, Occ. Retired, |] | |
| | Both residing at 14/A, Ground Floor, |] | |
| | New Hindustan CHSL, Plot No.272, 36 th |] | |
| | Road, Bandra (West), Mumbai 400 050. |] | ...Petitioners. |

V/s.

1. The State of Maharashtra]
represented through Government]
Pleader, OS, High Court, Bombay.]
2. The Municipal Corporation of]
Greater Mumbai, a statutory]
authority having its headquarters at]
MCGM Headquarters, Opp. CSMT,]
Mahapalika Marg, Mumbai 400 001]
and Ward Office at H/W Ward Office]
Bldg., 2nd Hasnabad Lane, Khar]
(West), Mumbai 400 052.]
3. Charulata Lulla,]
1st Floor, 14/A, New Hindustan CHSL,]
Plot No.272, 36th Road, Bandra (W),]
Mumbai 400 050.] ... Respondents.

**WITH
INTERIM APPLICATION NO.234 OF 2023
IN
WRIT PETITION NO.3602 OF 2022**

Charulata Lulla,]
Aged 73 years, Occ.: Housewife,]
1st Floor, 14/A, New Hindustan CHSL,]
Plot No.272, 36th Road, Bandra,]
(West), Mumbai – 400 050.] ... Applicant.

IN THE MATTER OF:

1. Hiroo Tuljaram Shahani]
Aged: 74 years, Occ.: retired.]
2. Jyoti Hiroo Shahani,]
Aged: 67 years, Occ. Retired,]
Both residing at 14/A, Ground Floor,]
New Hindustan CHSL, Plot No.272, 36th]
Road, Bandra (West), Mumbai 400 050.] ...Petitioners.

V/s.

- | | | | |
|----|--|---|-----------------|
| 1. | The State of Maharashtra |] | |
| | represented through Government |] | |
| | Pleader, OS, High Court, Bombay. |] | |
| 2. | The Municipal Corporation of |] | |
| | Greater Mumbai, a statutory |] | |
| | authority having its headquarters at |] | |
| | MCGM Headquarters, Opp. CSMT, |] | |
| | Mahapalika Marg, Mumbai 400 001 |] | |
| | and Ward Office at H/W Ward Office |] | |
| | Bldg., 2 nd Hasnabad Lane, Khar |] | |
| | (West), Mumbai 400 052. |] | |
| 3. | Charulata Lulla, |] | |
| | Aged 73 years, Occ.: Housewife, |] | |
| | 1 st Floor, 14/A, New Hindustan CHSL, |] | |
| | Plot No.272, 36 th Road, Bandra, |] | |
| | (West), Mumbai – 400 050. |] | ... Respondents |

**WITH
INTERIM APPLICATION (L) NO.28860 OF 2024
IN
WRIT PETITION NO.3602 OF 2022**

Jyoti Hiroo Shahani,]	
Aged: 69 years, Occ. Retired residing at]	
14/A, Ground Floor, New Hindustan]	
CHSL, Plot No.272, 36 th Road, Bandra]	
(West), Mumbai 400 050.]	... Applicants.

IN THE MATTER OF:

- | | | | |
|----|---|---|-----------------|
| 1. | Hiroo Tuljaram Shahani |] | |
| | Aged: 74 years, Occ.: retired. |] | |
| 2. | Jyoti Hiroo Shahani, |] | |
| | Aged: 67 years, Occ. Retired, |] | |
| | Both residing at 14/A, Ground Floor, |] | |
| | New Hindustan CHSL, Plot No.272, 36 th |] | |
| | Road, Bandra (West), Mumbai 400 050. |] | ...Petitioners. |

V/s.

