



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

WRIT PETITION NO.1658 OF 2012
WITH
NOTICE OF MOTION NO.180 OF 2016

Sameer Subhash Patil]	Applicant
Vs.		
The State of Maharashtra and others]	Respondents

a/w
WRIT PETITION NO.547 OF 2017
a/w
INTERIM APPLICATION [L] NO.14400 OF 2023
a/w
INTERIM APPLICATION NO.1769 OF 2022
a/w
WRIT PETITION NO.1658 OF 2012
a/w
NOTICE OF MOTION NO.1 OF 2021
a/w
NOTICE OF MOTION NO.439 OF 2019
a/w
INTERIM APPLICATION NO.928 OF 2020
a/w
INTERIM APPLICATION NO.2782 OF 2022
a/w
NOTICE OF MOTION NO.5 OF 2021
a/w
REVIEW PETITION [L] NO.72 OF 2017
IN
WRIT PETITION NO.1658 OF 2012
a/w
CHAMBER SUMMONS NO.105 OF 2018
a/w
NOTICE OF MOTION NO.188 OF 2013
a/w
NOTICE OF MOTION NO.6 OF 2021
a/w
NOTICE OF MOTION NO.501 OF 2017
a/w

NOTICE OF MOTION NO.4 OF 2021
 IN
 WRIT PETITION NO.1658 OF 2012
 a/w
 WRIT PETITION NO.183 OF 2019
 a/w
 WRIT PETITION NO.186 OF 2019
 a/w
 WRIT PETITION NO.55 OF 2019
 a/w
 WRIT PETITION NO.58 OF 2019
 a/w
 WRIT PETITION NO.69 OF 2019
 a/w
 WRIT PETITION NO.50 OF 2019
 a/w
 WRIT PETITION NO.3683 OF 2018
 a/w
 WRIT PETITION NO.3686 OF 2018
 a/w
 WRIT PETITION NO.92 OF 2019
 a/w
 WRIT PETITION NO.290 OF 2019
 a/w
 WRIT PETITION NO.275 OF 2019
 a/w
 INTERIM APPLICATION NO. 4506 OF 2022
 IN
 WRIT PETITION NO.275 OF 2019
 a/w
 WRIT PETITION NO.46 OF 2019
 a/w
 WRIT PETITION NO.35 OF 2019
 a/w
 WRIT PETITION NO.81 OF 2019
 a/w
 WRIT PETITION NO.30 OF 2019
 a/w
 WRIT PETITION NO.45 OF 2019

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Mr. Sanjiv Sawant a/w Mr. Heramb Kadam, Ms. Samiksha S. Mane i/b Sandeep Bane a/w Ms. Pooja Bane, Mr. Atharva Bane and Ms. Shefali Jadhav for Petitioner in WP/1658/2012.

Mr. Shubham Bane i/b Sandeep Bane, Ms. Pooja Bane, Mr. Atharva Bane, Ms. Shefali Jadhav for Petitioner in other Petitions.

Mr. J. M. D'Silva a/w V. N. Gupta for Petitioner in WP/547/2017.
 Mr. Mahendra Agvekar a/w Ms. Shraddha Chavan for Intervenor/Applicant in IA/928/2020 in WP/1658/2012.
 Mr. P. G. Lad a/w Ms. Aparna Kalathil and Ms. Anjali Maskar for MHADA.
 Mr. G.S. Godbole, Senior Advocate, a/w Mr. Chaitnya Chavan, Ms. Pushpa Yadav i/b Ms. Komal Punjabi for BMC in WP/1658/2012 and WP/547/2017.
 Mr. Jitendra Khonde, Executive Engineer, Building Proposal Dept. present.
 Mr. Sadipkumar Wagh, Assistant Engineer, Building Proposal Dept. present.
 Mr. Kshitijkumar Varma, Section Engineer, Building Proposal Dept. present.
 Mr. Shanker Dhumander, Assistant Engineer, Building Proposal Dept. present.
 Mr. Vilas Khilari, Deputy, H.E. City, present.
 Mr. Kailash Dhongade, Assistant Engineer, Water Works Department present.
 Ms. Uma Palsuledesai, AGP for State in WP/1658/2012, 183/2019, 55/2019, 58/2019 and 45/2019.
 Mr. Atul Vanarse, AGP for State in WP/547/2017.
 Ms. Jyoti Chavan, Adl. GP for State in WP/186/2019, 275/2019 and 81/2019.
 Mr. Milind More, Addl. GP for State in WP/69/2019 and WP/92/2019.
 Ms. Nazia Sheikh, AGP for State in WP/50/2019.
 Ms. Poonam Mittal, AGP for State in WP/3686/2018.
 Ms. Fatima Lakadawala, AGP for State in WP/3683/2018.
 Mr. Dipesh Siroya, AGP for State in WP/290/2019.
 Ms. Manisha Gawde, AGP for State in WP/46/2019.
 Ms. Usha Rahi, AGP for State in WP/30/2019.

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**CORAM : G.S. KULKARNI &
 KAMAL KHATA, J.J.**
DATE : 25th JULY, 2025.

