IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16958 OF 2024

1. Avinash Dominic Ghosal]
Aged: 48 years, Occu: Business,]
An Adult, Indian Inhabitant,]
Residing at: Chulne, Diwanman,]
Tal. Vasai and Dist. Palghar.] ...Petitioner.

V/s

1. State of Maharashtra,]
Mantralaya, Mumbai.]

2. The Commissioner,]
Vasai Virar Municipal Corporation]
Virar (West), Palghar – 401303,]
Maharashtra.]

3. Smt. Apolina Bastyav Miranda]
Age: 65 years, Occu: Housewife,]
R/at. Chulne, Diwanman, Vasai (West),]
Taluka Vasai, District Palghar.]

4. Roston Bastyav Miranda]
Age: 40 years, Occu: Service,]
R/at. Chulne, Diwanman, Vasai (West),]
Taluka Vasai, District Palghar.]

5. Mrs. Rumilda Sanket Gonsalves,]
Age: 36 years, Occu: Service,]
R/at. Above Aadhar Medical,]
Manikpur Naka, Vasai (West),]
Taluka Vasai, District Palghar.]

6. Johna Ignatius D'Souza,]
Age: 68 years, Occu: Housewife,]
R/at. Chulne, Diwanman, Vasai (West),]
Taluka Vasai, District Palghar.]

SUMEDH NAMDEO SONAWANE
Digitally signed by SUMEDH NAMDEO SONAWANE
Date: 2025.06.21 12:56:34 +0530

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

7. Honey Ignatius D'Souza,]
Age: 49 years, Occu: Service,]
R/at. Chulne, Diwanman, Vasai (West),]
Taluka Vasai, District Palghar.]

8. Laila Johson Gonsalves,]
Age: 47 years, Occu: Service,]
R/at. Chauk Shejol, Chulne,]
Vasai (West), Taluka Vasai,]
District Palghar.] ...Respondents.

Mr. Prafulla B. Shah i/by Adv. Kavyal P. Shah for the Petitioner.

Ms. S.S. Bhende, AGP for the Respondent No.1-State.

Mr. Swati Sagvekar for the Respondent No.2.

Mr. Anil D'Souza a/w. Adv. Elaine Fargose i/by Adv. Ernest Tuscano for Respondent Nos.3 to 5.

Ms. Rumilda Gonsalves, Respondent No.5, present in person.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 17th April, 2025.
PRONOUNCED ON : 20th June, 2025.

JUDGMENT (Per Kamal Khata, J.):-

1) Rule. Rule made returnable forthwith and the Petition is finally heard with the consent of all the parties.

2) By this Petition under Article 226 of the Constitution of India the Petitioner seeks the demolition of illegal and unauthorized construction by Respondent Nos.3 to 5 on the writ property.

3) The Petitioner claims to be the lawful owner of part of the land

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

bearing survey No.123, Hissa Nos.1 & 6, located at Mouje, Diwanman admeasuring about 004.05 hectares (4 Gunthas) ("**writ property**") based on the registered Sale Deed dated 24th November, 1975. According to the Petitioner, the Respondent Nos.3 to 5 unlawfully entered upon the writ property and started construction on or about 12th February, 2024.

4) Pursuant to a complaint lodged by the Petitioner on 20th February 2024, Respondent No.2 issued a letter to Respondent No.5, calling upon him to submit all relevant documents pertaining to the construction. The letter cautioned that failure to furnish the said documents would render the construction illegal and would result in initiation of proceedings under Sections 52, 53, and 57 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act").

5) Respondent No.5 replied on 21st February 2024, seeking guidance on the possibility of regularizing the said construction. In response, Respondent No.2, by communications dated 7th March 2024 and 11th March 2024, unequivocally informed him that no permission had been granted for any construction.

6) According to the Petitioner, Respondent No.2 stopped short at merely issuing communications and failed to take any concrete steps as per law, to prevent the ongoing unauthorized construction and encroachment. Due to the inaction of Respondent No.2 against Respondent Nos.3 to 5, the

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

Petitioner instituted Regular Civil Suit No. 119 of 2024 before the Civil Court, Senior Division, Vasai, seeking an injunction. By an Order dated 2nd May 2024, the Civil Court granted an interim injunction restraining Respondent Nos.3 to 5 from carrying out further construction on the subject property.

