

**(2020) 06 BOM CK 0021**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1447 Of 1995**

Vadilal M.Trevadia

APPELLANT

Vs

B.M.C.And Ors.

RESPONDENT

**Date of Decision :** 09-06-2020

**Acts Referred:**

Bombay Municipal Corporation Act, 1888 — Section 342, 347, 351, 354  
Constitution Of India, 1950 — Article 226

**Citation :** (2020) 06 BOM CK 0021

**Hon'ble Judges :** Ujjal Bhuyan, J

**Bench :** Single Bench

**Advocate :** Sanjiv Sawant, H. S. Kadam, Bipin Joshi, Kiran Bagalia, Musharaf Sheikh, R. Y. Sirsikar

**Final Decision :** Allowed

## Judgement

1. Heard Mr. Sanjiv Sawant along with Mr. H. S. Kadam instructed by Mr. Bipin Joshi, learned counsel for the petitioner; and Ms. Kiran Bagalia along with Mr. Musharaf Sheikh and Mr. R. Y. Sirsikar, learned counsel for respondent No1.

2. This old pending writ petition of the year 1995 has traversed much beyond the intitial pleadings and reliefs sought for.

3. This is how the litigation unfolded.

4. Initially, in this petition filed under Article 226 of the Constitution of India, petitioner assailed the legality and validity of the show-cause notice dated 06.07.1995 issued by the Deputy Municipal Commissioner, Zone-II, Municipal Corporation of Greater Mumbai (earlier Bombay Municipal Corporation and then Municipal Corporation of Greater Bombay) under Section 351 of the Bombay Municipal Corporation Act, 1888 calling upon the petitioner and two others to show-cause as to why the scheduled structure should not be removed or pulled down as well as the consequential order dated 14.07.1995 passed by the said authority i.e., Deputy Municipal Commissioner, Zone-II of Municipal Corporation

of Greater Mumbai informing the petitioner and two others that since they had not submitted any proof in reply to the show-cause notice, Municipal Corporation of Greater Mumbai (briefly 'Municipal Corporation' hereinafter) would proceed to demolish the unauthorized construction carried out by the petitioner and the two others at their risk and cost.

5. Basic grievance of the petitioner pertained to demolition of the scheduled property which it was contended was arbitrary, illegal and extremely high-handed being in violation of the principles of natural justice and fair-play as well as the material facts on record.

6. Case of the petitioner is that prior to 10.07.1994 M/s. Standard Grinding Mills was in lawful possession and occupation of a structure admeasuring 122' x 29' 6" approximately as well as other structures situated at C.S.No.503 Ashok Silk Mills Compound (property of M/s. Shah Construction Company), Rohidas Marg, Dharavi, Mumbai. The said M/s. Standard Grinding Mills is an old factory dealing in stone grinding etc. The structure admeasuring 122' x 29' 6" (referred to hereinafter as 'the said structure') formed part of the vast properties of M/s. Standard Grinding Mills. The said structure was primarily used as a godown. It is stated that the said structure was assessed to municipal taxes from prior to the year 1961. Be that as it may, M/s. Standard Grinding Mills was closed for the last 15 years.

7. Three lease agreements were entered into between M/s. Standard Grinding Mills (lessor) and the petitioner (lessee). As per agreement dated 10.07.1994, the lessor leased out a shed admeasuring 28' x 45', an old structure forming part of the larger godowns, to the lessee on the terms and conditions mentioned therein. By the agreement dated 20.07.1994, the lessor leased out to the lessee a shed admeasuring 50' x 28', an old structure forming part of the larger godowns, as per terms and conditions metnioned in the said agreement. In the like manner, an agreement dated 09.01.1995 was entered into between the said two parties whereby and whereunder the lessor leased out to the lessee a shed admeasuring 29' x 28', an old structure forming part of the larger godowns, as per terms and conditions mentioned in the said agreement.

8. It is stated that the above three structures were adjacent to each other, forming part of one whole.

9. Petitioner has come to know that prior to July, 1994 M/s. Standard Grinding Mills wanted to lease out the said structures to one Smt. Chhaya B. Mane and in this connection an agreement was entered into between the two. However, the said deal did not materialize and the agreement signed between the two was cancelled.

10. In the month of July, 1994 (to be precise on 20.07.1994), the Ward Officer, G/North Ward in the office of the Municipal Corporation had issued a notice under Section 354 of the Bombay Municipal Corporation Act, 1888 (briefly 'the Act' hereinafter) calling upon the said Smt. Chhaya B. Mane to pull down the

dilapidated portion of the said structure as well as to repair the damaged portion.

11. According to the petitioner, the said notice was handed over to him by M/s. Standard Grinding Mills in the month of January, 1995. Since the petitioner received the notice belatedly, he could not comply with the same within the period prescribed. Besides, as the petitioner was going through a financial crisis, he could not fully comply with the notice dated 20.07.1994. However, within his means he carried out the necessary repairs including replacing the old roof tiles which he completed in the third week of June, 1995. It is stated that the said structure is assessed to municipal taxes under assessment No.GN/6625(1B) which were paid by his predecessor-in-title. It is further stated that the said structure is also shown in the city survey records.

12. Since officers of the Municipal Corporation were threatening demolition of the said structure, petitioner filed a suit in the City Civil Court being Suit (Stamp) No.4080 of 1995. However, the said suit was closed on liberty being granted by the City Civil Court to the petitioner to move the Court after giving notice to the Municipal Corporation.

13. It was thereafter that the Deputy Municipal Commissioner, Zone-II , Municipal Corporation of Greater Mumbai (referred to hereinafter as the 'Deputy Municipal Commissioner') issued show-cause notice dated 06.07.1995 to Smt. Chhaya B. Mane, M/s. Shah Construction Company and the petitioner. It was mentioned therein that contrary to the provisions of Section 347 of the Act, the noticees had erected certain works described in the schedule without the requisite permission of the Municipal Commissioner. Therefore, the Deputy Municipal Commissioner under Section 351 of the Act called upon the noticees to show cause on or before 13.07.1995 as to why the said work should not be pulled down. The noticees were called upon to show proof that the work was not unauthorized. Petitioner and the other two persons were further put on notice that if they failed to show sufficient cause to the satisfaction of the Deputy Municipal Commissioner before the stipulated date, it would be construed that the noticees were admitting that the work was unauthorized and was an illegal construction which would be removed or pulled down at the risk and cost of the noticees without any further notice. The schedule indicated unauthorized construction of 9" thick BM wall thereby converting the premises into 12 galas, construction of full mezzanine floor and covering the entire structure with AC sheet roof admeasuring size 122' x 29' 6" and height below the loft 9' and above the loft 8' 3".

