

WP-9692-2026.DOC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9692 OF 2026

SAINATH
SANJAY
BODKHE

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by SAINATH
SANJAY BODKHE
Date: 2026.09.01
22:13:00 +0530

1. Smt. Nirmala Rupchandra Ghatawat
Age 59 years, Occ.: Household,
R/o. Flat No.101/102, Rooprajat
Vihar, in front of Govt. Hospital,
Navapur Road, Boisar Taluka,
District Palghar.
2. Smt. Manju Chandan Solanki
Age 57 years, Occ.: Household,
R/o. Roop Solanki Palace,
Bungalow No.1, Rooprajat,
Near CIDCO Colony, Tarapur Road,
Taluka, District Palghar.
3. Smt. Meena Gautam Solanki
Age 51 years, Occ. Household
R/o. Roop Solanki Palace,
Bunglor No.2, Rooprajat,
Near CIDCO Colony, Tarapur Road,
Taluka, District Palghar.
4. Smt. Reena Ajay Ghatawat
Age 41 years, Occ.: Household,
R/o. Flat No. 101/102, Rooprajat
Vihar, in front of Govt. Hospital,
Navapur Road, Boisar Taluka,
District Palghar.
5. Smt. Sangita Mahavir Solanki
Age 49 years, Occ.: Household,
R/o. Second Floor, Olampus Building
Tarapur Road, SBI Bank,
Khodaram Bagh, Boisar,
Taluka, District Palghar.
6. Smt. Heena Deepak Ghatawat
Age 35 years, Occ.: Household,
R/o. Flat No.101/102, Rooprajat

Vihar, in front of Govt. Hospital,
Navapur Road, Boisar Taluka,
District Palghar.
Through Power of Attorney Holder
Shri. Ajay Roopchand Ghatawat
Age 41 years, Occ.: Business,
R/o. Room Nirmal, Bungalow No.4,
Pushkar Park, Near CIDCO Colony,
Tarapur Road, Taluka, District Palghar.

...Petitioners

Versus

1. Collector of Palghar
Collector office, Palghar,
Taluka District Palghar
2. Tahsildar of Palghar
Tahsildar office, Palghar,
Taluka, District Palghar.
3. Circle Officer of Boisar
Circle office, Boisar,
Taluka District Palghar
4. Mumbai Metropolitan Regional
Development Authority (MMRDA)
through Authorized Representative
having office at MMRDA, BKC,
Bandra Kurla Complex, E-Block,
Mumbai - 400051

...Respondents

Mr. Girish Godbole, Senior Advocate, a/w Mr. Devashish
Godbole, Mr. Mayank Gandhi, Mr. Dipak Bobade, Mr.
Prithviraj Kharat, for the Petitioners.

Smt. Mamta S Srivastava, AGP for Respondent Nos. 1 – 3.

Mr. Akshay Shinde, for Respondent No.4 - MMRDA.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 18th AUGUST 2026
PRONOUNCED ON : 01st SEPTEMBER 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.
2. By this petition under Article 227 of the Constitution of India, the petitioners take exception to a judgment and order dated 23rd July, 2026 passed by the learned District Judge-1, Palghar in Miscellaneous Appeal No.09/2026 whereby the appeal preferred by the petitioners - plaintiffs against an order dated 10th June, 2026 in RCS No.10/2026 passed by the trial Court thereby rejecting the application for temporary injunction filed by the plaintiffs to restrain the defendants from taking action pursuant to an order passed by the Tahsildar, Palghar (D-2), came to be dismissed by affirming the said order passed by the trial Court.
3. The background facts, leading to this petition, can be summarized as under :-

3.1 On 22nd June, 2023, under a registered sale deed, the plaintiffs purchased old Gram Panchayat House Nos.460 to 462 situated on Gat No.100 at village Boisar (“suit property”).

3.2 On 07th October, 2024, the Village Panchayat, Boisar issued a No Objection Certificate for erecting construction over the suit property. Armed with the said NOC, the petitioners erected tin sheds over the suit property.

3.3 On 17th July, 2025, the Tahsildar, Palghar (D-2) issued a notice to the petitioners alleging that, without obtaining the permission of the District Collector, Palghar, the petitioners had unauthorizedly erected 54 sheds admeasuring 6 x 3.05 sq. mtrs. each, and the petitioners were called to appear for hearing before the Tahsildar on 24th July, 2025.

3.4 The petitioners filed a reply contending, *inter alia*, that, the Gram Panchayat, Boisar had granted NOC on 27th October, 2024, the development was carried out in conformity with the building potential and the petitioners had already filed an application on 21st August, 2025, before the District Collector, Palghar, seeking regularization of the said development under

Section 143 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act, 1966").

3.5 After hearing the parties, on 03rd February, 2026, the Tahsildar passed an order directing the petitioners to remove the unauthorized development in an area admeasuring 21.25 sq. mtrs. within seven days, lest, those unauthorized structures would be demolished.

