
(2025) 04 BOM CK 0227

In the Bombay High Court

Case No : Writ Petition Nos.18551 Of 2024 With Interim Application No, 3174 Of 2025

Neetu Makhija

APPELLANT

Vs

Ulhasnagar Municipal Corporation Through M Commissioner
And Ors

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Municipal Corporation Act, 1949 — Section 260, 261, 262, 264, 266, 267, 267A, 268, 478

Citation : (2025) 04 BOM CK 0227

Hon'ble Judges : A. S. Gadkari, J;Kamal Khata, J

Bench : Division Bench

Advocate : A. S. Rao, Monish Bhatia, Suresh M. Kamble, Minal Chandnani, Rupali Shinde

Final Decision : Disposed Of

Judgement

Kamal Khata, J

1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to the Ulhasnagar Municipal Corporation ('UMC') to forthwith take action of demolition of the illegal and unauthorized construction carried out by Respondent No.2 on the subject property near the premises of the present Petitioner.

2) The Petitioner is a resident of BK No.214, Room No.1 at Bewas Chowk, Ulhasnagar No.1. The barracks on the subject property were consisting of six rooms out of which some rooms were demolished and new construction is being carried out. The illegal construction has caused heavy water leakage to her property. Despite addressing multiple communications to UMC, no action has been taken against the developer-Respondent No. 2. No permissions are obtained by the Respondent No.2 for construction of the structure. Apparently,

Respondent No.2 has also encroached on the adjoining property for construction. The Petitioner is undergoing mental trauma on account of this menace and threats given by Respondent No.2. However, despite complaint lodged against the Respondent No.2 on 28 th August 2024 and follow-ups, no assistance from the Police Authorities was received by the Petitioner or action taken against the Respondent No.2. The UMC's response to Petitioner's RTI Application reveals that the structure constructed is unauthorised. For lack of response from UMC coupled with the acknowledgement that the structure is illegally being constructed, the Petition was filed on 24th November 2024.

3) Mr. Rao, learned Advocate for the Petitioner draws our attention to the photographs annexed and the letter addressed by the UMC dated 24th September 2024 which clearly reveals that the construction carried on next to the Petitioner's property is without any permissions. He submits that the Respondent No.2 is politically influential and therefore the State Authorities i.e., the UMC and the police are refusing to take action against the illegal construction. Therefore, this Court must direct the UMC to demolish the same.

4) Mr. Kamble for Respondent No.1-UMC relies on the Affidavit of Alka Satish Pawar, the Assistant Commissioner, Ward Committee No.1 of UMC. He explains the numerous steps taken upon receipt of the complaint from the Petitioner. He stated that the concerned officer had visited the site and thereafter issued a Notice dated 22nd August 2024 under Section 260 of the Maharashtra Municipal Corporation Act, 1949 ('MMC Act') to Respondent No.2. By the said Notice, the Respondent No.2 was called upon to submit documents with regard to the construction within a period of seven days. Since the Respondent No.2 failed to produce the documents, another Notice dated 27th September 2024 under Section 267 and 478 of the MMC Act was served on Respondent No.2 calling upon him to remove the illegal construction within a period of seven days of the Notice. The Respondent No.2 was put to Notice that the failure on his part to remove the construction, would constrain the UMC to demolish the said construction at their expense. On failure of the Respondent No.2 to remove the unauthorized construction, the UMC had made an application for police protection on 18th December 2024. By reply of Deputy Commissioner of Police dated 27th December 2024 they expressed their inability to provide police protection due to the forthcoming new year celebrations on 30th and 31st December 2024. Therefore by another Application dated 9th January 2025, the Deputy Commissioner of Police was requested to grant police protection and was granted to initiate the action of demolition of this illegal construction on 15th January 2025. When the officers reached site with Police on 15th January, 2025 the Respondent No.2 informed the Officers of the UMC that he had applied for regularization of the construction and requested that the action of demolishing be stopped. Upon seeking instructions from their building and town planning department they were informed that on 7th January 2025 the UMC had received a proposal for regularization of the said construction. In view of this Application the UMC had refrained from the demolition.