14. Petitioner through his advocate submitted show-cause reply dated 09.07.1995 placing on record the correct facts. It is stated that the said letter dated 09.07.1995 was served upon respondent Nos.2 and 3 through their respective dispatches on 12.07.1995. It was pointed out by the petitioner in his show cause reply that through three lease agreements he had taken over the three structures on lease for valuable consideration and the said three structures were adjacent to each other, forming part of one larger structure. He stated that

he had not carried out or constructed any unauthorized work. Petitioner however admitted that portions of the said structure were in a dilapidated condition. Municipal Corporation had issued notice to one Chhaya B. Mane to pull down the dilapidated portion of the said premises and to replace the old, damaged, dangerous and conventional material by new material. It was stated that petitioner could not carry out the repair works within the prescribed period but nevertheless had carried out the repair works by replacing the conventional material by brick masonry work etc. Further, the old Mangalore tiled roof was also replaced. Petitioner further stated that the said structure situated in the Dharavi area was used for storage purpose. Dharavi is a slum area. Moreover, the said structure is shown in the city survey records besides being assessed to municipal taxes under assessment No.GN/6255 (1B) and there has been no default in payment of municipal taxes. Petitioner also sought for a personal hearing.

15. On 14.07.1995, Deputy Municipal Commissioner passed an order addressed to the petitioner and the two other persons stating that they had not submitted any proof in reply to the show-cause notice and accordingly, they were informed that Municipal Corporation was going ahead with the demolition of the unauthorized construction carried out by the petitioner at his risk and cost.

16. It is stated that the said notice was not hand served upon the petitioner. Rather it was pasted at the site. Immediately thereafter in the afternoon demolition squad arrived at the spot with bulldozers etc., and demolished the said structure despite protestations by the petitioner. Petitioner's reply dated 09.07.1995 was shown to respondent No.3 but he refused to look into it. Rather he threatened the petitioner of dire consequences. In the demolition exercise petitioner suffered huge loss. Goods belonging to the petitioner and other building materials which were lying at the site following demolition of the structure were taken away by the municipal personnel who were present at the demolition site.

17. Petitioner through his lawyer submitted a representation dated 15.05.1995 placing on record all the related and relevant facts and called upon the respondents to reconstruct the said structure at the same place and with similar material, returning back the goods, building materials etc. belonging to the petitioner which were taken away by the municipal personnel from the demolition site. Petitioner also tried to contact the third respondent but he refused to meet the petitioner.

18. It was under such circumstances that the writ petition was filed for quashing of the notice dated 06.07.1995 and the order dated 14.07.1995, further seeking a direction to the respondents to rebuild or restitute the petitioner's said structure as it existed prior to the demolition. Interim prayer was made either to direct the respondents to reconstruct the said structure or allow the petitioner to reconstruct the said structure, at the same place with similar materials.

19. On 28.08.1995 this Court admitted the writ petition and passed the following order:

"P.C.: Rule. The Respondents waive service. Liberty is granted to the petitioner to reconstruct the demolished structure by restoring status quo ante as it existed on 20th July, 1994. It is clarified that the petitioner shall not be entitled to construct any gala or convert the said structure into 12 galas or divide the same by any partition wall. In case the petitioner desires to convert the said structure into galas, the petitioner shall have to seek the necessary permission from the Municipal Corporation. The said reconstructed structure shall not be used unless authorised officer of the Municipal Corporation examines the reconstructed structure and checks up as to whether the reconstructed structure is in strictly in conformity with the Interim Order passed by this Court.

Shri. K. S. Cooper, the learned counsel for the petitioner informs the Court that the petitioner shall exercise the liberty to reconstruct the said structure so as to restore status quo ante in terms aforesaid within two weeks from today. The Municipal Corporation shall do the necessary verification within one week thereafter. The Municipal Corporation and its officials are restrained from obstructing the petitioner from reconstructing the structure in terms aforesaid.

The learned counsel for the petitioner prays for direction of the Court to the respondents to return the articles of the petitioner taken away by the employees while demolishing the structure in question. The learned counsel for the respondent applies for time to take instruction for this purpose. The petition shall appear on board at 11:00 a.m. on Friday, 1st September, 1995.

To be placed for further directions and for further Orders also on 18th September, 1995, by which date the interim order is expected to be implemented. Parties are authorised to act on basis of ordinary copy of the order duly authenticated by Associate of this Court.

Issue of certified copy is expedited."

19.1. Thus this Court granted liberty to the petitioner to reconstruct the demolished structure by restoring the status quo ante as it existed on 20.07.1994, clarifying that petitioner would not be entitled to construct any gala or convert the said structure into 12 galas or divide the same by any partition wall. It was however provided that if the petitioner wanted to convert the said structure into galas, petitioner would have to seek permission from the Municipal Corporation. Besides, the re-constructed structure should not be used unless authorized officer of Municipal Corporation certified upon due examination that the re-constructed structure was strictly in conformity with the interim order of this Court. This Court restrained Municipal Corporation and its officials from obstructing the petitioner while carrying out the re-construction work.

20. On 18.09.1995 Court was informed that petitioner had reconstructed the said structure. When learned counsel for the Municipal Corporation submitted that

petitioner had not only restored status quo ante but has done something more, Court granted liberty to the respondents to file affidavit enclosing therewith report in respect of re-construction. Liberty was also granted to the petitioner to file affidavit to place on record report of his architect who had supervised the re-construction. Court observed that it would be better if there was a joint inspection of the re-constructed structure to be arranged by the Municipal Corporation.

Accordingly, direction was issued. Relevant portion of the order dated 18.09.1995 is extracted hereunder:-

"2. The Court is informed that the petitioner has reconstructed the structure. According to the learned counsel for the Municipal Corporation the petitioner has not restored merely status quo ante but has done something more. Liberty to the Respondents to file the affidavit of its authorised officer in this behalf, annexing thereto the report in respect of reconstruction herein.