7) However, on an Appeal from the said Order, the District Court by its Order dated 24th June 2024, vacated the injunction but restrained Respondent Nos.3 to 5 from creating any third-party rights in respect of the property. The Petitioner's Application seeking a stay on the effect and operation of the said Order during the appeal period was rejected by the Appellate Court by Order dated 25th June 2024.

8) Aggrieved by the said Order, the Petitioner filed Writ Petition No.13292 of 2024, wherein the learned Single Judge of this Court issued notices to Respondent Nos.3 to 8 on 4th July 2024. The Writ Petition was, however, dismissed by Order dated 8th October 2024, as the Court observed that the Petitioner's rights would be protected and addressed through the proceedings initiated by Respondent No.2 under the MRTP Act.

9) Despite issuance of a letter dated 16th July 2024 and a legal notice dated 4th October 2024 by the Petitioner to Respondent No.2 calling upon it to take action against the illegal and unauthorized construction carried out by Respondent Nos.3 to 5, no action was taken. Aggrieved by

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

this inaction and in the absence of any cogent or justifiable reason for the same, the Petitioner has been constrained to file the present Petition.

10) Mr. Prafulla Shah, learned Advocate representing the Petitioner, submitted that, it is an undisputed fact that the construction carried out by Respondent Nos.3 to 5's on the writ property is illegal and unauthorized. It is also an undisputed fact that Respondent No.2 has failed to take any action against the Respondent Nos.3 to 5 and has wilfully stopped from taking further action despite their own written communications acknowledging that the construction carried out by Respondent Nos.3 to 5 is wholly unauthorized. In the aforesaid circumstances, he urges the Court to direct the Respondent No.2 to take necessary action against Respondent Nos.3 to 5 and demolish the illegal and unauthorized construction.

11) Ms. Swati Sagvekar, learned Advocate for Respondent No.2 relies upon two Affidavits filed by one Mr. Ajit Muthe, the Deputy Municipal Commissioner dated 10th March, 2025 and the other is of Mr. Manoj Vasant Vanmali, the Assistant Municipal Commissioner dated 2nd April, 2025. She highlights the fact that, pursuant to the complaint, the Corporation had visited the premises and subsequently issued a notice dated 20th February, 2024. In response to the said notice they had received an Application for regularization of the structure. Based on that, she submitted that, the

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

Corporation proposes to take action by following the due process of law against the illegal and unauthorized structure. Referring to the second Affidavit she submits that, pursuant to the Order dated 10th March, 2025 the Officers of the Corporation visited the site to ensure that no further work was being carried out pursuant to the Orders and the concerned Officer took appropriate photographs to show that no further work was being carried out. She submits that, if the Court directs the Corporation would take necessary action against the Respondent Nos. 3 to 5.

12) Mr. Anil D'Souza, learned Advocate appearing for Respondent Nos.3 to 5 strongly contended that, the Petitioner has not come to the Court with clean hands. He asserted that, the Petitioner himself has carried out unauthorized construction on his part of the plot. He urged the Court not to ignore those facts, particularly when the Petitioner himself had flagrantly violated the law exhibiting disregard and disrespect for the law. The learned Advocate asserted that, the writ property is purchased by Respondent Nos.3 to 5's father under a registered Sale Deed dated 13th May, 1999.

12.1) Mr. D'Souza asserted that, the law permits regularisation under the provisions of Section 53(2) of the MRTP Act after notice is issued and allows for seeking *post facto* permission upon submission of all necessary documents. In support of his contention, he relied on the Supreme Court decision in the case of *Mahendra Baburao Mahadik & Ors. vs. Subhash*

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

Krishna Kanitkar & Ors. reported in *(2005) 4 SCC 99,* which, according to him, considers the entire scheme under Chapter IV of the MRTP Act, 1966. He submitted that, the local Authority is empowered to entertain an Application for construction permission at two stages - either before commencement of construction under Section 44 or post-construction upon service of notice under Section 53 (2) of the MRTP Act, 1966. Relying on paragraphs 36 and 43 of the *Mahendra Mahadik judgement* (supra), he contended that, the Respondent Nos.3 to 5 were entitled to submit a *post facto* application for regularization of their structure.

