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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.962 OF 2025

1. Pyaridevi Hariram, 48 years
Adult, Indian Inhabitant
Occupation : Flourmill
Having address at B1, Shop no.6,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
2. Ujwala Sanjay Dhotre, 50 years
Adult, Indian Inhabitant
Occupation : Housewife
Having address At A1, Shop no.004A,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
3. Radheshyam Kamalaprasad Yadav,
aged 41 years, Adult, Indian Inhabitant,
Occupation:
Having address at B2, flat no.202,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
4. Vidya Kaur Gurubaksh Singh Kalsi, 46 years
w/o Gurubaksh Singh Kalsi
Adult, Indian Inhabitant
Occupation : Housewife
Having address at A1, flat no.101,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.

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5. Tirath Ramanand Sharma, 44 years
Adult, Indian Inhabitant,
Occupation: Carpenter
Having address at A1, flat no.202,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
6. Venkateswara Rao Pallamsetti Chappidi,
aged 58 years
Adult, Indian Inhabitant,
Occupation: Worker in Workshop (Service)
Having address at A1, flat no.204,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
7. Rammurat Laldhar Singh, 55 years
Adult, Indian Inhabitant,
Occupation: Worker in Workshop
Having address at A3, flat no.104,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
8. Umashankar Mukhalalprasad Goud, 31 years
Adult, Indian Inhabitant,
Occupation: Service
Having address at A3, flat no.201,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,
Bhiwandi Road, Thane West,
Thane – 421 302.
9. Santosh Lahuru Yadav, 46 years
Adult, Indian Inhabitant,
Occupation: Worker
Having address at A1, flat no.103,
Sai Dham Apartment, Opp. Sini
Square Tower, Near Kasheli Toll Naka,

Bhiwandi Road, Thane West,
Thane – 421 302.

...Petitioners

V/s.

1. The State of Maharashtra
represented by the Chief Secretary,
Mantralaya, Mumbai 400 032.
2. Mumbai Metropolitan Regional
Development Authority (MMRDA)
Having its office at Sub-Regional Office,
1st floor, Balkum, Fire Brigade Station
Building, Thane-Bhiwandi Road, Balkum,
Thane (W) 400 608.
3. The Collector of Thane, Thane.
The Tahsildar of Bhiwandi, Taluka -
Bhiwandi, District – Thane.
4. The Tahsildar of Bhiwandi, Taluka -
Bhiwandi, District – Thane.
5. The State of Maharashtra,
Through A.G.P High Court,
Mumbai.
6. The Sarpanch of Grampanchayat
Kasheli Grampanchayat Office, Kasheli
Taluka -Bhiwandi, District- Thane.
7. The Sarpanch of Grampanchayat Kalher
Grampanchayat office, Kalher Taluka
Bhiwandi, District- Thane.
8. Shri Sharad Vasant Madhavi Age-Adult
Residing at House No.439,
Near Grampanchayat office, At Kashali Post -
Kalher, Taluka- Bhiwandi, District-Thane.
9. Shri Shekhar Vasant Madhavi Age-Adult
Residing at House No.439,
Near Grampanchayat office, At Kashali Post -

Kalher, Taluka- Bhiwandi, District-Thane.

10. M/s. Saidham Developers
Through its Proprietor Shri Chandrakant
Mahadeo Kherade Age-Adult, Residing at
A-1, Flower Valley CHS Ltd., Eastern Expres
Highway, Runwal Nagar, Thane (West). ... Respondents

Mr. Mathew J. Nedumpara, a/w Ms. Hemali Merva, B.S. Munday and Mr.
Akhilesh Nair, i/by Nedumpara and Nedumpara for Petitioners.
Mrs. Usha Rahi, AGP for Respondent No.1-State.

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

RESERVED ON : 14th January 2025.

PRONOUNCED ON : 15th January 2025.

JUDGMENT (Per : Kamal Khata, J) :-

1) The Petitioners are alleged owners/purchasers of apartments in Saidham Apartments complex located at Kalher, Near Bhiwandi, Thane District. They are aggrieved by the Judgment dated 25th July, 2024 passed by this Court in Writ Petition No.833 of 2019 and Notices dated 6th January, 2025 issued by the Tahasildar Bhiwandi, directing parties to vacate their respective flats. The said Order directed demolition of their apartments holding that the construction was on Government land and regularization of those buildings was not possible. In addition, the builder of these 5 buildings was directed to deposit Rs.8 crores as compensation for pro rata distribution amongst the flat purchasers under the Orders of this Court. It was also clarified that the compensation that would be distributed on pro

rata basis to the flat purchasers would be in addition to the compensation that the purchasers may claim against the builders before the Civil Courts. The Notices dated 6th January, 2025 are issued by Tahasildar in furtherance of the Judgment passed by this Court.