5) Mr. Bhatia for the Applicants in Interim Application No.3174 of 2025 submits that, they are the owners of the barracks that were demolished. He claims that there are six families that have been residing in these barracks for several decades. They were also issued conveyance deed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and consequently have title in respect of the said land. He took us through the averments in the Application regarding the history of Ulhasnagar settlement and submitted that the documents to the application annexed at Exhibit B were the copies of the Conveyance Deeds in their favor. That pursuant to receipt of the Notice they had submitted their application for regularization as responsible and law-abiding citizens. He submitted that all necessary documents including the ownership details, tax receipts and other documents as required by the UMC have been submitted and their application is pending approval. He submits that, the structures were in a dilapidated condition and therefore they started their repairs to the same. He submits that despite being aware that the Applicants were owners of the barracks the Petitioner had failed to join them as parties although they were necessary parties and the demolition would have affected their rights. He submits that, the action was taken by UMC without following the due process of law and therefore they were constrained to file a suit before the JMFC, Ulhasnagar seeking injunction. Since the Court only issued notice and did not grant any ad interim reliefs, they preferred an appeal challenging the Order dated 31st January 2025. Upon hearing the Appellants in Appeal, by its Order dated 6th February 2025 the High Court was pleased to grant an injunction only until the next date i.e. 7 th February 2025 and requested the Civil Court to dispose of the Application. Due to the direction, upon hearing the Civil Court passed a status quo Order on 7th February 2025. He submits that in these circumstances the Applicants ought to be heard in the Petition. In support of his contentions, he relies upon the judgment of this Court in the case of Mr. Hardas Hazarimal Tharwani vs. State of Maharashtra & Ors. in PIL No. 19 of 2013, decided on 27th March 2024, to submit that the High Court had directed the Authorities to decide the Regularization Applications within a reasonable period. In these circumstances he submits that the Petition be dismissed.

6) We have heard the counsels and perused the papers and proceedings.

7) This Petition is yet another case where the owner is of a firm belief that, he has a right to demolish and reconstruct his structure without seeking requisite permissions from the concerned Authorities. This contention has been emphatically rejected in a Petition converted into a Suo-moto Petition and referenced as High Court on its Own Motion vs. the state of Maharashtra through principal secretary & Ors. reported in 2024 SCC OnLine Bombay 918. This judgement was followed by us in a recent judgment in the case of Hanuman Jayram Naik versus the State of Maharashtra reported in 2025 BHC AS 8860-DB.

8) With a view to give an opportunity to the Applicants, we inquired with Respondent No.2's Advocate if any Application was made for the seeking

permission from the UMC for construction. He fairly submitted that presently he neither had any such instructions nor documents evincing permissions applied for before construction. He stated that the 2nd Respondent had only applied for the regularization pursuant to the Notice served by the UMC. He relied on paragraph No.15 of the Interim Application in support of his submission.

9) This is not a case of an illiterate citizen as in the case of Hanuman Jayram Naik (supra) who in the garb of being an illiterate claimed immunity from the law. As we had observed in Hanuman Jayram Naik's case, it was a widespread belief. This case vindicates our observation.

10) Moreover, after perusing the papers and proceedings more particularly the Application of the Intervenor Applicants it is observed that the Applicants have with a deliberate intent to overreach the Orders of the Court more particularly, the Order dated 27th January 2025 misinterpreted the Order and have averred the following in their plaint that was filed in the Civil Court on 29th January 2025. Paragraph No.10 of the plaint reads as under:

"10. The Plaintiffs state that the Plaintiffs have also approached the Hon'ble Bombay High Court by way of Civil Writ Petition bearing No.18551 of 2024, filed before the Hon'ble Bombay High Court inter alia seeking protection of their legal rights. The Plaintiff states that however, vide Order dated 27th January 2025, the said Writ Petition came to be disposed off whilst keeping the matter open for all parties, including the Plaintiffs, to pursue their legal remedies. That ipso facto, this clearly indicates that there is no bar on the Defendant from hearing and deciding the regularization applications of the Plaintiffs which is a vested right upon the Plaintiffs. Hereto annexed and marked EXHIBIT 3 is a copy of the said Order dated 27th January 2025."