12.2) He further asserted that, Mahendra Mahadik's (supra) judgment has been consistently followed in :

(i) *Sudhir M. Khandwala vs. Municipal Corporation of Greater Mumbai & Ors* reported in *2010 (2) Mh.J.J. 759;*

(ii) *M/s. Abhishek Builders & Ors. vs. CIDCO* reported in *2012 (5) Mh.L.J. 413;*

(iii) *Rajiv Mohan Mishra vs. CIDCO* reported in *2018 SCC OnLine Bom 4132 ;*

(iv) *Kaalkaa Real Estate Pvt. Ltd. & Anr. vs. MCGM* reported in *2022 SCC Online Bom 2536.*

12.3) Mr. D'souza contended that, a cumulative reading of these judgements clearly supports his argument that where the structure constructed on privately owned property does not substantially exceed the permissible limits, it can be regularized upon payment of penalty and

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

charges as may be determined by the competent authority in accordance with law. He further emphasized that the response of the Deputy Director of Town Planning did not cite any violations warranting outright rejection of the regularization Application. Accordingly, he argued that the Petition is devoid of merit and ought to be dismissed.

13) We have heard all the learned Counsel for the parties and perused entire record.

14) This is yet another case where a landowner chooses to first construct and then seek to regularize the construction. We have dealt with a similar issue in *High Court on its Own Motion V/s. the State of Maharashtra through Principal Secretary & Ors.,* reported in *2024 SCC OnLine Bom 918.*

15) We find this type of cases routinely in our Court. We are constrained to observe that this precise understanding, that the law permits regularisation under the provisions of Section 53(2) of the MRTP Act, after notice is issued and allows for seeking *post facto* permission upon submission of all necessary documents, as contended by Mr. D'Souza, is carried by the Local Authorities, Municipal Corporations and Competent Authorities created under Statute for planned development. On this basis, they stop at issuing notices under relevant provisions and do not take it to its logical end, though the law prescribes.

15.1) But this is contrary to law – and is impermissible.

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

16) We are constrained to take a judicial notice that that the local authorities, competent Authorities and Municipal Corporations, routinely refrain from taking consequential actions after issuing notices, such as demolition and more importantly prosecution of the law violators. Such inaction results in sequential repercussions such as creation of third-party rights for which the State has no summary remedy. Recovery of money from those builders/developers is only a distant dream and take decades for final adjudication and execution.

16.1) On the other hand, the builder/developer alongwith the responsible Officers and the Police though jointly and severally responsible for these illegalities have, thus far, escaped any form of accountability or punitive action. These inactions resulting in illegal acts by the guardians of law and order incite social unrest and shake the social fabric.

16.2) Presently, we find no effective deterrent evolved by the State to stem this rot. We have, in our city, an equal number of illegal structures. Indirectly granting security to the violators is unacceptable. The dichotomy of State is evident and we do not appreciate it.

17) The arguments of the Petitioner's Advocate in the present case have already been considered by this Court, in the case of *High Court on its Own Motion (supra).* Though in that case the concerned person did not have any right on the property the Court dealt with the proposition raised

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

in the present case. The relevant paragraphs are reproduced herein for ready reference:

> "57. Mr. Anturkar puts his case at the broadest but let us first deal with what he does not argue. It is not his case that there need not be a vestige of entitlement to development. That is why we set out the definition of a development right. An encroacher is an encroacher, he submits, and we think quite correctly. **It is only if a person has some semblance of a right to develop, that person is entitled to apply for retention of the work.** He hastens to add that this does not mean that the applicant is necessarily entitled to have that permission for retention granted. **But he is certainly entitled to apply for such a retention permission. It is then for the Planning Authority to decide that application.** It may or may not be granted. But the making of the application for retention cannot be forestalled by saying that no development permission was applied for or obtained.
>
> 62. **In other words, on Mr. Anturkar's construct, if something is put up with no permission at all, none even having been sought, the noticee is entitled in law to apply for 'retention' or regularization — and until that application is decided, this admittedly illegal construction must continue. Or to put it even more dramatically : no one needs ever to apply for a building or development permission. Anyone (with some connection to the land or its development) can simply start development. Never mind the provisions of Sections 43 to 45. That wholly illegal development cannot be touched until an application for regularisation is made**

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

and rejected.