3. Liberty to the petitioner to file an affidavit in reply annexing the report of the Architect who has supervised the reconstruction of the structure. It is much better that a joint inspection of the reconstructed work is arranged by the Municipal Corporation where the authorised officer of the Municipal Corporation as well as the Architect of the petitioner can remain present.

I order accordingly and direct that joint inspection be taken of the property in dispute as aforesaid."

21. Following the aforesaid order, affidavits were exchanged and filed on behalf of the parties. After hearing the submissions made by learned counsel for the parties, this Court passed the following order on 16.10.1995:-

"2. By order dated 28th August, 1995, the Court had permitted the petitioner to reconstruct the demolished structure by restoring status quo ante as it existed on 20th July, 1994. By the said order it was provided that the said reconstructed structure shall not be used unless the authorized officer of the Municipal Corporation examines the reconstructed structure and checks up as to whether the reconstructed structure is strictly in conformity with the Interim Order passed by the Court.

3. It is the case of the petitioner that the overall size as well as the height of the reconstructed structure in pursuance of the Interim Order of the Court is in conformity with the Interim Order of the Court. It is the case of the Municipal Corporation that the reconstructed structure is not in conformity with the Interim Order of the Court.

4. It is the case of the Municipal Corporation as obvious from Exhibit "I" of the affidavit of Shri. M. G. Salunke dated 19th September, 1995, that the overall size of the shed as on 20th July, 1994, was 50' x 25' and the petitioner has reconstructed the shed of the size of 121'.10" x 28.8". It is also the case of the Municipal Corporation that the total height of the reconstructed structure is of

about 17'-1" whereas the height of the old structure was 14 feet in July, 1994.

5. The petitioner relies mainly on the schedule to the notice (Exhibit "B" to the petition) and submitted that there was never a dispute in the past in respect of dimensions of the old shed used as a godown and the only dispute raised by the Municipal Corporation was in respect of conversion of the old shed in 12 galas and construction of mezzanine floor etc. It is the case of the Municipal Corporation that it can be demonstrated with reference to the plans submitted by the former occupant Smt. Chaya Baburao Mane that the overall size of the old shed was 50' x 25' only. The Court passed its Order dated 28th August, 1995, on the ground that the Deputy Municipal Commissioner directed demolition of the structure without considering the reply to the show cause notice dated 6th July, 1995, and without granting any hearing to the petitioner. The Municipal Corporation is thus not precluded in law from issuing a show cause notice and adjudicating upon the controversy in the first instance subject to the final decision of the Court.

6. The Deputy Municipal Corporation (Zone-III) is granted specific liberty to issue the show cause notice to the petitioner in this behalf as permissible under Section 351 of the Bombay Municipal Corporation Act. The Municipal Corporation shall disclose the relevant material on which the Corporation intends to rely in support of its contention that the dimension of the old shed / godown which was directed to be repaired by notice dated 28th July, 1994, was 50' x 25' only and its height was 14' feet only. The Deputy Municipal Corporation shall grant at least two weeks time to the petitioner to file his reply to the said show cause notice. The Deputy Municipal Corporation shall grant personal hearing to the petitioner and pass a speaking order in respect of the above referred controversy. If it is reasonably found that the size of old shed was 50' x 25' only and its height was only 14' feet it would follow that the Interim Order has been mis-used by the petitioner. If on the contrary it is found that the size of the old shed was 121'-10" x 28'-6" and its height on the average was 17' x 1' it would follow that the grievance made by the Municipal Corporation at this stage is not justified.

It must be clarified that the learned counsel for the petitioner made a request during course of hearing today that the abovereferred controversy should be adjudicated upon in the first instance not by the Deputy Municipal Corporation (Zone-II) but by some other Deputy Municipal Commissioner of coordinate jurisdiction. In order to cut the controversy short and without casting any aspersion on the integrity of the Deputy Municipal Corporation (Zone-II), the Court enquired from the learned counsel for the Respondent- Corporation as to whether something could be done in this behalf. It was thereafter voluntarily agreed that the Deputy Municipal Commissioner (Zone -III) shall issue the show cause notice and shall pass the necessary order as indicated above.

7. The Court shall examine the matter further after receiving a copy of the Order passed by the Deputy Municipal Commissioner (Zone-III) in respect of the above controversy. The order passed by the Deputy

Municipal Commissioner shall not be enforced without prior leave of the Court, since the matter is subjudice before the Court.

8. For the time being, the petitioner shall not be allowed to use the reconstructed structure. It is reasonably expected that this Order shall be fully implemented latest within eight weeks from today.

9. Further directions reserved."

22. From the above it is seen that while the petitioner stated before the Court that the reconstructed structure i.e., its overall size and height was in conformity with the interim order of this Court, Municipal Corporation however took the stand that size of the re-constructed structure was much bigger. It was pointed out on behalf of the petitioner that size or dimension of the said structure prior to demolition was never an issue. What was in issue was conversion of the said structure into 12 galas and construction of mezzanine floor etc. After observing that Court had passed the re-construction order dated 28.08.1995 because reply of the petitioner was not considered and without affording him any hearing before demolition, Court further observed that it did not preclude the Municipal Corporation from issuing fresh show-cause notice and deciding the matter at the first instance subject to final decision of the Court. Therefore, Deputy Municipal Commissioner was given liberty to issue show-cause notice to the petitioner granting him sufficient time to file his reply and also to grant him personal hearing wherafter a speaking order should be passed. It was observed that if it was found that size of the old structure was 50' x 25' and its height was 14', it would follow that the interim order had been misused by the petitioner. If on the contrary, if it was found that size of the old structure was 121' 10" x 28' 6" and its height on the average was 17', it would follow that grievance of the Municipal Corporation was not justified. On apprehension expressed by the petitioner, respondents agreed that Deputy Municipal Commissioner, Zone-III would issue the show-cause notice and pass the speaking order. It was ordered that Court would examine the matter further after receiving a copy of the speaking order which should not be enforced without the leave of the Court. This Court further directed that for the time being petitioner should not be allowed to use the re-constructed structure.