- | | | | |
|----|--|---|-----------------|
| 1. | The State of Maharashtra |] | |
| | represented through Government |] | |
| | Pleader, OS, High Court, Bombay. |] | |
| 2. | The Municipal Corporation of |] | |
| | Greater Mumbai, a statutory |] | |
| | authority having its headquarters at |] | |
| | MCGM Headquarters, Opp. CSMT, |] | |
| | Mahapalika Marg, Mumbai 400 001 |] | |
| | and Ward Office at H/W Ward Office |] | |
| | Bldg., 2 nd Hasnabad Lane, Khar |] | |
| | (West), Mumbai 400 052. |] | |
| 3. | Charulata Lulla, |] | |
| | 1 st Floor, 14/A, New Hindustan CHSL, |] | |
| | Plot No.272, 36 th Road, Bandra, |] | |
| | (West), Mumbai – 400 050. |] | ... Respondents |

Mr. Aseem Naphade i/by Adv. Omar Khaiyam Shaikh for the Petitioners.

Ms. Poonam Mittal, AGP for Respondent No.1-State.

Ms. S.V. Tondwalkar i/by Adv. Komal Punjabi for Respondent No.2-BMC.

Mr. Rajiv Narula a/w. Adv. Sushil Chaurasia i/by SKC Legal for Respondent No.3.

Mr. Kishor Pawar, Jr. Engg. (B&F) H/W Ward, present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 23rd April, 2025.

PRONOUNCED ON : 20th June, 2025

Judgment (Per : Kamal Khata, J) :-

- 1) The Petitioners are occupants of ground floor of the premises bearing No.14/A, New Hindustan CHS Ltd situated on Plot No.272, 36th

Road, Bandra (West), Mumbai 400050 ('writ premises'). By this Petition, the Petitioners challenge the Notice dated 14th March, 2020 issued under Section 53(1) of the Maharashtra Regional Town Planning Act 1966 ('MRTP Act') as well as the speaking Order dated 29th April 2022 passed by the Brihanmumbai Municipal Corporation ('BMC'). The speaking Order identifies seven violations, which are in contravention of the approved plan dated 5th January 1967.

2) The nine grounds listed at pages 18 to 20 highlight three principal grievances:

- a) that, the Petitioners were not granted an opportunity of being heard,
- b) that, the Petitioners have not carried out any unauthorised construction and whatever renovations they had carried out were long ago with the permission of the society, and
- c) that, it is Respondent No. 3 who is attempting to evict the Petitioners by instigating the BMC to act against them.

3) By an Order dated 25th November, 2024, this Court directed the Executive Engineer of the BMC to conduct an inspection of the writ premises, as well as the 1st floor residence of Respondent No.3, and to submit a report. The Designated Officer of BMC subsequently filed his report dated 5th December, 2024, identifying seven instances of unauthorized work within the writ premises occupied by the Petitioners and

five instances of unauthorized work on the 1st floor premises occupied by Respondent No.3.

4) On 12th December, 2024, during the hearing, the Petitioners gave an undertaking to this Court, to adopt all necessary remedial measures to restore the ground floor of the writ premises to its original position by removing and/or demolishing the unauthorised construction within a period of two weeks, i.e., by 26th December, 2024. The matter was then adjourned to 9th January, 2025 for compliance.

5) On 9th January, 2025, Mr. Aseem Naphade, the learned Advocate for the Petitioners, attempted to explain the reasons for their non-compliance with the undertaking. He submitted that, certain unauthorized works could not be removed as doing so posed a risk of the floor above caving in. He further contended that, being lay persons, the Petitioners were unaware of these potential consequences and technicalities at the time of giving the undertaking.

6) However, Ms. Tondwalkar, learned Advocate for the Respondent No.2-BMC, countered this assertion, stating that, as per the Engineer's opinion, the unauthorised work could indeed be removed. She further confirmed and reiterated this position after obtaining instructions from the Executive Engineer who was present in Court.

7) Upon hearing both learned Counsel and upon perusal of the report and photographs, we find that there has been a willful and deliberate

breach of the undertaking given to this Court during the hearing on 12th December, 2024 wherein it was assured that all remedial measures would be undertaken to restore the ground floor to its original condition. Notably, the Petitioners had initially denied any illegality; however following the BMC's report highlighting the irregularities, they agreed to remove the unauthorised works and restore the premises to its original condition as per the sanctioned plan.