63. Courts everywhere are used to insidious — even sinister — arguments being presented in apparently attractive forms, but courts are just as capable of unravelling these and discerning them for what they really are. **Mr. Anturkar's arguments clearly amount to this : so long as the person is not a trespasser, he need not apply for any permission whatsoever. He can construct whatever he likes. Because there is always available to him a recourse to Section 53(3) and indeed this is something of a waiting game because this unilaterally driven builder does not even have to apply at this stage. He has to await a municipal notice from the Planning Authority under Section 53(1). Once he receives it, even then all is not lost. He simply has to apply for retention of that for which he sought no permission and he will receive by operation of statute an automatic stay until his application is decided.**

85. Section 53, as amended, makes a clear differentiation between types of violations. Violations under Section 52(1)(a) and (c) are in one category and are segregated from those in 52(1)(b) and (d). That the ones in (a) and (c) are more serious is clear because the notice for violations under Section 52(1)(a) or (c) receives only a 24-hour notice. The notice for a violation under Section 52(1)(b) or (d) gets a month's latitude.

87. There is another perspective, one that is possibly dispositive. **The amended Section 53 now makes a clear distinction between an illegality and an irregularity. Section**

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

52(1)(a) and (c) cases — development with no permission or where permission is revoked — are illegal. Hence the shorter notice and immediate demolition. Section 52 (1)(b) and (d) cases — where there is some permission, but it has been contravened — are irregularities. Hence the longer notice period and the opportunity to 'comply'. There can be no question of 'compliance' in a case of illegality.

90. **Section 53(3) does not contemplate ex post facto permission for an illegality. It contemplates the continuance, retention or regularization of that which had some semblance of a permission but where there is an anomaly — to wit, an irregularity.**

91. Section 53 does and cannot contemplate the curing of an illegality. If it did, Section 53 would be liable to be struck down inter alia on the ground of manifest arbitrariness.

94. There are two fundamental principles behind development permissions. First, any development presupposes some form of a right connected to the land (which includes the right to develop). Without that, there can be no permission because even if it was sought it would be rejected. The Rules under the Maharashtra Development Plans Rules, 1970 inter alia make it clear that amongst the various requirements for the grant of planning permission are the extracts of record of rights of Property Register Cards and other material particulars. This is to be found in Rule 6. But the requirements of Rule 6 are engrafted into Rule 10 which speaks of the procedure to be followed in retention. Thus, axiomatically, the right to develop must first be

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

established.

95. The second part is that retention on its own presupposes that there is at least some minimal permission sought and obtained. Retention cannot apply to a case where no permission was ever sought. This approach would completely negate the operation of Sections 43, 44, 45 and other provisions of the MRTP Act. It would run contrary to half a century's jurisprudence in this country.

100. There are several decisions where the Supreme Court has deprecated the habit of bypassing regulations and building control norms : see : *Shanti Sports Club v. Union of India; Priyanka Estates International Private Limited v. State of Assam.*

101. In the context of Sections 54 to 56 of the MRTP Act, in *Esha Ekta Apartments Cooperative Housing Society Limited v. Municipal Corporation of Greater Mumbai,* the Supreme Court held that these provisions do not mandate or contemplate the regularisation of construction made without obtaining the necessary permissions or in violation. Paragraphs 45.5, 45.6 and 46 of the Esha Ekta judgment say:

"45.5 Section 54 empowers the Planning Authority to stop unauthorized development. Section 55 enables the Planning Authority to remove or discontinue unauthorized temporary development summarily.

45.6 Section 56 empowers the Planning Authority to take various steps in the interest of proper planning of particular areas including the amenities contemplated by the development plan. These steps include discontinuance of any

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

use of land or alteration or removal of any building or work.

46. An analysis of the above reproduced provisions makes it clear that any person who undertakes or carries out development or changes the use of land without permission of the Planning Authority is liable to be punished with imprisonment. At the same time, the Planning Authority is empowered to require the owner to restore the land to its original condition as it existed before the development work was undertaken. **The scheme of these provisions do not mandate regularization of construction made without obtaining the required permission or in violation thereof."**

(Emphasis Supplied)

18) In our considered view, the learned counsel for the Respondents has not only misread the applicable legal provisions but has also fundamentally misinterpreted them. It is regrettable that, despite being specifically referred to the binding precedent in *High Court on its Own Motion* (Supra), the learned Advocate failed to distinguish the same and instead persisted in relying upon judgments that are inapplicable. He further insisted that this Court's understanding was erroneous while his submissions are and were only correct. Such conduct and approach, in our opinion, merits strong disapproval and is wholly unbecoming of an Officer of the Court.

