



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6730 OF 2021

1. Nihal Ahmed Abdulla, Age 64 years,  
2. Aqueel Ahmad Abdul Rasheed, Age 70 years,  
3. Naveed Ahmad Iqbal Ahmed Abdulla, Age 28 years,  
4. Badrunisa Mohd. Hussain, Age 60 years,  
5. Sufiya Abdulla, Age 52 years,  
6. Aisha Abdulla, Age 61 years,  
7. Jamila Abdulla, Age 59 years,  
8. Tayyaba Mohd. Hussain, Age 42 years,  
9. Habiba Mohd. Hussain, Age 38 years,  
10. Shafik Ahmed Abdul Khalik, Age 61 years,  
All r/o.Ravivar Ward, Islamabad, Malegaon,  
District Nashik.

Petitioners

versus

1. Malegaon Municipal Corporation through  
its Commissioner, Malegaon, Dist.Nashik.  
2. The Ward Officer, Prabhag No.4,  
Near Nandedi High School, Malegaon.  
3. Deputy Director of Town Planning,  
Divisional Commissioner Compound,  
Nashik Road, Nashik.  
4. Asstt.Direcctor of Town Planning,  
Kanda Batata Market, Beside NDCC Bank,  
Bombay Agra Road, Nashik.  
5. District Collector/Land Acquisition Authority  
at Nashik.  
6. Superintendent of Police,  
City Police Station Compound, Malegaon.  
7. The State of Maharashtra through UDD,  
Mantralaya, Mumbai.

WITH

INTERIM APPLICATION NO.11864 OF 2025

Shaikh Akhtar Shaikh Akbar

Applicant

In the matter between :

Nihal Ahmed Abdulla

Petitioners

versus

Malegaon Municipal Corporation and others

Respondents

WITH  
INTERIM APPLICATION NO.11866 OF 2025

Yunus Abdul Salam Kazi and others Applicants

In the matter between :

Nihal Ahmed Abdulla Petitioners

versus

Malegaon Municipal Corporation and others Respondents

Mr.A.R.Shaikh i/by Ms.Aisha Ansari for Petitioners.

Mr.S.S.Patwardhan, for Respondent Malegaon Copration.

Ms.Savita A.Prabhune, AGP, for the State.

Mr.Sanjeev P.Kadam, Senior Advocate, with Mr.Prashant P.Raul with Ms.Varsha M.Thorat i/by Mr.Vikas Mourya for Applicant/Intervenor in IA.11864/2025.

Mr.M.M.Vashi, Senior Advocate, with Mr.Mahendra Sandhyanshiv with Ms.Manisha Desai for the Intervenor/Applicant in IA.11866/2025.

CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

Judgment reserved on : 30<sup>th</sup> September 2025  
Judgment pronounced on : 4<sup>th</sup> November 2025

**JUDGMENT (Per : Aarti Sathe, J.) :-**

1. This is yet another petition which reflects the apathy and complete dereliction of duty on the part of the Malegaon Municipal Corporation (for short 'the MMC') in not taking action against complaints made to remove illegal/unauthorized constructions which are mostly rampant in cities like Mumbai and its neighbouring district/areas. Although in several decisions of the Supreme Court and this Court deprecating unauthorized and illegal constructions, it is as always that the municipal bodies are still to wake up from the deep slumber.
2. The Petitioners are challenging the inaction on the part of Respondents particularly the MMC in not demolishing unauthorized constructions made on the

plots of the Petitioners, which are in fact reserved for the purposes of construction of Police station and staff quarters. The Petitioners have made several complaints to the Respondent and have requested to take action against encroachment/unauthorized constructions. Interim Application Nos. 11866/2025 and 11864/2025 are filed wherein the Applicants who claim to have purchased the plots of the Petitioners, are seeking impleadment as Respondent in the present writ petition. In the present petition we are not inclined to delve on any issue of ownership and/or decide the inter se disputes between the Petitioners and the Applicants in the interim applications.

3. Brief facts of the case are as follows:

4. The Petitioners' claim to be the absolute owners of a plot bearing survey number 110/B, admeasuring about 9524 square meters situated at Malegaon City (hereinafter referred to as 'said plot'). The Petitioners contend that their pre-deceased father Abdullah Gulam Mohammed purchased the said plot admeasuring about 9524 square meters under a registered conveyance deed dated 20<sup>th</sup> August 1986 from the original owners i.e. Motiram D. Taily and others at the market value and consideration paid to the owner. On receipt of the consideration amount, the said owners handed over vacant and peaceful possession of the said plot to the Petitioners' father, who since then has been in possession of the said plot. The Petitioners' father passed away on 17<sup>th</sup> January 2001 and thereafter the Petitioners are in use and occupation of the said plot. It is in such capacity the Petitioners are the owners of the said plot.