Oral Order (Per G.S. Kulkarni, J.)

1. This batch of proceedings has raised very serious concerns in regard to the several illegalities in regard to a skeleton structure of ten floors in the heart of busy commercial area in Mumbai city, namely, at Dadar. To the dismay of everyone, the twelve ground floor premises are occupied by the tenants, who are running full-fledged commercial establishments/shops, however, without any approval from the Municipal Corporation and an Occupation Certificate. In a detailed order passed by this Court on 16th July, 2025 (Coram: one of us

G.S. Kulkarni and Arif S. Doctor, JJ), several illegalities are noted, which would certainly shock the conscience of the Court. This, more particularly considering that 110 residential tenants are being kept away from their legitimately entitled tenements, for more than 15 years and only a handful of commercial tenants are illegally exploiting the benefits of their partly redeveloped tenements for almost 12 years which are situated on the ground floor of the said building, which is undergoing redevelopment. As also two occupants on the first floor premises are occupying the premises illegally. This, however, with the complete blessings of the municipal machinery, in as much as the municipal officers in the present case have acted in a manner, as if there are no rules and regulations applicable for the construction in question.

2. This Court in its earlier order has made serious observations when it directed the Municipal Commissioner to undertake an inquiry, to find out and ascertain the roles of the concerned Municipal Officers who have perpetuated such illegalities. The following observations as made by the Court in its order dated 16 July 2025 are required to be noted:

“5. We cannot countenance such gross dereliction of duties. We accordingly order the Municipal Commissioner to find out as to who are these officers/employees responsible for bringing this situation and who have avoided and/or refused to take action against such gross illegality and permitted such occupation of these commercial structures. We order that after such officers are identified and the role attributed to them, appropriate departmental action needs to be initiated against these officers, as this materials are sufficient, as to how without occupation certificate being granted by the M.C.G.M. occupancy of these structures with open eyes was permitted by these officers and employees, that too, to the prejudice to other 110 residents of the same building who are awaiting their tenements as the building is yet to be fully constructed since last more than 15 years.

There cannot be different yardstick in respect of other eligible occupants of the building. However, Municipal Officers appear to have aided and created this situation of a discrimination being meted out to these occupants who were similarly situated in the redevelopment in question.”

3. Admittedly, the building under redevelopment above the ground floor is only a skeleton. It has no Occupation Certificate (OC). As fairly pointed out by Mr. Godbole, learned senior counsel for the Municipal Corporation, the most glaring aspect of the case is that for all these years, i.e., for almost 12 years, no effective notices under any of the provisions of the Mumbai Municipal Corporation Act, 1949 (“MMC Act”) or the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”) were issued. This more particularly when Section 353A of MMC Act provides for “Completion Certificates, permission to occupy or use”, failing which there is no permission to occupy or use any building. Sub Section (2) of Section 353A *inter alia* provides that:

“(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any such work, until—

(a) the permission referred to in proviso (b) to sub-section (1) has been received.....

(emphasis supplied)

4. Further, Section 53 of the MRTP Act is a provision conferring power to require removal of unauthorised development.

5. This apart, the situation is to the effect that in the partly constructed building in question, about 12 commercial structures on the ground floor of this building, which is situated in a prime locality like Dadar, are all shops where hundreds of persons visit for purchases. Such shops are being occupied,

used or permitted to be used contrary to the mandate of Section 353A, namely, without an O.C. It is quite appalling that the structure, which has not been examined by the Municipal Corporation as required by the statute, with its expertise to certify, whether it is a habitable structure and/or whether it would be safe, not only for its occupants but also for those who would visit these premises, qua the fire safety requirements, is continued to be occupied, in the absence of any permission, approval, clearance or any legal mandate. The legitimate expectation of any innocent person who visits these premises would be of the structure being legal and certified by grant of an O.C. This is being compromised for all these years and with open eyes.

6. It cannot be countenanced that such gross illegalities in respect of any premises, that too which are in the heart of the city and which are being full-fledgedly occupied, are not being noticed by the several officers of the Municipal Corporation, who are supposed to be vigilant, or whether such state of affairs is intended to be maintained and bolstered, for motives the law would not recognize, is something which bothers us. Thus, a situation of a total failure of the municipal governance by non-adherence to the provisions of law is what is apparent in the present proceedings. Every possible officer right upto the concerned Additional Commissioner exercising jurisdiction has turned a blind eye to all these illegalities.

7. This is one such case of illegality which has come before the Court and as to how many such illegalities are being perpetuated, is a matter of serious

concern for the Municipal Commissioner and his co-officers, who deserve to have sleepless nights on such issues, as any neglect on such issues may lead to the happening of any untoward incident of a collapse or of a fire affecting human lives. If a building in such manner is permitted to be illegally occupied, it is very easy for the municipal machinery to blame the persons, who were illegally occupying, but the question is whether any real efforts to bring the illegality to law were at all taken, with the solemnity and seriousness the law would expect the municipal officers to act. One can imagine as to how much business these twelve shops must have undertaken for such long period illegally occupying these shops. Thus, the situation of illegality is aided and enabled by the municipal officers.