23. Following the said order of this Court, Deputy Municipal Commissioner, Zone-III issued notice to the petitioner on 13.11.1995. Be it stated unlike the previous occasions, this time notice was issued only to the petitioner and not to the other two persons. The said authority referred to the order of this Court dated 16.10.1995 and called upon the petitioner to appear before him on 02.12.1995 at 10:00 a.m. along with all the documents in respect of the unauthorized construction carried out by the petitioner as described in the schedule and to show-cause as to why the said unauthorized structure should not be demolished. Along with the said notice, copies of 14 documents were stated to have been furnished to the petitioner on which reliance was placed by the Municipal Coporation.

23.1. The schedule to the notice dated 13.11.1995 is as under:-

"Schedule

Unauthorized construction of a pucca structure consisting of 9" thick brick masonry wall with AC sheet roof and use of iron girders admeasuring total legnth 122' x 29' 1" width and 17' 1" average height (18' 1" + 16' 1") / 2."

23.2. It was further mentioned that the said notice was also in compliance to the provisions of Section 351 read with Section 347 of the Act.

24. Petitioner submitted his reply to the said show-cause notice on 30.11.1995 through his advocate. At the outset it was pointed out that 3 out of the 14 documents stated to have been furnished to the petitioner were actually not furnished. It was pointed out that the basic object behind passing the order dated 16.10.1995 by this Cout was to narrow down the controversy which was raised on behalf of the Municipal Corporation about the size of the reconstructed structure. Therefore, the notice of demolition was on the face of it bad in law being beyond the order dated 16.10.1995. In the said reply, petitioner also pointed out the inconsistencies in the stand of the Municipal Corporation in the affidavit filed before this Court and in the show-cause notice dated 13.11.1995. That apart, it was pointed out that size of the re-constructed structure as per the plan was much bigger than the size of the demolished structure as per the city survey plan. It was further pointed out that the show-cause notice did not prove that size of the old structure was only 50' x 25' having a height of 14' ; on the other hand, from the documents produced by the petitioner it was evident that the old structure was admeasuring 121' 10" x 28' 6". During joint inspection it was found that the adjacent structures were having height of 17' 1"; therefore, it was quite clear that the original structure as it stood before demolition was having height of 17'. Petitioner relied upon 12 documents. Thereafter petitioner dealt with each of the documents relied upon by the Municipal Corporation and furnished to him.

25. Petitioner was heard whereafter there was site inspection by the Deputy Municipal Commissioner on 19.12.1995. Thereafter petitioner through his advocate submitted written submission on 19.01.1996. Finally, the Deputy Municipal Commissioner passed the speaking order dated 19.02.1996 holding that the documentary evidence produced by the petitioner did not establish that the structure admeasuring 112' x 29' 1" is an authorized one. The documentary evidence produced by the petitioner pertained to the old structure which is not in existence. Therefore, the existing structure is an unauthorized structure and needs to be demolished. However it was mentioned that the action of demolition would be taken up only after obtaining leave of this Court in terms of order dated 16.10.1995.

26. Following such development, petitioner has amended the writ petition by incorporating challenge to the said order dated 19.02.1996 while bringing on record additional related documents and relevant submissions.

27. While parties had filed affidavits prior to passing of order dated 16.10.1995 which were considered by the Court while passing the said order, post amendment of the writ petition, respondents have filed detailed affidavit justifying the order dated 19.02.1996.

28. Mr. Sawant, learned counsel for the petitioner has referred to the list of dates filed by the petitioner as well as the written submission filed on behalf of the petitioner. He submits that this Court while admitting the writ petition on 28.08.1995 had passed an interim order directing re-construction of the said property with a view to maintain status quo ante i.e. the position which existed as on 20.07.1994. Size of the said structure referred to in the notice and factually at site was 122' x 29' 6". Referring to the first order of demolition dated 14.07.1995, he submits that despite filing show-cause reply, Deputy Municipal Commissioner, Zone-II stated that no documents in reply were furnished. Without considering the stand taken by the petitioner, order dated 14.07.1995 was passed. That apart, without hand serving the petitioner, copy of the said order was pasted on the said structure and demolition was carried out immediately thereafter on 14.07.1995 itself. The first impugned order dated 14.07.1995 and the demolition carried out wholly reflected arbitrary and high-handed exercise of power by the respondents, besides being violative of the principles of natural justice. It was in these circumstances that Court allowed re-construction of the demolished structure.

28.1. Regarding the second impugned order dated 19.02.1996, learned counsel for the petitioner submits that the related show cause notice as well as the impugned order were not in consonance with the order passed by this Court on 16.10.1995. Relevant documents relied upon by the respondents were not furnished to the petitioner despite the Court directing so in the order dated 16.10.1995. His further submission is that the said structure is situated at Dharavi, Mumbai. Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 came into force with effect from 03.09.1971. Right from coming into force of the said Act, the entire Dharavi area has been declared as a slum.

Therefore, provisions of the aforesaid Act would be applicable. That apart, internal partition can be permitted in terms of Regulation 9(4) of the Development Control and Promotion Regulations for Greater Mumbai, 2034. In any case the partition wall sought for can be permitted in accordance with the policy of the Municipal Corporation whereafter it can be regularized. All these aspects were not considered by the Deputy Municipal Commissioner, Zone-III while passing the second impugned order dated 19.02.1996. As a matter of fact, the related show-cause notice and the aforesaid order go beyond the intent and purport of this Court's order dated 16.10.1995. In that view of the matter the said order dated 19.02.1996 is liable to be set aside and quashed with necessary directions to the respondents to grant the prayers of the petitioner.

29. Ms. Bagalia, learned counsel for the respondents has referred to the

chronology of events right upto passing of the impugned order dated 19.02.1996. In this connection, she has also filed a brief written note containing chronology of events and submissions. She submits that pursuant to order of this Court dated 16.10.1995, show-cause notice dated 13.11.1995 was issued to the petitioner enclosing therewith copies of all documents relied upon by the respondents. Reply submitted by the petitioner dated 30.11.1995 was duly considered and the petitioner was also heard. There was thus full compliance to the principles of natural justice. Petitioner has not been able to show any procedural impropriety in the decision making process.