8) Accordingly, a show cause notice was issued to the Petitioners on 9th January 2025. Additionally, we directed the BMC to submit a report accounting for both compliances and non-compliances, and the matter was adjourned.

9) BMC filed yet another report dated 23rd January 2025, indicating non-compliance with five out of the seven unauthorised works, partial compliance with one, and complete compliance with only one. The Petitioners requested time to comply, which was granted. By 5th March 2025, only one item remained to be restored. Upon a query posed by this Court, the Advocate for the BMC sought additional time to obtain instructions from the BMC's engineer. On 21st April 2025, BMC furnished a report dated 5th March 2025 categorically stating that the unauthorised construction could be removed and the area restored in accordance with the approved plan.

10) Despite the passage of almost five months, as evident from this

Court's Orders dated 25th November 2024, 12th December 2024, 9th January 2025 and 18th February 2025, during which the Court provided multiple opportunities to restore the premises to its original position, they have failed to remove one of the unauthorised constructions. This failure is based on a broad contention that restoration is not feasible, relying on an Architect's report.

11) The relevant paragraphs of the Architect's report read as under:

"In order to commence with the requirement /compliance of the aforesaid order, I shall be required to obtain the proper and necessary documents from the Corporation such as O.C Plan of the said building and structural drawing.

"Further in terms of removal/ demolition of the alleged unauthorised alteration addition's etc. it shall become necessary to conduct/ carry-out structural audit structural stability tests in order to assess the integrity and/or stability of the ground floor, first floor and terrace along with any other or further structure erected/ constructed on upon the terrace, considering the age of the building.

It is also pertinent to record that internal structural audit and stability test shall also be required to be carried out of the 1st floor to assess the strength and structural integrity of the said premises in order to examine and assess whether there is any possibility/chances of a cave in or failure of the 1st floor premises upon removal/demolition of the alleged unauthorised extension as stated in the interim order referred to herein above."

12) The report, to say the least, is devoid of any justification or factual foundation. The remaining unauthorised work as described by the Notice and speaking Order is: “Unauthorize addition, alteration in Bath, W.C and W.P.” which involves the conversion of the area beneath the staircase into a bathroom. The BMC engineer’s report dated 5th March 2025 clearly states that the area can be restored and specifies the manner in which it can be done.

13) Mr. Rajiv Narula Advocate for Respondent No. 3 on instructions has also expressed willingness to co-operate and permit the BMC Engineers to remove the bathroom and restore the area. However, the Petitioners continue to refuse permission for either the BMC or Respondent No.3 to undertake the necessary restoration.

14) In the case of *Celir LLP vs. Sumati Prasad Bafna* reported in *2024 SCC OnLine SC 3727* the Apex Court observed as under:

“197. Contempt jurisdiction exists to preserve the majesty and sanctity of the law. Courts are the guardians of justice, and their decisions must command respect and compliance to ensure the proper functioning of society. **When individuals or entities challenge the authority of courts through wilful disobedience or obstructive behaviour, they undermine the rule of law and create the risk of anarchy. Contempt serves as a mechanism to protect the integrity of the courts, ensuring that they remain a symbol of fairness, impartiality, and accountability.**

198. When judicial orders are openly flouted or court proceedings are disrespected, it sends a signal that the rule of law is ineffective, leading to a loss of trust in the system. Judicial decisions must remain unimpaired, free from external pressures, manipulation, or circumvention. Acts that attempt to mislead the court, obstruct its functioning or frustrate its decisions distort the process of justice and would amount to contempt.

199. The contempt jurisdiction of this court cannot be construed by any formulaic or rigid approach. Merely because there is no prohibitory order or no specific direction issued the same would not mean that the parties cannot be held guilty of contempt. The Contempt jurisdiction of the court extends beyond the mere direct disobedience of explicit orders or prohibitory directions issued by the court. **Even in the absence of such specific mandates, the deliberate conduct of parties aimed at frustrating court proceedings or circumventing its eventual decision may amount to contempt.** This is because such actions strike at the heart of the judicial process, undermining its authority and obstructing its ability to deliver justice effectively. The authority of courts must be respected not only in the letter of their orders but also in the broader spirit of the proceedings before them.