8. This is not what is expected from the regime, the statutory provisions under the MMC Act or the MRTP Act would bring about. Some of the observations which this Court has made in the order dated 16th July, 2025 (supra), which concern larger issues of municipal administration are required to be noted:

“11. We may caution the Municipal Commissioner that it appears from the several matters which are coming to the Court that the Ward Officers and the officers higher to the Ward Officers who are responsible to take actions in accordance with law, are not furnishing information about the illegalities and/or such information is being suppressed and not reaching the office of the Municipal Commissioner. This has created a situation of gross lawlessness on several counts going scot free, not only qua illegal constructions but also of illegal occupancies. We accordingly direct the Municipal Commissioner to form “appropriate teams” ward wise to inspect the structures which are unauthorized and which are occupied without occupancy certificates so that accountability

can be fixed and prompt actions can be taken in respect of all such structures, and accordingly the municipal mess of such illegalities, which is created in the different wards can be cleaned up in a timely manner, before things go completely out of hand.”

9. In pursuance of the said order dated 16 July, 2025 passed by the co-ordinate Bench, two affidavits are placed on record. The first affidavit is of Mr. Vinayak Vispute, Assistant Municipal Commissioner, G/North Ward. This affidavit clearly states that he is deposing only on the basis of what is on the record of the Municipal Corporation. In our opinion, this officer could not have confined his affidavit merely on the record in his office, but also, as to the ground realities on the site, i.e. nature of the open illegalities which are taking place within his jurisdiction, and to which possibly he wants now to shut his eyes even when it comes to the solemnity of an affidavit to be filed in the Court. It appears from the tenor of affidavit that he wants to open his eyes, only when this Court passed orders. This, in our opinion, is a position of suitability and self-convenience adopted by this officer. Be that as it may, the contents of the affidavit are something which apart from being wholly unacceptable, also would shock our conscience.

10. The following averments as made in the Affidavit need to be noted:

“7. It is submitted that the construction of the proposed Building was raised upto 10th Floors as per the last CC granted in respect of the redevelopment proposal that was being implemented on the said Property. It appears from the records that the constructed portion of the building has no part OC issued by the Building Proposal Department of Respondent No.2. It further appears from the records that the ground floor of partially constructed building was unauthorisedly occupied and in respect thereof, legal action was taken by the Building Proposal Department of Respondent No.2.

8. It is submitted that as per Circular No.MGC/A/5455 dated 6.11.2018 issued by the Hon'ble Municipal Commissioner, the Designated Officer shall not issue a Stop Work Notice in respect of any ongoing construction work in the Ward unless the concerned Executing Engineer (BP) concurs with any proposed action in respect of such ongoing construction.

9. Further, as per the Circular No.CHE/3505/DPWS/H&K dated 4.3.2002, it is clarified that whenever any complaint in relation to any unauthorised work being carried out in respect of a building as regards with which Plans have already been approved but no occupation certificate is issued, such issue is required to be investigated by the concerned Building Proposal Department, who upon enquiring into the issue is expected to initiate action in such cases. Hereto annexed and marked as Exhibits- 'C' & 'D' are the copies of Circular No.MGC/A/5455 and Circular No.CHE/3505/DPWS/H&K dt. 4-3-2002.

10. In light of these internal circulars, when the Ward office received complaints pertaining to the Building in question, those have been promptly forwarded to the Building Proposal staff for Ward office for necessary action.

11. Likewise, when Ward office received complaints from the Petitioner regarding unauthorised occupation in the building without obtaining OC, such complaints were forwarded the concerned Building Proposal Department and accordingly, a communication to that effect was addressed to the Petitioner. Hereto annexed and marked as Exhibits "E" to "F" are copies of the Complaints received from the Petitioner and consequential communications addressed to the Building Proposal Department and the Petitioner.

12. Further, as per the statement recorded in the Order dated 16.7.2025, joint inspection of the building was carried out by the Building Proposal Department and Building & Factory Department, G/North Ward on 16.7.2025. During the inspection, it was observed that there are total 14 shops on the ground of the building, out of which 12 shops were found to be occupied. In addition thereto, no other occupant was found to have been occupied any other part of the building. Hereto annexed and marked as **Exhibit "G"** is a list of occupants occupying 12 shops.

13. During the inspection, it was further observed that illegal partition walls were found to have been erected on 2nd and 3rd floors which was proposed for parking space. Accordingly, the Ward Officer was also received a letter dated 17.7.2025 from the Building Proposal Department in this regard, Resultantly, based on the inspection, an action in terms of Section 53(1) of Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) was initiated against the Owner / Occupier.

Architect and MHADA who is the acquired property as per the provisions of MHAD Act. This Notice was issued on 17.7.2025 and this Respondent has called upon Noticees to remove the unauthorised changes carried out in the said building and restore the same back to its original position during the period of one month from receipt of, the said Notice. Hereto annexed and marked as **Exhibit "H"** is a copy of the said Notice dated 17.7.2025."