5. The Petitioners contend that the development plan for the Malegaon City was sanctioned on 30<sup>th</sup> June 1970 and implemented on approval by the State Government, with effect from 14<sup>th</sup> August 1970. Thereafter on 1<sup>st</sup> February 1986, the first revised development plan was sanctioned by the State Government which was brought into effect from 1<sup>st</sup> April 1986.

6. On 2<sup>nd</sup> July 1986, the Petitioners' father submitted a proposal of a layout plan to the District Collector Nashik. After following due process and procedure in the Town Planning Department, the Competent Authority sanctioned the layout plan as also granted a Non Agricultural (NA) permission on 2<sup>nd</sup> July 1986 to the

Petitioners' father. Under such sanctioned layout plan, the said plot was part of the subdivided 27 plots, of different sizes and dimensions for which a layout sanction was accorded by the State Government on 2<sup>nd</sup> July 1986.

7. The Petitioners have thus contended, on such background, that the Petitioners' deceased father had purchased the said plot by registered conveyance deed from the original owners on 20<sup>th</sup> August 1986, from amongst the aforesaid 27 plots as sanctioned by the layout plots.

8. It is the Petitioners' case that sometime around the year 1999, the second revised development plan was prepared for the Malegaon City, which came into effect from 15<sup>th</sup> September 2006. In the second revised plan, the Petitioners' plot was reserved for police station and staff quarters to which the petitioners objected. The Petitioners further submit that in spite of such reservation, till date the said plot has not been acquired and no steps have been taken by the Respondent.

9. Therefore, the Petitioners made an application to MMC for the sanction of permission of construction of building on the said plot. The said permission was made by the Petitioner to MMC sometime in 2005. Thereafter on 4<sup>th</sup> July 2005, MMC, i.e. Respondent No.1 informed the Petitioners that the said plot was reserved for public purpose i.e. for the construction of police station and staff quarters and hence the Petitioners were not entitled to develop the said plot. Respondent No.1 MMC relied on the second revised plan to reject the application of the Petitioner.

10. The Petitioners submitted to MMC that the said plot, was inherited by the Petitioners from their deceased father who had purchased the said plot by registered conveyance deed and because of non-acquisition of the said plot, by the respondents for public purpose of constructing a police station along with staff quarters, the said reservation automatically lapsed/expired. Therefore, on 12<sup>th</sup> May 2017, the Petitioners issued a purchase notice under section 127 of the Maharashtra Regional and Town Planning Act 1966 (MRTP), which was submitted to the MMC. In pursuance of the said purchase notice dated 12<sup>th</sup> May 2017, office remarks were recorded on 12<sup>th</sup> June 2017, 17<sup>th</sup> June 2017 and 27<sup>th</sup> June 2017.

11. It is the Petitioners' case that certain persons in connivance with the officers of the respondent authorities had encroached upon the Petitioners' plot and carried out illegal/unauthorized construction thereby breaching the rule of law in undertaking such brazen illegal construction.

12. On 8<sup>th</sup> June 2021, Petitioners made a complaint regarding the illegal/unauthorized construction on the Petitioners' plot to Respondent No.1 requesting for an action to be taken against the same. It is submitted that again post 8<sup>th</sup> June 2021, Petitioners once again on 3<sup>rd</sup> September 2021 addressed another letter to the Respondents and reminded the Respondents to initiate an action against the said illegal/unauthorized construction on the said plot of the Petitioner.

13. The Petitioners submit that in spite of the reminders and letters, till date, no action has been taken by the Respondent authorities against such illegal/unauthorized constructions. Also said plot which is purportedly reserved for public purposes i.e. for constructing police station and staff quarters is not being acquired. It is the Petitioner's grievance that this inaction on the part of the Respondents is causing grave/serious prejudice to the Petitioners.

14. This petition was listed before the Court from time to time. By an order dated 12<sup>th</sup> March 2025, Respondent No.1 was directed to file a reply affidavit and more particularly was directed not to delegate the filing of the reply to any subordinate officers. The said reply was to be filed within a period of 1 week from the date of the aforesaid order.