200. Any contumacious conduct of the parties to bypass or nullify the decision of the court or render it ineffective, or to frustrate the proceedings of the court, or to enure any undue advantage therefrom **would amount to contempt.** Attempts to sidestep the court's jurisdiction or manipulate the course of litigation through dishonest or obstructive conduct or malign or distort the decision of the courts would

inevitably tantamount to contempt sans any prohibitory order or direction to such effect.

201. Thus, the mere conduct of parties aimed at frustrating the court proceedings or circumventing its decisions, even without an explicit prohibitory order, constitutes contempt. Such actions interfere with the administration of justice, undermine the respect and authority of the judiciary, and threaten the rule of law.”

[Emphasis Supplied]

15) In the present case, the conduct of the Petitioners’ is obstinate and reflects a willful disregard of their obligations and of the authority of this Court. Such conduct cannot be condoned. Over a period of five months, it is evident that the Petitioners have willfully and with the *mala fide* intent, sought to delay these proceedings, thereby perpetuating the illegalities they committed. Through wilful disobedience and obstructive behaviour, the Petitioners have undermined the rule of law and flagrantly breached the undertaking given to this Court on 12th December 2024, sending a signal that the rule of law is ineffective and thereby eroding public trust in the judicial system.

16) Initially, we were inclined to exercise restraint, considering the age of the Petitioners. However, they have demonstrated obstinacy and complete lack of respect for their own solemn undertaking given to this Court. This willful and deliberate breach of their own undertaking to the Court is unacceptable. The Petitioners actions strike at the very core of the

judicial process, undermining its authority and obstructing its ability to deliver justice effectively.

17) In these circumstances, we find the Petitioners guilty of contempt. We observe that the contemnors have shown no remorse, and the apology tendered by the learned counsel for the Petitioners appears to be a mere formality lacking genuine contrition.

18) In view thereof, we impose a sentence of two weeks simple imprisonment and a fine of Rs.2,000/- on the contemnors.

18.1) The fine shall be deposited in the Registry of the Court within a period of one week from the date of uploading of the present Judgment on the Official website of High Court, Bombay.

18.2) In the event of failure to deposit the fine within stipulated period, the contemnors shall undergo a further sentence of one week of simple imprisonment.

18.3) We direct the Respondent 1 to secure the presence of the contemnor to undergo imprisonment imposed upon them.

18.4) Needless to say, the Authorities or instrumentalities of the State shall comply with the directions issued by this Court with due diligence and utmost expediency.

18.5) A compliance report shall be filed in the Registry of this Court within three months from the date of this Order.

19) We direct the Respondent Nos.1 and 2 to remove all the

illegalities and unauthorized constructions carried out by Petitioners and restore the writ premises as per the approved plan within a period of one week from the date of this Order. The cost of removal and restoration shall be borne by the Petitioners. In the event that, the Petitioners fail to pay the costs, the said amounts shall be recovered by taking appropriate proceeding against the Petitioners as per the law.

20) In view of the above, nothing further survives in the Writ Petition.

20.1) Show Cause Notice is accordingly made absolute.

20.2) Interim Application No.234 of 2023 and Interim Application (L) No.28860 of 2024 are accordingly stand disposed off.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

21) At this stage, learned counsel appearing for the Petitioners submits that, considering the advanced age of the Petitioners, the operation and implementation of the Judgment directing imprisonment may be suspended for a period of 4 weeks from today.

22) He submitted that the Petitioners will deposit the fine amount, under protest, in the registry of this Court within a period of one week from today.

22.1) The said statement is accepted.

23) In view of the above and at the request of the learned counsel for the Petitioners, the direction to surrender and undergo sentence is hereby suspended for a period of 4 weeks from today.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.).