(emphasis Supplied)

11. From the aforesaid statements as made in the affidavit, several glaring aspects are noticed. Firstly, from the contents of paragraph 7 of the Affidavit, it is clear that the deponent is aware that the constructed portion has no OC. Further he says that "it appears from the record" that the ground floor of partially constructed building was unauthorisedly occupied and that legal action was taken by the building proposal department. If such is the position on his record, as to why his department and the successive officers failed to take action for almost 10 to 12 years, is not being answered by him. The only way to look at such municipal understanding of this officer, is that except for the Court intervening, he would not have any inclination to work in coordination with the other departments so as to take any lawful action on such illegality. Infact he permitted and perpetuated this illegality. He was least bothered to take any action. He or his department did not issue a single notice when commercial premises were being occupied without OC.

12. When it comes to accountability, blame game in such affairs is the routine mantra. This case is not an exception. In paragraph nos. 8 & 9 of the affidavit (supra), the deponent has tried to shift the blame on this gross inaction on the 'Building Proposal Department', when he refers to circular dated 6

November 2018 issued by the Municipal Commissioner to say that the designated officer would not issue stop work notice in respect of ongoing construction work in the ward, unless the concerned Executive Engineer (Building Proposal Department) concurs with any proposed action in respect of such ongoing construction. He however does not whisper as to why his department did not take up the matter for such long years with the Executive Engineer (Building Proposal) for any action to be taken on such illegality although having been noticed or by any of his predecessor Assistant Engineers. This clearly indicates a 'blame game of self-convenience', so as to not take any action against such illegality or permit such illegality to continue and for reasons which the Municipal Commissioner himself would consider and ponder on.

13. Paragraph no. 9 (supra) of the said affidavit of Mr. Vinayak Vispure, Assistant Municipal Commissioner is also not different from what is set out in paragraph no.8 so as to shift the blame on his inaction on the Building Proposal Department. In fact this paragraph is not only astounding but a classic example of how things can be dodged and lawful action being avoided, when he says that action would be taken only when a complaint is received. This gives an indication that the Assistant Engineer himself will not act in regard to any brazen illegality happening in his jurisdiction and would take action only when a complaint is received. If such reason is to be accepted, then in our opinion, it is bringing about a regime of not only a total abuse, but lawlessness in keeping

in cold storage the several powers and authority the municipal officers wield in matters of civic administration. It is likely that in a given situation for several reasons no complaint whatsoever is ever made. Would that mean that the municipal officers would turn a blind eye to the illegalities and not take any action? In fact, in our opinion, what has been set out in paragraph no.9, if it is accepted to be the correct position happening at the departmental level within the Mumbai Municipal Corporation, it would amount to making a mockery of the rules, regulations, obligations, duties and responsibilities which are supposed to be collectively discharged by the different officers at different levels and departments of the Municipal Corporation.

14. Now, we come to paragraph no. 10 of the affidavit of Mr. Vinayak Vispute. No details whatsoever are furnished by the deponent Mr. Vinayak Vispute in setting out what action he had promptly proposed. Thus, making such vague statements/averments in the affidavit, the intention is only to get away and/or overcome such irregularities nay illegalities in some manner, with an impression that such shabby and irresponsible affidavits could be accepted by the Court.

15. We next come to paragraph nos. 11 & 12 of Mr. Vinayak Vispute's affidavit, which clearly reflects that action was sought to be taken only after this Court intervened on 16 July 2025, as a picture is sought to be painted, as if some action would now be taken. In our opinion, it cannot be the approach of any Municipal Officer that only when the Court intervenes, an action would be

taken and otherwise, the illegality would be permitted to perpetuate. Such attitudes and approach being openly canvassed by the Municipal Officers, have brought about a regime where majority illegality and irregularity has become a rule and legality is an exception in the routine administration as we experience day in and day out in municipal matters. We would infact wonder whether a common man has any place in this system. Several glaring examples being when it comes to putting up illegal constructions resulting in no action being taken for years together. How much is the percentage of illegal and unauthorised constructions in Mumbai would reveal the correct factual position.

16. Now coming to paragraph no. 13 of Mr. Vinayak Vispute's affidavit. The affidavit pertains only to the inspection undertaken after the Court passed the order on 16 July 2025, where the Building and Proposal Department also started acting pursuant to the said order passed by the Court to initiate action. Thus, the contents of paragraph no. 13 would clearly indicate that there was no inclination of any responsibility by such officers, at the helm of affairs, to weed out any such illegalities, and more particularly, when at the ground level such illegalities are openly noticed. Even a basic survey and inspection of the premises was not undertaken, for reasons which are not far to be seen.

17. We ponder whether in such rampant state of affairs such employees / officers of the Municipal Corporation can at all be called public servants, upon whom enormous powers are conferred under the rules, regulations and the law,

to take actions against several illegalities in matters of putting up illegal constructions, people occupying premises without occupation certificate, in the absence of there being no structural stability certificate, no fire clearances and several other vital aspects in relation to a building being legally and safely occupied. The responsibility would be more onerous in respect of commercial premises, in which not only the occupants of the premises but several innocent persons would visit, not knowing that the building itself is not structurally certified by the Planning Authority but also that there is no clearance whatsoever, for the safe use of the building and its occupation. Thus, the legal rights of a common man / citizens to be in a safe building are sought to be compromised and violated and that too very brutally at the hands of such officers. Things cannot wait until unfortunate incidents happen and innocent people suffer.