11) A plain reading of the Order dated 27th January 2025 would indicate that the Petition is not disposed of and was kept pending to be taken up on 10th February 2025. However the Applicants have falsely averred that the Petition was disposed off. This clearly evinces that they have attempted to mislead the Court and misinterpret this Court's order. Upon being refused relief by the Civil Court, they filed a Writ Petition (No.1786 of 2025) suppressing the fact from the Single Judge of this Court that the Division Bench of this court has refused to grant any reliefs to the Applicants by its Order dated 27th January 2025.

12) We cannot permit citizens who refrain from performing their duties as a citizen, to seek enforcement of rights under the Constitution. We are bound by the dictum that "illegality is incurable" as held by the Supreme Court in the K. Ramadas Shenoy vs. The Chief Officers, Town Municipal Council, Udipi And Others reported in (1974) 2 SCC 506. The Supreme Court in the case of Rajendra Kumar Barjatya and Anr. vs. U.P. Avas Evam Vikas Parishad and Others reported in 2024 SCC OnLine SC 3767 has reiterated the view.

13) The binding decisions would support our view that the citizens cannot be permitted to regularize a thoroughly illegal construction which is started without

seeking necessary permission from the concerned Authority. It cannot be tolerated.

14) We are of the view that, the UMC as well as the Police Authorities are responsible for not taking timely action and thereby promoting and perpetuating the illegal constructions. It is observed that the concerned Authorities have not even given instructions to Advocates representing them. Unfortunately, the Advocates representing the UMC to are not well-versed with the relevant judgments. This is the reason the Courts are not assisted with the correct legal position leading to passing of status quo orders and injunctions.

15) In this scenario, according to us, even Respondent No.2-the developer who has undertaken construction for the Applicants herein is equally responsible for constructing without obtaining necessary permissions in accordance with law. A contention that he was merely given a contract to construct – cannot shield him from having committed an offence under the statute and is bound to follow the law. The law is for the well-being of citizens and all the citizens must voluntarily and necessarily follow else there will be only anarchy.

16) We request the State Government to consider to legislate on this aspect as well. All concerned in illegal constructions should be held responsible and severe deterrence must be imposed to maintain the law and Order and lawful development in the country. The Respondent No.2 is equally responsible in abetting and carrying out illegal activities of construction without obtaining requisite permissions from the Authorities. We are afraid that if these steps are not immediately taken, the entire object of a planned development in a State would be only a distant dream. Besides, it would be a state of anarchy.

17) We find that there is serious lack of communication between the different departments of the Municipal Corporations in this digital era. This cannot be tolerated and permitted. As observed in the present case, no action was initiated by the UMC since 24th September 2024 when they themselves acknowledged that the subject structure was illegal. This information could well have been shared with the concerned department to initiate action. Even after filing of the Petition the UMC failed to initiate action which is their bounden duty under the statute and do not require orders from the Court for initiating the same. The delay in seeking police protection till the end of second week of December 2024 also raises doubts. Further, the entire action and efforts of the UMC Authorities and the Police authorities to demolish the illegal structure on 15th January was thwarted when the 2nd Respondent claimed he had applied for regularization on 7th January 2025. Such application should have been immediately communicated to all concerned departments. Similarly, it was a duty of the concerned Officer to find out from the concerned department, whether such a regularization Application was made before marching towards demolition with the Police authorities on 15th January 2025.

18) Further, we find it quite astonishing that even police authorities who are the

eyes of the city administration did not point out about the construction to the UMC though a duty is cast upon them under the Sections 260, 261, 262, 264, 266, 267, 267A and 268 of the MMC Act. The inordinate delay in taking appropriate action leads us to accept the common public belief that the concerned authorities themselves are protecting these illegalities for the reasons best known to them only.

19) In these circumstances we hold that the mischievous conduct of the Applicants cannot be permitted to be continued and illegalities to be perpetuated. The Petition is accordingly allowed in term of prayer clauses (a), (b), (c), (d), (e) and (f).

20) In view of the disposal of the Writ Petition, Interim Application does not survive and same is accordingly disposed off.