29.1. Learned counsel for the respondents submits that while the demolished structure was smaller in size, the re-constructed structure is much bigger having size of 122' x 28' 9" with average height of 17'. Thus, the re-constructed structure is in violation of the interim order of this Court dated 28.08.1995. Burden is on the petitioner to prove existence of 122' x 28' 9" construction as on 20.07.1994. But petitioner has not been able to produce any such evidence.

29.2. Learned counsel further submits that provisions of the Act are applicable for construction of buildings or carrying out repairs. While Section 347 provides for grant of such permission by the Municipal Commissioner, Section 351 empowers the Commissioner to pull down structures or repairs carried out without permission or approval or in deviation of permission and approval. Section 354 provides for demolition of works carried out unlawfully.

29.3. Deputy Municipal Commissioner after taking into account all the relevant facts arrived at the conclusion that the structure is unauthorized. The impugned order does not suffer from any infirmity to warrant interference. Courts have consistently held that it is the duty of local authorities to implement building regulations strictly and pull down illegal construction. Interim order allowing reconstruction of the structure does not create any right or does not endorse illegality of demolished structure. As a matter of fact, while granting permission to re-construct, this Court did not grant permission to the petitioner to use the re-constructed structure. Notice of motion filed by the petitioner for such permission was expressly rejected by this Court.

29.4. Learned counsel for the respondents has placed reliance on the following decisions to support her contentions:-

1. 2006 (3) Mh.L.J. 753,

Pravin Vs. Municipal Corporation of Greater Bombay;

2. (2010) 2 SCC 27,

Priyanka Estates International Pvt. Ltd. Vs. State of Assam;

3. (2013) 5 SCC 357,

Esha Ekta Apartments Co-operative Housing Society Ltd. Vs. Municipal Corporation of Mumbai;

4. 2019 SCC Online Bom.1613,

Vivek Shantaram Kokate Vs. Municipal Corporation of Greater Mumbai;

5. 2019 SCC Online SC 1389,

Municipal Corporation of Greater Mumbai Vs. Sunbeam High Tech Developers Pvt. Ltd.; and

6. 2019 SCC Online SC 1589,

Ram Murthy Yadav Vs. State of UP.

29.5. Summing up, Ms. Bagalia submits that petitioner has not been able to show any perversity in the impugned order. Though mala fide has been alleged, particulars to support such allegation are missing. She asserts that no case for interference under Article 226 of the Constitution of India has been made out. Therefore, the writ petition should be dismissed.

30. In response, Mr. Sawant submits that respondents had completely misconstrued the order of this Court dated 16.10.1995. Court had directed the Municipal Corporation to provide relevant documents to show that the dimensions of the said structure was 50' x 25' only having height of 15'. This was not at all complied with though burden was on the Municipal Corporation in terms of the order dated 16.10.1995. Mr. Sawant has also distinguished all the decisions relied upon by learned counsel for the respondents. He therefore, submits that re-construction of the structure allowed by this Court way back in the year 1995 may not be allowed to be demolished again by the respondents after long 25 years. Petitioner has made out a good case on merit and therefore the writ petition may be allowed.

31. Submissions made by learned counsel for the parties have been duly considered. Also perused the relevant materials on record as well as considered the judgments cited at the bar.

32. The initial notice dated 20.07.1994 of the Municipal Corporation issued to Smt. Chhaya B. Mane called for pulling down the dilapidated portion of the said structure as well as to repair the damaged portion. In the notice dated 06.07.1995 issued to Smt. Chhaya B. Mane, M/s. Shah Construction Company and the petitioner, allegation of the Municipal Corporation was that the noticees had erected certain works without the requisite permission of the Municipal Corporation and therefore the noticees were called upon to show-cause as to why the said work should not be pulled down. The work was described in the schedule as unauthorized construction of 9" thick BM wall thereby converting the premises into 12 galas, construction of full mezzanine floor and covering the entire structure with AC sheet roof having size admeasuring 122' x 29' 6" and height around 9'.

33. Petitioner responded to the above show-cause notice dated 06.07.1995 by submitting show-cause reply dated 09.07.1995 which were served upon

respondent Nos.2 and 3 on 12.07.1995. Petitioner denied the allegations made against him while at the same time referring to the three lease agreements entered into by him with M/s. Standard Grinding Mills.

34. Most unfortunately, without considering the said reply of the petitioner, Deputy Municipal Commissioner passed order dated 14.07.1995 stating that petitioner had not submitted any proof in reply to the show-cause notice and accordingly Municipal Corporation was going ahead with the demolition of the unauthorized construction.

35. If that was not enough, the said notice was not hand served upon the petitioner. Rather it was pasted on the wall of the said structure. Immediately thereafter on the same day in the afternoon the demolition squad i.e. municipal personnel arrived at the site with bulldozers etc. and carried out demolition of the said structure brushing aside all protestations of the petitioner.

36. The above action was not only in violation of the principles of natural justice and fair play but it was also wholly arbitrary and extremely high-handed giving no time at all to the petitioner to vacate the premises. In the process, petitioner's contention that the said structure could not be construed as an unauthorized structure was not considered at all.

37. It is in these circumstances that this Court passed the order dated 28.08.1995. While admitting the writ petition this Court granted liberty to the petitioner to re-construct the demolished structure by restoring status quo ante as on 20.07.1994. Though Court did not give liberty to the petitioner to convert the said structure into galas or to divide the same by any partition wall, it was however clarified that if the petitioner wanted to convert the said structure, he would have to seek permission from the Municipal Corporation. Besides petitioner could only use the re-constructed structure only upon certification by authorized officer of the Municipal Corporation that the re-construction was strictly in conformity with the interim order of this Court. At the same time Municipal Corporation and its officials were restrained from obstructing the petitioner in carrying out the re-construction work.

38. Dissecting the above interim order of this Court dated 28.08.1995, the following directions are discernible:-

1. Liberty was granted to the petitioner to re-construct the demolished structure by restoring status quo ante as on 20.07.1994;
2. Municipal Corporation and its officials were restrained from obstructing the petitioner while carrying out the re-construction work;
3. Petitioner could use the re-constructed structure only upon certification by the authorized officer of the Municipal Corporation that the re-constructed structure was in conformity with the interim order of this Court;
4. If the petitioner wanted to convert the said re-constructed structure into

galas, he would have to seek permission from the Municipal Corporation.