18. In our opinion, considering such state of affairs, it is high time that the Municipal Commissioner issues appropriate orders and reminds his officers at different levels so as to define/redefine the specific duties, their day-to-day obligations in respect of the functions they are required to discharge in the respective wards and make them accountable for their inaction.

19. We also expect the Municipal Commissioner to place on record an affidavit as to the role of each of the Municipal Officers in regard to each of the wards, their duties, functions and obligations so that even the Courts knows as to what is the role attributed to each of these officers and what are their duties

and obligations, when issues come before the Court. This be prepared in the form of a statement and be furnished to the Court, which would be useful to deal with hundreds and thousands of matters, coming before the Court as every such matter involves some role or the other of the different Municipal Officers, including issues on their accountability. The reason also being in many matters there are allegations of illegalities at the hands of Municipal Officers, allegations of inaction on the part of Municipal Officers, allegations of *mala fides* and several other allegations are made, which we are required to be looked into by the Court. Thus, it would be extremely useful that the Court knows as to what is the jurisdiction, duties and obligations of each of these officers and the manner such obligations and duties are required to be performed, and whether there is any contemporary set of rules for their functioning and that things are not in the nature of a banana republic, when it comes to the administration of municipal affairs.

20. In context of the present case and what we have observed hereinabove on the affairs of the municipal administration, we are also reminded of the observations as made by the Division Bench in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) Versus Bhiwandi Nizampur Municipal Corporation & Ors.**¹ wherein under the scheme of Constitutional Governance and the role of such public servants in discharging their public duties, the Court made the following significant observations:

¹ 2022 SCC OnLine Bom 386,

“102. In the scheme of Constitutional governance, it is not possible for us to assume that a public official, howsoever high, or mighty or low, can remain without public accountability to “We the People”. Failure of accountability and discharge of public duties and responsibilities which the law would mandate them to discharge, in our opinion, are anathema not only to the expectations of lawful governance, but would also bring about a colossal case of derailment of the Constitutional and legal machinery, resulting into patent societal injustice and a civic regime opposed to the rule of law. The issues, which we have discussed above, certainly cast a serious doubt as to whether the above expectations of the rule of law are at all fulfilled and/or are followed in breach. It is for such reason, when there is a glaring and an apparent failure on the part of the statutory authorities to comply their lawful duties and Constitutional expectations, and/or when there is a dent or a breach in enforcement of the laws, the Courts unhesitatingly are required to step in, so as to correct those who are failing in the discharge of their lawful duties, of not only to remind them of such duties and obligations but use the strong arm of law to set the same enforced and restore the confidence and expectations of the citizens, in the rule of law. This would also certainly require the Court to strictly deal with such officials, as the law would mandate the Court to so deal with them. They ought not to be under any impression that they can evade law with impunity. The famous quote of Lord Acton that “power corrupts and absolute power corrupts absolutely” ought to be realized to be untrue and something of the past, in its applicability in public governance. This, more particularly, when the aim is to compete with the other countries of the world where not only the building laws are stringently followed but also the aesthetics in relation to constructions and building designs are given a great impetus, so that the cities do not become eye sores of brick and mortar. This apart, as echoed in every public policy, corruption in municipal governance should be brought to the books by establishing multiple layers of anti-corruption mechanism within and outside the organization and achieve strict application of the provisions of the Prevention of Corruption Act, 1988. This ought to be implemented with immediate urgency by keeping a vigil on those officers who in the absence of any hurdles are deliberately not taking actions against illegal and unauthorized constructions. It is only then that there can be a ray of hope and sunshine for the future generations.”

21. As noted above, only after a serious order was passed by this Court on 16 July, 2025, these Municipal Officers have awakened from the deep slumber and

in a pretentious manner presenting an affidavit before the Court, making a farce of the system, to now state that they have become aware of these illegalities noted by us and the actions they propose to take by issuing notices under Section 353A of the MMC Act and under Section 53(1) of the MRTP Act.

22. Be that as it may, with whatever wisdom which has downed on these officers in issuing such notices, these notices are required to be taken to the logical conclusion and in accordance with law.

23. The other aspect of the matter is that when this Court is seized with this proceedings, if there is any mischief on the part of these illegal occupants by approaching certain forums including the Civil Court, we expect that the Municipal Corporation will immediately bring to the notice of the Civil Court and prevent any orders being passed which would infact defeat the lawful course of action being resorted by the Municipal Corporation after this Court passed the order dated 16 July, 2025 considering the principles as discussed in catena of judgments of this Court on the role of Civil Courts in such peculiar circumstances.