15. Respondent Nos. 3, 4 and 7 have filed their reply affidavits on 18<sup>th</sup> January 2023, opposing the admission of the writ petition. We note the relevant contents of the affidavit filed by Manjusha R. Ghate, Assistant Director of Town Planning Nashik, on behalf of forest department :

*2. I say that the Comptent Authority for implementation and execution of the Development Plan is the Planning Authority i.e. the Respondent No. 1 Malagaon Muncipal Corporation . The contentions of the Petitioners that the Respondent No. 3 and 4 are the Competent Authority for implementation and execution of the Development Plan is not correct and the same is denied*

*With reference to the para No. 2 (2.1), I say that the contentions which are submitted are not related to Respondents No. 3, 4 and 7 and hence this Respondent cannot make any submission about the same.*

*3. With reference to the para No. 2.2, I say that, it is seen from the record of the office of the Assistant Director of Town Planning, Nashik (Respondent No. 4) that, the Town Planner, Nashik has recommended the proposed layout of the suit land i.e. S. No. 110/B of Sangameshwar for Residential purpose for approval, and accordingly, the then Chief Officer, Malagaon Municipal Council had approved the said layout in the year 1986.*

*4. With reference to the para No. 2.3, I say that, the First Revised Development Plan, for erstwhile Municipal Council of Malegaon, was sanctioned by the Government in Urban Development Department, under Section 31 (1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") vide Notification No. TPS-1185/1296/CR-195/85/UD-24, dated 21. 02. 1986 and the same was in force with effect from 01.04.1986. In said development plan, the land bearing S. No. 110/B of Mouje Sangameshwar was shown in the residential zone.*

*I say that the Second Revised Development Plan of Malegaon Municipal Corporation has been partly sanctioned by the Government in Urban Development Department vide Notification No. TPS-1105/3500/CR-114/06/UD-9, dated 15.09.2006 U/s 31 (1) of 01. the said Act, and the same has come into force with effect from 11. 2006. In the said Second Revised Development Plan, the said land is reserved for Site No. 382, "Police Station and Staff Quarters". It is most humbly submitted that the Appropriate Authority for Acquisition and Development of the aforesaid reservation is Police Department.*

*I say that the document Exhibit D to the Petition is the purchase notice issued by the Advocate for the Petitioners, the same is dated.... 07. 2017 under section 127 of the said Act, on the appropriate authority and the same has been endorsed to the Respondent No. 3 and 4. Accordingly, the Respondent No. 3 i.e. Assistant Director, Town Planning Nashik, vide letter No. 2144 dated 20. 07. 2017 informed the Superintendent of Police, Nashik to take immediate steps regarding Acquisition of the said land. The copy of the said letter was also given to Petitioner's Advocate informing that the Notice under section 127 is without date and no document such as 7/12 Extract, Measurement Plan etc. are attached with the Notice as contemplated under section 127 of the said Act.*

*It is further submitted that as the Appropriate Authority for the Acquisition and Development of the aforesaid reservation is the Police Department, the specific remarks regarding receipt and legality of the Notice and action taken thereon are in the powers of the Respondent No. 6 that is Superintendent of police.*

*5. With reference to the para No. 2.4, I say that, the contentions of the Petitioner mentioned in this paragraph are not related to this Respondent Nos. 3, 4 and 7, hence, I have to offer no comments.*

*6. With reference to the para No. 2.5 and 2.6, 3 to 5, I say that, it is submitted that the contentions of the Petitioners mentioned in these paragraphs are not related to these Respondent Nos. 3, 4 and 7, hence, I have to offer no comments.*

*The Petitioners are complaining about the encroachment/unauthorized construction, on the suit land. It is submitted that being owners of the land the Petitioners should have taken care of their own property, and as such, they themselves are responsible for the same. On Petitioners own showing it is seen that the suit land is not yet acquired.*

*7. With reference to the para Nos. 6, 7, 8, are not related to the answering Respondent, however the contentions of the Petitioners about unauthorised and illegal construction upon their private land, the land which is in the position of the Petitioners as on date, has alternate efficacious remedy to resolve these issues and hence on this count alone the writ petition is not maintainable.*

16. The Petitioners have also filed an additional affidavit dated 8<sup>th</sup> February 2024, wherein the Petitioners have once again reiterated the facts of the case and also provided a list of persons who have carried out the illegal/unauthorized constructions and submitted a separate plan showing the red boundaries marked on the area of the illegal/unauthorized constructions along with the list of persons. In the said affidavit, the Petitioners have also contended that Respondent No. 3 has accepted the fact that the purchase notice issued by the Petitioners and in regard to which a letter dated 20<sup>th</sup> July 2017 was issued by Respondent No.3 to Superintendent of Police, Nashik, for immediate acquisition of the said plot has not been acted upon and no steps have been initiated till date. It is stated that Respondent No. 6 in its affidavit dated 18<sup>th</sup> January 2023 has stated that since the

Petitioners are the owner of the said land, the Petitioners must take care of his own property. The Petitioners have contended that immediate action was required to be taken insofar as removal of the illegal/unauthorized constructions was concerned.