39. This interim order dated 28.08.1995 restoring status quo ante as on 20.07.1994 by allowing the petitioner to re-construct the demolished structure was passed by this Court because this Court was satisfied that the demolition of the said structure was carried out by the Municipal Corporation in a most illegal and arbitrary manner giving a go-bye to all norms of procedural fairness and principles of natural justice. Ordinarily status quo ante orders, that too, by allowing re-construction of demolished structure, are not passed by the Court. Passing of such an order is a clear indication of the Court being satisfied about the gross illegality of the order and the consequential demolition exercise.

40. On the next date i.e., on 18.09.1995, petitioner informed the Court that in terms of the previous order dated 28.08.1995 he had re-constructed the demolished structure. However, on behalf of the Municipal Corporation, an objection was raised that the structure which had been re-constructed was much bigger in size than the structure that was demolished. While granting liberty to both parties to file affidavits regarding their respective stands, Court directed a joint inspection of the re-constructed premises to be arranged by the Municipal Corporation.

41. Though there was joint inspection, it appears that report of joint inspection was not filed. Be that as it may, both the parties stuck to their respective stands. While Municipal Corporation took the stand that size of the re-constructed structure was much bigger than the one which was demolished, according to the petitioner overall size and height of the re-constructed structure was in conformity with the interim order of this Court, besides the basic objection of the Municipal Corporation being conversion of the said structure into 12 galas and construction of mezzanine floor. In view of such controversy, this Court by order dated 16.10.1995 granted liberty to the Deputy Municipal Commissioner to issue show cause notice and to grant personal hearing to the petitioner whereafter the said authority was directed to pass a speaking order. Scope of this exercise, as rightly pointed out by learned counsel for the petitioner, was to see whether the re-constructed structure was in conformity with the interim order dated 28.08.1995 directing restoration of status quo ante as on 20.07.1994. This was precisely the ambit and scope of the exercise which the Deputy Municipal Commissioner was directed to carry out by this Court. In fact the intent of the Court's order becomes very much clear from the analysis of the Court's observations: Court observed that if it was found that size of the old structure was 50' x 25' and its height was 14', it would follow that the interim order was misused by the petitioner; if on the other hand if it was found that size of the old structure was 121' 10" x 28' 6" and its average height was 17' then it would follow that grievance of the Municipal Corporation was not justified. Having observed and directed so, this Court made it clear that the speaking order should not be enforced without the leave of the Court, clarifying that Court would examine the matter further after passing of the speaking order.

42. Having noticed the scope and ambit of the enquiry directed by this Court to be carried out by the Deputy Municipal Commissioner, Zone-III, the consequential show-cause notice may now be seen. The show-cause notice is dated 13.11.1995 and refers to the order of this Court dated 16.10.1995. By the said notice, petitioner was asked to produce all documents in respect of the unauthorized construction carried out by the petitioner and to show-cause as to why the said unauthorized structure should not be demolished. The schedule described the unauthorized construction as one of a pucca structure consisting of 9" thick brick masonry walls with AC sheet roof and use of iron girders having total area of 122' x 29' 1" width and 17' 1" height.

43. Obviously, the show-cause notice dated 13.11.1995 went away beyond what was directed by this Court. As noticed above, this Court had directed a fact finding enquiry as to whether the re-construction went beyond the structure which was demolished; but the notice spoke of demolition of unauthorized structure.

44. Be that as it may, after petitioner submitted reply and after hearing the petitioner, the Deputy Municipal Commissioner passed the second impugned order dated 19.02.1996. It is a long order running into 24 pages. However, sum and substance of the said order is that as per city survey record there were only two structures having total area of 2400 square feet whereas the existing structure is having area of 112' x 29' 1" with average height of 17' 1". Referring to Section 342 of the Act it was pointed out that if repairs are to be made to an existing building which amounts to re-construction / re-erection etc., a notice has to be given to the Commissioner. Petitioner did not give any such notice and thus the new structure that has been constructed becomes unauthorized having been constructed without obtaining permission from the municipal authorities. Having said so, Deputy Municipal Commissioner further held that the individuality of the old structure has completely vanished and therefore the structure that was assessed under assessment No.GN/6255 (1B) is no more in existence. In such circumstances, the assessment record of the old structure cannot be made applicable to the new structure. In place of the old structure a totally new structure with increased dimensions has been constructed. It has further been held that the documentary evidence produced by the petitioner did not establish that the structure admeasuring 112' x 29' 1" is an authorized one; rather, the documentary evidence of the petitioner pertains to the old structure which is no longer in existence. He therefore held that the structure admeasuring about 112' x 29' 1" i.e., about 3548 square feet is unauthorized and needs to be demolished.

45. Needless to say, the show-cause notice dated 13.11.1995 and the consequential order dated 19.02.1996 have traversed completely beyond the scope and ambit of the enquiry directed by this Court. This Court had directed to find out as to what was the area of the original structure as it existed as on 20.07.1994 and secondly to find out whether the re-constructed structure was bigger in size than the one which existed as on 20.07.1994. In other words, a

fact finding enquiry was directed. I am afraid, Deputy Municipal Commissioner had completely misdirected himself and in the process failed to do what he was directed to do by this Court. To add to the absurdity, he has held that all the documents produced by the petitioner pertained to the old structure under assessment No.GN-6255 (1B) but the said structure is no longer in existence having been demolished. There are no documentary evidence pertaining to the newly constructed structure admeasuring 112' x 29' 1". There cannot be any documentary evidence such as assessment bill, city survey plan etc. in respect of the new structure which has been reconstructed as per order of this Court dated 28.08.1995. As a matter of fact, by the said order this Court had directed the municipal authorities not to put obstruction in the re-construction work of the petitioner. Therefore, such a re-constructed structure cannot be termed or construed as unauthorized. In such a scenario, reference to Sections 342, 347, 351, 354 or any other section of the Act becomes redundant. Municipal authorities cannot sit over the order(s) of this Court and demand documentation of the reconstructed structure when the Court had directed reconstruction, and in the absence of the same to term the reconstruction as unauthorised. Even at the cost of repetition, it has to be borne in mind that what was directed by this Court was to find out as a fact finding exercise as to whether the re-constructed structure as per the Court's order dated 28.08.1995 has similar dimension as the structure which existed as on 20.07.1994. Thus, what is discernible from the above is that the Deputy Municipal Commissioner not only did not conduct the above enquiry; rather he went on a tangent thereby vitiating the decision making process and arrived at a wholly unacceptable and erroneous conclusion.