24. There is another aspect of the matter, namely, that once premises are occupied illegally and in the absence of Occupation Certificate, an action could have been taken under Section 8 of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006 and more particularly when it comes to commercial premises and innocent persons visiting such premises. Section 8 is a power to

seal the building. We expect that the Chief Fire Officer also ought not to be a bystander, who would shut his eyes, in respect of any unlawful construction, which has been occupied, without any fire clearance from his department and lawful actions need to be taken invoking the provisions of Section 8. Let appropriate stand in this regard be taken and be informed to the Court on the adjourned date of hearing.

25. The second affidavit filed on behalf of the MCGM is of Shri Jitendra Arjunrao Khonde, Executive Engineer (Building Proposal) Department. He has also deposed to the affidavit on the basis of the record and whatever is lying in his department, as clearly set out in paragraph 2 of his Affidavit. He has deposed, what his record would indicate, namely, that one Vilas Gaonkar, through his (owner) who is architect Mr. Shivram Ghanshyam Dalvi had submitted a proposal for proposed redevelopment of the said building known as R.K. Building situated at Junction of Gokhale Road and Ranade Road, Dadar West. Mumbai – 400 028. He has also referred to some concession granted by Municipal Commissioner by an order dated 22 September 2009. He also refers to an IOD dated 14 October, 2009 which was issued and thereafter a Commencement Certificate [C.C.] being granted upto the 10th floor on 9th February, 2012 and that the plans were amended on 28th July, 2011. He has also categorically stated that there was no part occupation certificate or no occupation certificate issued in regard to any of the floors. He has also stated that despite this, the non-residential tenants, unauthorisedly and illegally have entered into the commercial portion of the constructed premises, and started

occupying the same. These are averments in paragraph 8. In paragraph 9, he further states that the occupation of such units by the tenants is illegal and unauthorised, as there is no Occupation Certificate (O.C). He further states that an action was initiated under Section 353A of the MMC Act by issuance of notices dated 6 September, 2016 to eight non-residential tenants, who were unauthorisedly occupying the commercial units, however, the sequel appears to have been buried. This shows complete knowledge of the said Municipal officer of such unauthorised occupancy, however, such notices were only mere pieces of paper and to be preserved in the files of the department, so that necessary affidavits like the present can be filed to make a farce that notice was issued.

26. What follows is something very interesting, namely, that noting such position, a purported prosecution under Section 471 of MMC Act came to be filed before the Court of learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, which was taken up for hearing by the said Court on 4 November, 2016 in respect of these eight persons. The reasons on which such complaints were disposed of acquitting the accused is something which is quite intriguing. Such complaints resulted in acquittal of the accused, i.e., unauthorized occupants, on the learned Metropolitan Magistrate recording evidence of the Sub-Engineer Shri. A.C. Chitanvis, (Complainant Witness No.1), who had stepped into the witness box to prove the charge. As to what he stated before the Court, in our opinion, is a mockery of such prosecution, as he deposed that at the time of inspection of the shop, the accused was present. He

admitted that he does not have documents to prove relation of the accused with the offence. On such deposition of the said witness, the Learned Magistrate observed that only on the basis of hearsay knowledge, the proceedings were initiated. Thus, the Municipal Officers stepping into the witness box and deposing that on hearsay knowledge lodged the prosecution, certainly lead to the prosecution falling to the ground. The relevant extract of the order passed by the Metropolitan Magistrate Court needs to be noted, which reads thus:

“02. Evidence of only sub-Eng. Chitanvis (C.W. No.01) is available to prove the charge. He deposed that, at the time of inspection the shop was of M/s Paul and accused No.3 was present there. But, he admitted that, he does not have documents to prove relation of the accused with the offence place. It appears that, only on the basis of hearsay knowledge this proceeding was initiated. Because single document is not available to prove that, how accused No.3 was related with the shop. It is not known that, what is mean by M/s Paul and how accused No.3 was related with the same. It is also not known that, on the basis of which facts inference was drawn that, accused No.3 occupied the shop. Except vague oral evidence nothing is available to prove that, the shop was occupied by accused No.3. Hence, it is not proved that, the shop was occupied by accused No.3.

03. In respect of accused No.2 Sub-Engi. Chitanvis (C.W.No.01) deposed that, he was developer of the building. But, he admitted that, he does not have documents to prove relation of the accused with the offence place. Hence, it is not known that, on which basis he deposed that, accused No.2 was developer of the building. Further, he has not stated that, how accused No.2 was responsible for occupying shop No.11 by accused No.3. There is absolutely nothing on record to prove that, accused No.2 occupied the shop or cause to occupy the same. For the reasons mentioned above, it is not proved that, the accused committed the offence. In the result, as they are entitled for the acquittal I pass the following order.

ORDER

Accused Nos.2 and 3 are acquitted of the offence committed under section 353-A punishable under section 471 of the Mumbai Municipal Corporation Act, 1988. Their bail bonds stand cancelled. They shall furnish fresh bail as per section 437-A of the Code of Criminal Procedure.”

(emphasis supplied)

27. It thus appears that as a mere formality, an action under Section 471 of the MMC Act was initiated. The ground reality being that all such occupants have enjoyed their illegal occupation and even today are actually using these commercial premises and as observed by the Division Bench in its order dated 16th July, 2025 to the deprivation of other similarly situated tenants on the higher floors.