17. Respondent No.1 through Ravindra Seshrao Jadhav, Commissioner of MMC, has filed an affidavit. The relevant paras of the said affidavit are reproduced below :-

3. *I say that the Petitioners pray for a writ of mandamus for demolition of construction over land S.No. 110/1B. I say that the Petitioners claim that the said land belongs to them. I say that the occupants of the structure standing on S. No. 110/1B claim that the Petitioners have agreed to sell plots of land on S. No. 110/1B for valuable consideration. This is this a private dispute between the Petitioners on one hand and the occupants, claiming under the Petitioners, on the other hand. The Petitioners have not disclosed to this Hon'ble Court the said fact of the private dealing between them and the occupants of land S.No. 110/1B. They have on the contrary claimed that the occupants are unknown to them and have forcibly and unauthorisedly occupied the said land by construction huts. The petition is therefore, liable to be dismissed for non-disclosure of the said important facts.*

4. *I say that besides the suppression of facts as aforesaid, certain legal issues between the Petitioners and their transferees/occupants arise among them. The Petitioners need to address those issues by resorting to appropriate remedies and not by way of a Writ Petition under Article 226 of Constitution of India. The Respondent No. 1 is not in a position to comment upon the nature of rights inter se between the parties. Such issues of disputed facts also need not be entertained by this Hon'ble Court under Article 226 of Constitution of India.*

6. *I say that the Petitioners are attempting to settle their private disputes with their transferees by misusing the process of the Maharashtra Municipal Corporations Act, 1949 ("MMC Act") and MRTP Act 1966, as also the process of law under Article 226 of Constitution of India. The Petitioners have alternate and equally efficacious remedies for redressal of such of their grievances. The present Writ Petition under Article 226 of Constitution of India, therefore, does not deserve any consideration.*

7. *I say that notwithstanding what is stated by me herein above the record of the Respondent No. 1 shows that the structures on land S.No. 110/1B are illegal and unauthorised. The Respondent No. 1 has already initiated action against them as per law. The Respondent No. 1 issued orders to its respective departments to take action against the unauthorized occupants on the suit premises. Hereto annexed and marked as Exhibit K is the copy of the order dated 27.3.2025 issued by Respondent No. 1. In pursuance of order dated 27.3.2025, the Town Planning Department of the Respondent Corporation visited the suit premises on 2.4.2025 for ascertaining the unauthorized construction and preparing a panchnama, however, there was obstruction from the unauthorized occupants. Considering the resistance by the obstructionists, the Respondent Corporation addressed two letters dated 8.4.2025 and 11.4.2025 to the Police Inspector, Pawarwadi Police Station requesting for police protection for preparation of panchnama. Hereto annexed and marked as Exhibit L (Colly) are the copies of letter dated 8.4.2025 and 11.4.2025. However, since no police protection was provided to the Respondent Corporation*

for carrying out panchnama, the Town Planning Department of the Respondent Corporation again visited the suit premises and a panchnama with respect to unauthorized construction was prepared. Hereto annexed and marked as Exhibit M(Colly) is the copy of the panchnama. The Respondent Corporation through its Ward Office issued letters dated 20.5.2025 to the unauthorized occupants under Section 477 of the MMC Act for ascertaining their title with respect to the suit premises. Hereto annexed and marked as Exhibit N(Colly) are the copy of letters dated 20.5.2025 issued by Respondent Corporation. However, since there was failure on part of the unauthorized occupants to explain their title/interest in the suit premises, the Respondent No. 2 has issued notices dated 24.6.2025 to the unauthorized occupants in pursuance of Section 260 and Section 267(1) of the MMC Act. Hereto annexed and marked as Exhibit O(Colly) are the copy of letters dated 24.6.2025 issued by Respondent No. 2. I say that owing to the currency of monsoon season of this year, no action for demolition has been taken after 24.6.2025. I say that since there is a failure on part of unauthorized occupants to remove the unauthorized construction, action has been initiated for removal of the same and the same will be removed within a reasonable period of time subject to availability of manpower and availability of police protection.