46. To add to the confusion, in the show-cause notice dated 06.07.1995, the area of the said structure was mentioned as 122' x 29' 6" with height of about 9". In the show-cause notice dated 13.11.1995, the area of the 'unauthorized' construction was mentioned as admeasuring 122' x 29' 1" width and 17' 1" average height. However, in the impugned order dated 19.02.1996, the size (area) of the new structure has been mentioned as 112' x 29' 1" with average height of 17' 1" i.e., about 3548 square feet. Not only there is discrepancy in the area of the structure in the notices and in the impugned order, there is also no mention of 9" thick BM wall converting the premises into 12 galas and construction of mezzanine floor in the impugned order dated 19.02.1996 which was in fact the core allegation in the show-cause notice dated 06.07.1995. In this factual backdrop, it would not be unreasonable to take a view that the re-constructed structure has in fact removed the objections pointed out in the notice dated 06.07.1995.

47. Having discussed the above, the three lease agreements entered into by the petitioner with M/s. Standard Grinding Mills may now be adverted to. By three lease agreements dated 10.07.1994, 20.07.1994 and 09.01.1995, M/s. Standard Grinding Mills leased out three sheds to the petitioner. By the first agreement a shed admeasuring 28' x 45' was leased out to the petitioner. In terms of the second agreement dated 20.07.1994 the lessor leased out to the petitioner a

shed admeasuring 50' x 28' and by the third agreement dated 09.01.1995 a shed admeasuring 29' x 28' was leased out to the petitioner. It is the specific case of the petitioner that the three sheds were not only adjacent to each other but formed a larger whole used as a godown. Certainly, the above three sheds forming part of one whole had an area much larger than 50' x 25' which was the submission of the respondents at the time of passing of the order dated 16.10.1995. The total area of the above adajacent and composite structure would certainly be in the vicinity of 112' x 29' as per the impugned order dated 19.02.1996. Besides, petitioner has pointed out that during joint inspection it was found that the surrounding / neighbouring structures had average height of 17'.

48. But as already discussed above, respondents could not produce any documentary evidence to show that the size of the old structure as on 20.07.1994 was 50' x 25' having height of 14'. The initial objection of the Municipal Corporation was against the dilapidated portion of the said structure which it wanted to be pulled down and for repairing of the damaged portion; thereafter, against conversion of the structure into 12 galas and construction of mezzanine floor. After the demolition of the structure and erection of new structure as per interim order of the Court, these objections no longer hold good. It is not the case of the Municipal Corporation that petitioner has again converted the structure into galas and constructed mezzanine floor or that the old structure without the conversion into galas and without the construction of the mezzanine floor had no construction permission. What the respondents objected to before the Court was that the re-constructed structure was bigger in size than the old structure which was demolished. But to buttress this point respondents would have to show at the first instance what was the area or size of the old structure by referring to the authorizations / permissions granted by the municipal authorities.

49. It is trite that if a person or an authority alleges that a structure is an unauthorized one, the authorization or the permission must first be placed on record. Thereafter it has to be shown as to how the structure has deviated from the authorization or the permission. Obviously, the initial burden would be on the person or the authority who alleges that the structure is unauthorized. In such circumstances, the most crucial document would be the original or initial authorization / permission. In the present case, respondents have not been able to produce the same to show that the old structure had size of 50' x 25'. On the other hand, Deputy Municipal Commissioner has taken the stand that all the documents including assessment bills etc. produced by the petitioner pertained to the old structure under assessment No.GN-6255 (1B) which is no longer in existence. He held that no documents could be produced by the petitioner relating to the new structure which was constructed without obtaining permission from the municipal authorities and therefore it is unauthorized. As already discussed above, this reasoning is absurd in as much as the new structure has been constructed as per order of this Court after the petitioner was given liberty

to re-construct the demolished structure since the demolition was found to be ex-facie illegal by this Court. Therefore, by no stretch the re-constructed structure can be construed to be an unauthorized one.

50. Before wrapping up the discussions, the decisions cited by learned counsel for the respondents may be analysed in the context of the factual narrative of the present litigation.

51. In Pravin (supra), the stall-holders were served with notices under Section 351 of the Act alleging that the stalls were illegal. Thereafter, speaking order was passed by the Deputy Municipal Commissioner recording a finding that there was no legal allotment of pitches in favour of the stall-holders. Though this finding was challenged in civil suit, stall-holders could not obtain any favourable order. In the meantime, they also preferred appeal which was dismissed. After rejection of the appeal, the stall-holders applied for regularization of the structures. Such regularization application was rejected by the Deputy Municipal Commissioner who also observed that allotment letters were obtained fraudulently. This Court rejected the challenge to the said order declining regularization observing that when the stall-holders applied for regularization after dismissal of their appeal it showed their acceptance of the fact that the structures were not authorized or legal. In the circumstances this Court held that Deputy Municipal Commissioner was right in rejecting the application for regularization.

51.1. From the above it is amply clear that facts in Pravin (supra) and the facts of the present case are poles apart; besides, there being a finding in Pravin (supra) that the allotment letters were obtained fraudulently. In such circumstances, the decision in Pravin (supra) cannot have any bearing on the present case.

52. Priyanka Estates International Pvt. Ltd. (supra) is a case where an unauthorized construction was raised by the appellant builders beyond 5½ floors. Guwahati Municipal Corporation accorded permission to the builders on 03.02.2000 for construction of basement, ground, mezzanine, first, second, third, fourth and half of fifth floors. On 08.02.2000, the builders applied for permission for construction of the remaining part of fifth, sixth, seventh and eighth floors but permission was refused by the Corporation on 27.03.2000. On appeal, the Standing Appellate Committee of the Corporation accorded permission on 05.05.2000. However, no consequential formal permission was accorded by the Municipal Commissioner. In the meanwhile, the Corporation was dissolved and an Administrator was appointed. On application being moved, the appeal verdict was reviewed and the permission accorded was made subject to seven conditions.