28. It is hence quite clear that a farce of an action is the rule of the day. Such acquittal in the prosecution purportedly lodged under Section 353A and Section 471 proceedings is being considered by such unscrupulous persons, as a certificate for legal occupation and a shield that no action can now be taken. The municipal officers are also content with such state of affairs.

29. In our opinion, all this depicts a ridicule and a mockery of the whole system. We are of the clear opinion that this is a open racket the Municipal Officers are indulging to perpetuate illegalities. These are issues of a serious concern for the Municipal Commissioner. The eyes of these higher officials, who are very experienced officers, cannot be shut to such modus operandi to defeat the law. Such lawless regime cannot continue to subsist. It brings about a situation of total absence of the rule of law in urban planning and that too in commercial cities like Mumbai. It also cannot be countenanced that Municipal Commissioner would wield an approach that all such rampant illegalities cannot be controlled and/or it is beyond his capacity, ability or that the

municipal machinery, and/or that the municipal officers can overlook such glaring issues which are arising before the Court day in and day out.

30. We do not know whether any Municipal Commissioner has attempted with the assistance of Law Officer, who is also supposed to be a responsible officer of the Corporation, to ascertain or consider as to what kind of matters/disputes involving the Municipal Corporation are coming to the Court; as to why the Municipal Corporation is required to be one of the largest litigant in the Mumbai Courts, instead of spending its resources, time and energy in undertaking issues of public good. Is it a good sign that for years together the Municipal Corporation would keep generating and then defending these thousands and lakhs of proceedings in every Court in the city? On any given day, how many of its responsible officers are required to be in Courts or with its Law Officers with files and records keeping aside their prime and important work on the field or in the department and whether all this was ever estimated by someone is another issue. This is a situation of colossal derailment of an effective, robust and responsible municipal machinery. It cannot be that the municipal officers perpetuate illegality and then defend the proceedings in Court on a farce of an action. It is high time that there is an introspection on these issues. Something is drastically wrong in the functioning of corporation and his high ranking officials not taking into consideration all these repercussions and such massive litigation being faced and defended at huge public cost and/or tax payers money.

31. We do not know how much resources and public money the municipal corporation spends in defending unwarranted litigation and/or on such litigation which could be avoided. Such resources can be used for fruitful and effective public purposes. Such figures spent on litigation are also required to be estimated and made known to the public at large as also the Court, so that the tax payers are aware of the quantum of their money being spent on litigation. An introspection as to why public money needs to be spent on such litigation which may be generated by either inaction, action or illegalities of the municipal officers at any level, is not given a thought, bothers us not only as judges but as citizens.

32. There can never be a reckless approach by any official of the municipal corporation. An approach of negligence, lethargy, inaction and unlawful action much less of any illegality being nurtured by an officer/employee in the shoes of a public servant can never be countenanced. He cannot adopt an approach to be least bothered on such affairs, on an assumption that the municipal corporation's legal machinery will defend such actions in Courts, at public costs and expenditure. There needs to be an accountability on each of these officers and employees, a running account either individually or departmentally (with group of such officials) as to how much litigation each of these officers/department were required to defend (hope not generated) and the reasons therefor and how much expenditure was required to be incurred officer/employee-wise, which would guide the Municipal Commissioner to take

corrective actions, bring about accountability and a situation of integrity and honesty in the officials discharging their duties and responsibilities. Unless robust, disciplined, systematic steps are taken on such front, “we the citizens of Mumbai” would continue to be the victims of such messy urban plight, civil disorder and chaos on every possible front like encroachments on public land, footpaths and pavements, illegal constructions, pollution, to name a few. As to why the citizens should suffer on such counts, is the question. Are we a system which will not accept any reform or willingness to act with the municipal integrity and public expectations; should we tolerate such glaring illegalities of municipal maladministration and such state of public disorder and civic neglect are issues which are required to be very urgently considered. It is already too late.

33. In the present era of immense technological advancement, we are of the opinion that all tools of technology of computerised systems need to be provided so that upto date data on the relevant municipal issues touching the citizens can be maintained. These advancements are required to be rigorously implemented, if not so far been done, at the level of each department and each municipal officer, so as to bring about a healthy, citizens friendly, transparent and effective administration in municipal affairs. The adaptability of the technology and use of such tools needs to be encouraged. Illustratively, a simple representation made to any officer, at whichever level, in regard to any issue needs to be effectively processed and the status of such application till it is

disposed of should be available to the applicants/complainants by giving a code when such complaint/representation is received and its disposal with gist of reasons for ready reference of the officials as also the applicants. At the same time, all the information in regard to every such work of the municipal official should instantly be available to the Municipal Commissioner. Similarly, ward-wise data in regard to unauthorized and illegal constructions as also the authorised developments, which are taking place should be available at the click of a button and made known to the public at large on the municipal website. These are some of the thoughts which also would be required to be pondered.