2) Mr. Nedumbara learned counsel for the Petitioners argued that the Petitioners were not made parties and thus were not heard resulting in gross violation of principles of natural justice. He argued that such a judgment that was passed without conducting any survey of the properties in question rendering it illegal. He further contended that the Petitioners were entitled to regularise these constructions under Section 52A of the Maharashtra Regional Town Planning Act (“MRTP Act”). He therefore sought the reliefs prayed for in the Petition.

3) The prayers in the Petition are reproduced hereunder for ready reference:

- a) Declare Ext. A/judgement to have been rendered as illegal for having been passed without hearing the necessary parties;
- b) Direct the respondents 1 to 4 to survey the properties upon which the apartments of the petitioners and others, have been constructed by the 10th respondent, to ascertain encroachment upon government land;
- c) Direct respondents 1 to 4 to regularise the petitioners’ apartments and to grant occupancy/leasehold rights over the alleged government lands over which their apartments have been constructed;

- d) Restrain respondents 1 to 4, and their agents, from interfering in any manner whatsoever, with the enjoyment of the apartments owned by the petitioners and others, until due process of law is followed in respect of the disputed ownership rights over the properties;
- e) pass such further and other orders as the nature and circumstances of the case may require.”

Reasons and Conclusion:

4) We heard Mr. Nedumpara though most of the arguments advanced were not relevant to the point involved in Petition. We also perused the record. In our view, this Petition is yet another attempt to overreach the Orders passed by this Court on 25th July, 2024 since the SLP was dismissed as not pressed on 28th December, 2024. This Court’s Judgment dated 25th July, 2024 accordingly attained finality.

5) Some flat owners had filed an Interim Application bearing No. 15861 of 2024 to interevne in the Developers Interim Application seeking to modify the Judgment dated 25th July, 2024. By the said application the said flat owners contended that they would be satisfied with rehabilitation instead of monetary compensation which was disposed off by this Court by its Order dated 17th December, 2024. Paragraphs No.7 and 8 of the Order dated 17th December, 2024 recorded as under:

“7. Prayers for deferring the demolition until the flat purchasers are rehabilitated are nothing but a ploy

to avoid complying with the directions in our judgment and order. That is why the flat purchasers are sought to be put forward, claiming such equities.

8. Though judgment and an order were made on 25 July 2024, considering the plight of the flat purchasers, the time for making alternate arrangements and carrying out demolitions was granted until 1 February 2025. The SLP against the judgment and order has already been dismissed.”

5.1) Thus, the Interim Application in the disposed Writ Petition No. 833 of 2019 was dismissed.

6) This Petition now in the name of some other flat purchasers challenges the notice dated 6th January, 2025 by the Respondent No.4-Tahsildar for demolition of the building. We are unable to grant the Petitioners any reliefs for the following reasons:

(i) The Petitioners claiming to be innocent third party purchasers cannot possibly be protected because their rights flow from an illegality. Their remedies if any, are against the developers. This law is enumerated by this Court in *Bombay Environmental Action Group v/s. Mumbai Municipal Corporation (Arihant Building)* reported in 1994 SCC OnLine Bom. 512 and *West Coast Builders Pvt. Ltd. & Another v/s. The Collector of Bombay & Others* reported in 1994 SCC OnLine Bom. 54.

(ii) Moreover the argument of the purchasers innocently taking possession and thus acquiring title offered by the

developers is also repelled in the judgments of this Court in the case of *Priyanka Estates International reported in (2004) 1 SCC 663* and *Esha Ekta Apartments reported in (2012) 4 SCC 8689*.

(iii) Additionally, the Judgment dated 25th July, 2024 has extensively considered the law on illegal constructions and held that, the illegal and unauthorised constructions deserve to be demolished.

(iv) Recently the Hon'ble Supreme Court in the case of *Rajendra Kumar Barjatya and Another v/s. U.P. Avas Evam Vikas Parishad and Others reported in 2024 SCC OnLine SC 3767* directed demolitions of all illegal structures. Paragraph No.20 is reproduced herein below for ready reference:

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities,

administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be

just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.

[emphasis supplied]

7) We are bound by the Judgments of the Hon'ble Supreme Court. In the present case, the judgment dated 25th July, 2024 has categorically held that all the 5 buildings in the complex were illegal, unauthorizedly constructed and thus directed to be demolished.

8) We reject the contention of the Petitioner's Advocate that the concerned authorities must consider their regularisation application dated 14th January, 2025, i.e., made today. On examination of the application, tendered after conclusion of the arguments, it reveals that the application is not even filed with the concerned authority. In any event, even if filed, must be rejected.

9) We strictly adhere to the principles of law firmly settled by the

Supreme Court in its celebrated decision in the case of *K. Ramdas Shenoy V/s. The Chief officers, Town Municipal Council, Udipi reported in (1976) 1 SCC 24* that, illegality is incurable.

10) In view of the above, we find no merits in the Petition and dismiss this Petition.

11) However, we hereby reiterate that the rights of the Petitioners to claim compensation against the developers are kept open.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)