8. I say that there are many more important works of public nature that deserve the attention of the Respondent No. 1. I humbly pray to this Hon'ble Court that the relief claimed in the present Writ Petition, purely for the personal benefit of the Petitioners, in respect of their private lands do not deserve any priority over many more important works of genuine public nature. I crave leave of this Hon'ble Court to file additional Affidavit-in-Reply to set out the public works that need urgent attention of the Respondent No. 1 with its limited resources and manpower at its disposal, if so, directed by this Hon'ble Court, although they are capable of a judicial notice even without a mention of them. I, therefore, humbly request the Hon'ble Court not to issue any directions as prayed for by the Petitioners in any time bound manner and by giving priority over other essential works of public nature. The process of legal action as prayed for by the Petitioners is already initiated and the same will be taken to its logical conclusion subject to availability of resources and manpower, albeit as soon as possible.

18. We have heard the rival contentions made by the parties. Counsel on behalf of the Petitioners Mr. A.R. Shaikh i/b Ms. Aisha Ansari has submitted that the present petition needs to be allowed in view of the fact that the illegal/unauthorized constructions have been made on the said plot and the Respondents have failed to take any action in respect thereof.

19. Mr. M.P. Vashi, Senior Advocate along with Mr. Mahendra Sandhyanshiv a/w Ms. Manisha Desai appeared for the interveners in Interim Application No. 11866 of 2025 who are asserting rights over the said plot. The learned AGP, Ms. Savita Prabhu has appeared for the state and Mr. S.S. Patwardhan has appeared for the Respondent No. 1 MMC and once again reiterated the submissions made by them in their respective affidavits. Mr. Sanjeev Kadam, Senior Advocate a/w Mr.

Prashant P. Raul a/w Ms. Varsha M. Thorat i/b Mr. Vikas Mourya appeared on behalf of the applicant intervener in Interim Application No. 11864 of 2025 and asserted the rights of the applicants in respect of the said plot. In the backdrop of the above facts and after hearing counsels for the Petitioners and Respondents, we proceed to pass the following orders.

20. As observed herein above insofar as any private dispute between the Petitioners and the Applicants who seek to intervene in the interim application, we do not wish to delve on any dispute which these parties assert on any ownership rights qua the land, as the limited issue being dealt in the present proceeding is on the complaint of the Petitioners on illegal construction on the plot in question undertaken without any permission being obtained from the Planning Authority-MMC.

19. On perusal of the affidavit filed by Respondent No. 1 MMC, we are surprised to note that in Paragraph No. 8 of the said affidavit, MMC has categorically stated that the aforesaid dispute is an inter-se dispute and they have many more important works of public nature that deserve the attention of MMC and hence this dispute which is purely for personal benefit of the Petitioners is something which they feel does not deserve any priority and there are many more important works of genuine public nature which MMC has to look into. It is rather surprising to note the tenor of this affidavit and quite shocking to note that the rampant illegal/unauthorized constructions having taken place on the said plot of the Petitioners, does not deserve any attention of the MMC. Also the MMC has chosen not to take any action and is shirking away from its responsibility in contending that this dispute is an inter se dispute and they have other issues which are of greater public importance than removing illegal/unauthorized constructions, more particularly when the said plot is reserved for the construction of police station and staff quarters, despite which no action is being taken by MMC to remove the illegal/unauthorized constructions on the said plot. We wonder what can be of more priority to MMC than removal of the aforesaid illegal/unauthorized constructions. It is a settled principle of law that the Courts have taken a strict view insofar as illegal constructions/brazen unauthorized structures are concerned.

20. It is further seen that MMC has also taken an untenable stand that action could not be taken to remove illegal/unauthorized constructions due to the monsoon season post 24<sup>th</sup> June 2025. The MMC also has contended that although an action for removal of the illegal/unauthorized constructions was initiated, yet on account of lack of availability of police protection and subject to availability of manpower, the same could not be concluded and that actions within a reasonable period of time would be taken.

21. We are of the opinion that in fact there appears to be no real intention on the part of the officers of the MMC to take action to remove the rank unauthorised constructions. There is also a contradictory statement made on behalf of the MMC wherein it is stated that, it is a private dispute between the Petitioners and the other applicants who are seeking rights in their interim application, whereas in their affidavit it has also been stated that the concerned ward officer has issued letters dated 20<sup>th</sup> May 2025 to the unauthorized occupants under section 477 of the Malegaon Municipal Corporation Act, for ascertaining their title with respect to the suit premises. The MMC by taking such contradictory stands cannot shirk away from its legal obligation and duty to take actions against unauthorised constructions.