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

19) Notably, the judgment *High Court on its Own Motion* (Supra) holds the field as of today. As such, it continues to bind this Court. We also unequivocally and respectfully affirm the view expressed therein.

20) Perusal of entire record clearly reveals that, the construction carried out by Respondent Nos.3 to 5 is wholly illegal although on property purportedly owned by them. Such an irregularity is incurable as held by the Supreme Court in the case of *K. Ramdas Shenoy V/s. The Chief Officers, Town Municipal Council, Udipi & Ors.* reported in *(1974) 2 SCC 506.*

21) We are in complete disagreement with Mr. D'Souza's contentions that such blatant illegal construction can be regularized.

21.1) In recent pronouncements of the Supreme Court in the case of *Rajendra Kumar Barjatia & Anr. vs. U.P. Avas Evam Vikas Parishad & Ors.* reported in *2024 SCC OnLine SC 3767* and in the case of *Kaniz Ahmed vs. Sabuddin & Ors.* reported in *2025 INSC 610*, the Supreme Court has clearly directed that as follows:

a) the constructions which are audaciously put up without any building planning approval cannot be encouraged.

b) if any violation is brought to the Notice of the Courts, it must be curtailed with iron hands and any leniency afforded to them would amount to showing misplaced sympathy.

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

c) that laxity on the part of the Authorities concerned in performing their obligations under the Act cannot be used as a shield to defend action against the illegal/unauthorized constructions.

d) the High Courts must adopt a strict approach while dealing with the cases of illegal construction and should not readily engage themselves in judicial regularization of buildings erected without requisite permissions of the competent Authority.

e) there is a need for maintaining a firm stance that emanates not only from the inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force to facilitate the well-being of all concerned.

f) the law ought not to come to the rescue of those who flout its rigors as allowing the same might result in flourishing the culture of impunity.

21.2) In view of the the observations/directions of the Supreme Court and the ratio laid down in the aforesaid two Judgments, we see no reason to protect the illegalities.

22) In view of the above, we pass the following Order:

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

a) Petition is allowed and Rule is made absolute in terms of prayers (a), (b) & (c).

b) We direct the Respondent No.2 to implement its notice dated 29th February 2025 by demolishing the illegal/ unauthorised construction and initiate prosecution against all concerned Respondents under Section 52 of the MRTP Act, 1966 within a period of three weeks from the date of uploading of the present Order on the official website of the High Court of Bombay.

c) We direct the Municipal Commissioner to take appropriate action against all erring Officers responsible for not preventing the erection of illegal construction by Respondent Nos.3 to 5 and file a compliance report in this Court within a period of six months from the date of uploading of the present Order on the official website of the High Court of Bombay.

23) Rule is made absolute in the above terms.

(KAMAL KHATA, J.) (A.S. GADKARI, J.)

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::

24) At this stage, learned Advocate appearing for the Respondent Nos.3 to 5, i.e. the persons who have constructed the illegal structure, prays that, the operation and implementation of the present judgment be deferred for a period of 3 weeks to enable the said Respondents to test the correctness of this judgment before the Hon'ble Apex Court.

24.1) The learned Advocate appearing for the Petitioner opposes the said prayer.

25) However, taking into consideration the request of the learned Advocate for the Respondent Nos.3 to 5, the operation and implementation of the present Order is stayed for a period of 3 weeks from today.

26) It is made clear that, during the interregnum, the Respondent Nos.3 to 5 shall not carry out or continue with any activity relating to the illegal construction in any manner whatsoever.

27) We further expect that, during this period, the Commissioner of Respondent-Corporation shall start and initiate necessary/appropriate action beginning with his own Officers, so as to instill in them due regard for the rule of law.

(KAMAL KHATA, J.) (A.S. GADKARI, J.)

::: Uploaded on - 21/06/2025 ::: Downloaded on - 21/06/2025 16:27:06 :::