52.1. Without complying with the above conditions and without getting actual sanction for construction of building beyond 5½ floors from the Commissioner of the Corporation, appellant builders continued with the construction activities beyond 5½ floors and tried to complete the same. It was at this stage that

Guwahati Metropolitan Development Authority came into the picture and issued notice. Ultimately order of demolition came to be issued by the said authority on 30.05.2006. When this was challenged before the Gauhati High Court, the same was dismissed having been found to be devoid of merit and substance. It was in the above factual background that Supreme Court upheld the decision of the Gauhati High Court.

52.2. In that case, the builders carried out construction in the building beyond 5½ floors without complying with the conditions and without obtaining actual sanction for construction. Admittedly, the construction carried out beyond 5½ floors was unauthorized. Clearly, the facts in *Priyanka Estates International* (supra) are distinguishable from the facts of the present case.

53. Likewise in *Esha Ekta Apartments Co-operative Housing Society Limited* (supra), question for consideration before the Supreme Court was legality and validity of the orders passed by the municipal authorities refusing to regularize the illegal constructions made on plot No.9, scheme No.58, Worli, Mumbai. Planning authority had granted approval for construction of six buildings comprising basement, ground and five upper floors. Later on, the developers / builders secured permission from the Chief Minister of the State to raise the height of the buildings upto 60 feet. However, the consequential revised plans submitted were rejected by the planning authority. Notwithstanding rejection of the revised building plans, the developers / builders continued to construct the buildings in violation of the permission leading to issuance of 'stop work' notice by the Municipal Corporation but it appears that no steps were taken thereafter by the municipal authorities. Though revised plans were submitted thereafter those were rejected too. The prospective buyers of flats had entered into agreements with the developers / builders. They formed the *Esha Ekta Apartments Co-operative Housing Society Ltd.* and other housing societies. Members of the housing societies knew that the construction raised was in violation of the sanctioned plan and permission, yet a large number of them occupied the illegally constructed building. Plea for regularization of the construction and that flat buyers should not be penalized for the illegalities of the developers / builders were turned down by the Supreme Court after the case was transferred from this Court to the Supreme Court. In the facts of that case, Supreme Court held that petitioners failed to make out a case for directing the respondents to regularize the construction made in violation of the sanctioned plan. In that context Supreme Court reiterated that no authority administering municipal laws can encourage violation of the sanctioned plan. However, Supreme Court observed that the flat buyers were free to avail appropriate remedy against the developers / builders.

53.1. From the factual narrative as above it is evident that the decision in *Esha Ekta Apartments Co-operative Housing Society Limited* (supra) would have no application to the facts of the present case.

54. In *Vivek Shantaram Kokate* (supra), petitioners were occupants of various

rooms or tenements of the building in question. As per the notice issued by the Municipal Corporation the building was in a ruinous, dangerous and dilapidated condition, requiring it to be pulled down. According to the petitioners the building could be repaired and therefore the notice should be quashed. This Court found the contention of the petitioners to be contrary to settled law and unsupported by undisputed facts. Holding that no case of *Wednesbury's* unreasonableness was made out, this Court declined to interfere under Article 226 of the Constitution of India. Though an allegation of mala fide was made, the same was found to be without any particulars and was rightly rejected by this Court with the observation that mala fides are the last refuge of a losing litigant.

54.1. Needless to say, there is no comparability between the facts in *Vivek Shantaram Kokate* (supra) and the present case.

55. The issue in *Sunbeam* (supra) was if a Municipal Corporation demolishes a structure in exercise of powers vested in it but in violation of the procedure prescribed, whether the High Court can direct the owner / occupier of the building to re-construct the demolished structure. In that case the structure in question was constructed without obtaining development permission. In such circumstances, Supreme Court while not approving the action of the Municipal Corporation in demolishing the structure without following the prescribed procedure, however held that if a structure is an illegal one even though it has been demolished illegally it should not be permitted to be re-erected.

55.1. Obviously the decision in *Sunbeam* (supra) cannot be applied to the present case in as much as it is nobody's case that the old demolished structure was an illegal one. That apart, the re-construction was carried out by the petitioner expending own resources on orders of the Court way back in 1995 after suffering considerable injury in the illegal demolition. 25 years have gone by since the re-construction. It is true that an interim order creates no right in a litigant but at the same time a pragmatic view has to be taken. This is in addition to the fact that even the Municipal Corporation had not taken the stand that the original structure was constructed without permission; the allegations being that the conversion into galas and construction of mezzanine floor were unauthorized. After demolition, these allegations no longer hold good.

56. Finally, in *Ram Murthy Yadav* (supra), the appellant, a Judicial Officer assailed his order of compulsory retirement. Challenge to the same before the High Court was unsuccessful. While refusing to interfere with the order of compulsory retirement, Supreme Court observed that while a bona fide error may need correction and counselling but a conduct which creates a perception beyond the ordinary cannot be countenanced; for a trained legal mind, a judicial order speaks for itself. The order of compulsory retirement was passed against the appellant in the context of a complaint made against him for acquitting an accused in a criminal case.

56.1. In the above factual scenario, the decision in *Ram Murthy Yadav* (supra)

can have no application to the facts of the present case.

57. Way back in 1968, a Constitution Bench of the Supreme Court in *State of Orissa Vs. Sudhansu Sekhar Misra*, AIR 1968 SC 647 recalled the saying of Earl of Halsbury L.C. in *Quinn v. Leatham* that every judgment must be read as applicable to the particular facts proved, or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found and that a case is only an authority for what it actually decides. Much later, in *State of M.P. Vs. Narmada Bachao Andolan*, (2011) 7 SCC 639, Supreme Court in paragraph 64 of the said report observed that a little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases.

58. Thus having regard to the discussions made above, Court is of the view that the impugned orders dated 14.07.1995 and 19.02.1996 cannot be legally sustained and those are hereby set aside and quashed. The re-constructed structure shall not be demolished by the respondents, who are directed to take steps to regularize the re-construction either by continuing the earlier municipal assessment or by making fresh municipal assessment. Further more, if the petitioner files application for conversion of the re-constructed structure into galas, the same may be considered in accordance with law. No opinion is expressed.

59. Writ petition is accordingly allowed. But there shall be no order as to costs.