22. This Court in the case of Subhadra Ramchandra Takle Vs. State of Maharashtra (Writ Petition No.5898 of 2025) wherein one of us (G.S.Kulkarni, J.) was a member, has taken an extremely stringent view insofar as demolition of illegal constructions is concerned and held that the same amounts to gross illegality on the part of the respective corporations. The relevant observations regarding the same are reproduced below:

1. This is one case which would shock the conscience of the Court, inasmuch as on a land, which is almost about 5½ acres in Survey Nos.178, 179 and 180, situated in Village Shil, Thane-400612, about 17 structures/buildings have been illegally constructed without obtaining any permission whatsoever from the Thane Municipal Corporation as also from the owners of the land.

2. The case of the Petitioner, who is a senior citizen, is of land grabbing by a land mafia or land sharks. The photographs of the construction are annexed to the Petition. They are just to be believed

that such massive construction can be undertaken without any permission from the planning authority and that too by grabbing lands belonging to third parties.

3. We have considered the nature of the representation made by the Petitioner dated 24th January 2025 to the Hon'ble Chief Minister, Deputy Chief Minister as also to the Chief Secretary to Thane Municipal Corporation, Municipal Commissioner of the Thane Municipal Corporation and the Assistant Municipal Commissioner which records that such construction has been undertaken by the persons linked with underworld as described by the Petitioner in Paragraph 3 of the said representation (Page 15 of the Paperbook). We can understand the plight of the Petitioner who apart from being a lady and a senior citizen could never have single handedly been in a position to confront such land mafia and such massive illegal construction. Such construction could not have come up except with the blessings of the Government and Municipal Officers. It is also shocking that the persons who have rampantly undertaken such construction could spend such huge amounts in undertaking such brazen illegal construction and ultimately to defraud innocent flat purchasers to purchase flats/tenements in such construction. The situation is so serious that it would be difficult to believe that there is at all any rule of law when it comes to illegal constructions and whether the Thane Municipal Corporation is at all alive to what is happening under its feet and under the blessings of its officers. The Petitioner has timely approached this Court as there are certain constructions which are stated to be ongoing and yet to be occupied. It is informed to us that in respect of some of these structures, there is a likelihood that some persons are illegally put in possession.

4. In considering such gross illegality, this large unauthorised construction, we are reminded of the law of the land as laid down by the Supreme Court in a line of decisions. In *M. I. Builders Pvt. Ltd. vs. Radhey Shyam*, the Supreme Court in dealing with unauthorised construction held, it needs to be demolished, made the following observations with regard to the illegal construction:

73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief.

Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.....”

(emphasis supplied)

10. It is thus clear that any construction which is unauthorised and illegal would be required to be removed/demolished. We may observe that those who purchase tenements in illegal construction are greedy purchasers, who are a different category of citizens as opposed to those citizens who would purchase tenements which are lawfully constructed, they cannot assert rights in regard to illegal construction.

11. The question however is that how such construction can come up and as to whether the Municipal Officers would not be responsible and/or accountable when such rampant illegal construction is undertaken within their jurisdiction and more particularly when the land, on which the construction in the present case has been undertaken, is an agricultural land/green zone, on which no permission for construction can ever be granted by the Corporation.

12. As noted hereinabove, in High Court on its own motion (In the matter of Jilani Building at Bhiwandi) (supra), the Court has categorically ordered on the accountability to be affixed on the Municipal Officers which would include the Municipal Commissioner, who is the Chief Executive Officer of the Municipal Corporation. If such large construction, which is about 17 buildings can illegally come up, we do not know as to whether the officials of the Municipal Corporation are at all discharging their duties in a manner as known to law. Merely filing complaints with the Police and issuing notices of demolition certainly is not sufficient as no action whatsoever is taken when rampant illegal construction is in progress. No efforts are taken to stop such construction in a manner known to law. This would all require an inquiry to be undertaken as per the principles of law as laid down by this Court in the said proceedings. We may state that the Municipal Officers are supposed

to discharge their duties as the law mandates. They discharge such duties on the principles of public trust as reposed in them. It appears that every single officer of the Municipal Corporation who is possibly supposed to take action, has failed to take action, and unless there was an implied support of these persons to enable such persons to undertake illegal constructions, it would have never come up.”