34. Having reflected on such issues, we are quite certain that a committee is required to be appointed to examine the nature of these litigations ward-wise, which are reaching the Courts, on the perspective as to what is amiss, what actions, inactions qua the different fields of municipal jurisdiction generates such tons of litigation. As to why attempt is not made to avoid such litigations and/or the situation is otherwise, that these Municipal Officers generate litigation. Thus, considering such loads of cases, which come to the Court, in which the whole purpose and intention is that interim orders are passed by the Courts and the Law Department which is overloaded with current cases, would not even attempt to get the interim orders vacated, and such illegality continuing for years together, is our common experience. We, however, do not lose hope as we have full confidence in the ability and the wisdom of the higher officials of the Municipal Corporation.

35. In the aforesaid circumstances and being disturbed with the situation which we consider, it to be quite alarming if not salvaged in time, as we say so with a sense of belonging, that remedial measures on this front, in an independent manner needs to be suggested to the Municipal Commissioner by a Special Committee to be appointed by the Court. Such Committee would make recommendations to the Municipal Commissioner in regard to the bulk of litigations, as to how it is being generated and/or can be avoided, its nature vis-a-vis different wards and the officers who are seen to have failed in their duties and become responsible for generation of such litigation. In this regard, corrective measures can be suggested by the said Committee so as to have a robust litigation policy. In our opinion, systematic and well planned measures if devised so as to prevent such litigation being taken to the Courts, is the only way forward. Such exercise certainly needs to be a meticulous independent exercise. Once such exercise is undertaken and the nature of the problems, illegalities being routinely complained by the citizens, who otherwise approach the Courts, requiring the Municipal Corporation to defend such proceedings, whatever they may be, of inactions, non-disposal of the complaints, applications etc. or any other irregularities, violations to be identified and the manner they need to be dealt in, is the need of the hour. We are of the firm belief that large number of issues, which can be resolved at the level of Municipal Corporation, need not come to the Court, unless these are serious issues on the applicability and interpretation of law, which of course are required to be adjudicated by the Court. However, our experience is that large litigations which come to the

Court are unwarrantedly generated and for which the Municipal Corporation need not waste its resources and it is this large chunk of litigation, such issues would be required to be considered by such Committee.

36. On our request, Mr. Godbole, learned senior counsel for the Corporation, who has ably assisted the Court, on instructions, has fairly stated that the Corporation would not be averse to such Committee being constituted by the Court. The whole object is a way forward, a transparent, systematic and a robust approach to have an effective, accountable and lawful regime to deal with such issues of such large municipal corporation of a repute, which is one of the oldest and the richest Municipal Corporation in Asia, having a budget which is larger than some of the small States, however, with vast and complex jurisdiction. We are sure that such exercise being undertaken by such Special Committee and a blue print of what can be the appropriate course of action for all times to come, being recommended would bring a well built and healthy path in handling such issues.

37. As fairly agreed on behalf of the municipal corporation and in the light of the aforesaid discussion, and the issues as flagged by us, we constitute a two Member Committee to make recommendations to the Municipal Commissioner on all these issues. Such Committee shall be of:

- (i) Hon'ble Mr. Justice G.S. Patel, Former Judge of this Court.
- (ii) Mr. Naushad Engineer, Senior Advocate.

Its report and recommendations be made by the Committee preferably within four months. The Municipal Commissioner shall also recommend four officers

of the municipal corporation who would also form part of the committee. As and when the committee desires the presence of the Municipal Commissioner on certain issues, the Municipal Commissioner shall make himself available to participate in the meeting of the Committee.

38. The Municipal Commissioner shall provide the venue/seating arrangements and the Secretarial assistance to the Committee.

39. Insofar as the present proceedings are concerned as noted above we permit all lawful actions to be taken by the Municipal Corporation in regard to the situation which is already now noticed by the concerned officers and has been referred to the Court. Mr. Godbole has fairly stated that he would look into all the other issues which are arising and the correct position will be placed before the Court on a proper Affidavit to be filed in the present proceedings.

40. Insofar as MHADA is concerned, Mr. Lad has stated that the concerned officials of MHADA would now start taking appropriate action of the redevelopment of the building is taken up, the structural audit is also being now undertaken by the concerned experts of MHADA (structural auditors) and further appropriate action would be taken as observed in the earlier order passed by the Court that the transit accommodation would be made earlier to these tenants, who are otherwise entitled to it. On such backdrop we accept the request of Mr. Godbole for sufficient time to be given so that the correct position would be placed before the Court as also the appropriate action which in the meantime will be taken will be placed on record.

41. Stand over to 1st August, 2025 **High on Board**.
42. At this stage, Mr. Sawant prays for leave to amend to implead the occupants of the ground floor and two occupants of the first floor plus occupants of commercial structures as party-respondents in Writ Petition No.1658 of 2018. Let the amendment be carried out by Tuesday, 29th July, 2025. A copy of the amended petition be served on all the parties well in advance. Reverification is dispensed with.
43. The Special Committee as appointed by us shall mutually take a decision in respect of its honorarium.

[KAMAL KHATA, J.]

[G.S. KULKARNI, J.].