23. This court has time and again following several decisions of the Supreme Court held that illegal/unauthorized constructions cannot be tolerated and it is necessary to demolish the same as the law would mandate. This Court in the case of Feroz Talukdar Khan Vs. Municipal Commissioner Thane in a similar case where no action was being taken by the Thane Municipal Corporation against illegal construction observed it to be a settled principle of law that illegal constructions in no manner can be protected and/or no action taken against such construction by the Municipal Corporation. This court in unequivocal terms has in fact said that this inaction on the part of Thane Municipal Corporation has shocked their judicial conscience. The relevant observations of the judgment in Feroz Talukdar Khan (Supra) are required to be noted, which read thus:

8. *Having heard learned Counsel for the parties and having perused the record, we may observe that it is in disputed position, that the entire construction in question right from the plinth up to the sixth floor is unauthorized. We find from the photographs tendered on behalf of the Petitioner that although the construction is illegal, two additional floors are sought to be constructed.*

9. *We are really surprised at such approach on the part of any citizen, who would not have any regard to the mandate of law and more importantly, put up construction, which would be offered/sold in the open market that is, brazen illegal construction being sold, to innocent persons, by misguiding them in some manner, on the legality of the construction. This aspect would not require further elaboration. The ill effects an unauthorized construction entails and the adverse consequences it would bring about not only the society at large, but also the environment and above all the innocent tenement purchasers are just to be imagined.*

10. *We are also surprised that normally occupants are inducted in a building only after a legally permissible construction is put up and after an occupation certificate is granted by the planning authority, after due verification of the quality of construction and on examination of all aspect of the legality involved in the construction. However, all these norms, are thrown to the winds and were wholly ignored by Respondent No. 3. In our opinion, respondent No.3 had ample resources to do so and risk an unauthorized construction of such nature. However, the law would not allow any misplaced sympathy on such persons, who violate the law with open eyes.*

11. *This is a glaring case, wherein the municipal corporation earlier attempted to prevent the illegal construction when the same was at a plinth level. However, it*

*appears that after the issuance of such notice, the municipal officers remained mute spectators and failed to exercise their powers in preventing further construction. By their inaction, the municipal officers not only permitted illegal construction to progress but also to be sold and to be occupied, knowing well that the construction is illegal. Certainly the municipal officers cannot take a stand that they were not aware of the progress of the construction, till a full fledged ground plus sixth floors was put up.*

12. *As observed by us in our order dated 12th June 2025, in the case of Smt. Shubhadra Ramchandra Takle (Supra), such neglect or a permissive regime for a fait accompli to be achieved cannot arise unless such construction has the covert blessings of the Municipal / Government Officers. There is nothing different in the present case as it appears to us that the notice which was issued initially remained confined to be merely a piece of paper, without any action taken by the municipal officers to remove the plinth and prevent further construction. Also, the FIR which was filed has also remained to be a paper FIR.*

13. *Mr. Reddy has stated that the Corporation is already taking steps to demolish the construction. In our opinion, given the settled position in law this is inevitable. Moreover, such construction was required to be nipped in the bud, so that further illegal construction could not have at all progressed.*

14. *Our common experience, in such context, is that the law which is understood by the municipal officers / government officers, is different from what the legislature and the Courts would accept. It is beyond our imagination. We can only say that when it comes to such rampant unauthorized construction, it cannot be that unless the Court intervenes, no action would be taken by the municipal officers to demolish the same. We wonder as to when the municipal officers and planning authorities working on the field would act honestly and in the spirit of the oath they take as public servants in discharging their duties as mandated by law. These are our sentiments of deep pain and anguish when we find such open defiance of law at the hands of the municipal officers whose duty is to ensure compliance with the Municipal Laws and not to ensure their observance in the breach. We have observed in our order in Smt. Shubhadra Ramchandra Takle (Supra) that it is difficult to believe that there exist any rule of law when it comes to unauthorized constructions.*

19. *In a recent decision of the Supreme Court in Rajendra Kumar Barjatya & Anr. Vs. U. P. Avas Evam Vikas Parishad & Ors. MANU/SC/1351/2024, the Supreme Court has reiterated the following principles in the context of illegal and unauthorized constructions.*

*"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."*

20. In a recent decision of the Supreme Court in *Kaniz Ahmed Vs. Sabuddin & Ors.* MANU/SC/1351/2024 deprecating regularization of illegal construction, the Supreme Court made the following observations:

*"6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.*

*7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well- being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: Ashok*

*Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]"*

24. Further, in **Nana Kene Vs. Municipal Commissioner KDMC**, the coordinate bench of this court wherein one of us was a member (G.S. Kulkarni J.) was confronted with a similar issue wherein the Municipal Corporation had failed to discharge its lawful duty against unauthorized constructions. The relevant observations made by the Court read thus:

9. *Similar issues had arisen before this Court in **Smt. Subhadra Ramchandra Takle vs. State of Maharashtra & Ors.** (Civil WP No. 5898 of 2025) when this Court considering the settled principles of law of the land as declared by the Supreme Court, and in similar circumstances where third party rights were stated to be created, approved the action of the Municipal Corporation to proceed to follow the due process of law, to remove unauthorized construction. In this view of the matter, we are in agreement with the learned counsel for the petitioner, as also from what has been set out by the Municipal Commissioner in the reply affidavit that the purchasers of these tenements whose acquisition of such tenements in unauthorized construction itself being illegal, cannot have any legal rights to be asserted before any forum. In this situation, a plea made by such persons, who have purchased the tenements in unauthorized construction for protection of such illegal construction cannot be entertained either before the Court, much less before the State Government to pass any orders which would be contrary to law. The State Government cannot be called upon to take a position not recognized by law or contrary to the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") which recognizes only lawful construction being put up by adhering to the established procedure as prescribed by the planning authority. It is difficult to bypass such requirement of law. In this context, any plea that rank unauthorized construction be considered to be regularized is wholly unacceptable, as this would amount to creating a window to first put up rank illegal construction of whatever magnitude and then apply for regularization. This is wholly contrary to the rule of law and the basic compliances which are necessary under the provisions of the MRTP Act as also the Maharashtra Municipal Corporations Act, 1949 for any authorized/permissible construction to be undertaken. The principles of law in this regard are well settled in catena of decision of the Supreme Court. A useful reference at the outset can be made to the decision of the Supreme Court in **Friends Colony Development Committee vs. State of Orissa & Ors. (2004) 8 Supreme Court Case 733**, wherein the Supreme Court has made the following significant observations:-*

*"23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also*

legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.]

25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future.”

(emphasis supplied).

10. The principles of law in this regard also are reiterated by the Supreme Court into the decisions in **Rajendra Kumar Barjatya & Anr. v/s. U. P. Avas Evam Vikas Parishad & Ors.** 2015 SCC OnLine SC 1981 and **Kaniz Ahmed vs. Sabuddin & Ors.** 2025 SCC OnLine SC 995 to which a detailed reference has been made in the orders passed by this Court in **Feroz Talukdar Khan vs. The Municipal Commissioner Thane Municipal Corporation & Anr.** (Civil Writ Petition No. 4210 of 2025).

7. In a recent decision of the Supreme Court in **Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Ors.**, the Supreme Court ordering demolition of large illegal construction, made the following observations:

159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.”

(emphasis supplied)

9. In a decision of the Division Bench of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation & Ors. in which one of us** (G. S. Kulkarni, J.) was a member, this Court taking into consideration the decisions of the Supreme Court in *Friends Colony Development Committee Vs. State of Orissa*<sup>6</sup> and *Dipak Kumar Mukherjee V. Kolkata Municipal Corporation & ors.*<sup>7</sup> reached to a conclusion that the unauthorised and illegal construction cannot be tolerated and would be required to be demolished.

25. Considering the facts of the present case, this case is also no different from the several cases which have come up before this court and the decisions which have been referred to above in the preceding paragraphs. In fact, in the present

case, Respondent No.1 Municipal Commissioner of MMC categorically submits that the structures on the said plot of the Petitioner are illegal/unauthorized constructions and in spite of this submission has failed to take any action in respect thereof.

26. Thus, in the facts of the case, as also considering that an action has been initiated by the MMC to remove the illegal/unauthorized constructions, we pass the following order:

### ORDER

- (i) MMC to proceed further to demolish illegal/unauthorized constructions in question following the lawful measures as initiated, with requisite police protection if so desired which shall be made available by the Officer in-charge of the Local Police Station. Let such action be taken by the MMC in accordance with law within a period of 30 days from today;
- (ii) All rights and contentions of the parties in the intervention applications are expressly kept open in respect of only the rights qua the land are concerned and not the illegal constructions;
- (iii) Writ Petition stands disposed of in the aforesaid terms. No costs;
- (iv) Interim Applications also stand disposed of subject to the aforesaid observations.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)