3.6 The petitioners instituted a suit before the Civil Judge, Senior Division, Palghar seeking a declaration that, the said order dated 03rd February, 2026 was a nullity and the consequential relief of restraining the authorities from acting on the said order dated 03rd February, 2026.

3.7 In the said suit, the plaintiffs took out an application for temporary injunction. By an order dated 10th June, 2026, the learned Civil Judge, Palghar was persuaded to reject the application observing *inter alia* that, *prima facie*, the construction was carried out sans permission of the Planning Authority, and the plaintiffs were provided an efficacious opportunity of hearing and the order dated 03rd February, 2026 was passed by the Defendant No.2 after following due process of law.

3.8 Being aggrieved, the petitioners preferred an appeal before the District Court. By the impugned judgment and order, the learned District Judge dismissed the appeal founding no reason to interfere with the exercise of the discretion by the trial Court as the structures erected by the plaintiffs were completely unauthorized and illegal. It was further observed that, in view of the bar contained in Section 149 of the MRTP Act, 1966, the suit assailing the order passed thereunder, was not tenable. There was nothing to indicate that, the order dated 03rd February, 2026, was nullity as it was passed in conformity with the provisions of the governing statute and by observing fundamental principles of judicial process.

3.9 Being further aggrieved, the plaintiffs have invoked the writ jurisdiction of this Court.

4. I have heard Mr. Girish Godbole, the learned Senior Advocate for the petitioners, Smt. Mamta Srivastava, the learned AGP for Respondent Nos.1 to 3 – State and Mr. Akshay Shinde, the learned Counsel for Respondent No.4 – MMRDA, which came to be impleaded in this petition. With the

assistance of learned Counsel for the parties, I have also perused the material on record.

5. Mr. Godbole, the learned Senior Advocate for the petitioners, would submit that, the Courts below have not examined the core issue of the authority of Tahsildar, Palghar (D-2) to initiate action under the provisions of MRTP Act, 1966. The competence of Tahsildar, Palghar (D-2) to issue notice alleging unauthorized development, hear the parties and thereafter pass the order, by invoking the powers contained in Sections 52, 53 and 54 of the MRTP Act, 1966, goes to the root of the matter.

6. Amplifying this submission, Mr. Godbole submitted that, the Courts have not applied their mind to the consequences that ensued the notification dated 09th July, 2024 extending the Mumbai Metropolitan Regions Area and appointment of the Mumbai Metropolitan Region Development Authority ("MMRDA") as Special Planning Authority under Section 40(1) of the MRTP Act, 1966. By the said notification the area specified in Schedules - II, III and IV appended thereto, including the lands situated at village Boisar, were notified as MMR's extended notified area and the MMRDA came to be

appointed as the Special Planning Authority, withdrawing the appointment of the City and Industrial Development Corporation ("CIDCO") as a Special Planning Authority for the villages described in the Schedule-I appended thereto.

7. Though by a subsequent order dated 03rd January, 2025, the MMRDA has delegated its powers as the Special Planning Authority to the District Collector, yet, the Tahsildar, Palghar (D-2) could not have exercised the powers delegated by the District Collector vide order dated 31st March, 2022. Laying emphasis on the provisions contained in Section 151 of the MRTP Act, 1966 which provides for delegation of the power, *inter alia*, by the State Government, any Regional Board, Planning Authority, or the Development Authority, Mr. Godbole would submit that, none of the provisions which permit the delegation of powers could be lawfully invoked in the instant case.

8. At any rate, the Authority to whom the State Government or Regional Board, Development Authority or Planning Authority has delegated the power, could not have further delegated the said power to a subordinate authority. On this count alone, Mr. Godbole would urge, the order dated 03rd

February, 2026, becomes null and void. The Courts below were, thus, in error in rejecting the application for temporary injunction when the challenge was to the jurisdictional competence of the Tahsildar, Palghar (D-2) to pass the order dated 03rd February, 2026.

9. Mr. Godbole fairly submitted that, the petitioners cannot run away from the fact that structures have been erected without obtaining permission of the Planning Authority and even the application for regularization under Section 143 of the MRTP Act, 1966, has been rejected. Nonetheless, since the order dated 03rd February, 2026 passed by the Tahsildar, Palghar (D-2) is sans legal authority, no action can be taken on the basis of such order.

10. Smt. Srivastava, the learned AGP for Respondent Nos.1 to 3, forcefully countered the submissions on behalf of the petitioners. Smt. Srivastava urged that, the central issue was of unauthorized construction. Indisputably, the petitioners had not obtained permission for erection of as many as 54 structures over the suit property. Thus, the petitioners do not deserve any equitable relief, despite having brazenly erected the structures sans permission of the Planning Authority.

11. Smt. Srivastava, would urge that, the initial reliance on the purported NOC granted by the Village Panchayat, Boisar is of no assistance to the petitioners. The Village Panchayat, Boisar is not a Planning Authority and, thus, on the basis of NOC issued by the said panchayat, the construction could not have been erected. To buttress this submission, Smt. Srivastava placed reliance on a Division Bench judgment of this Court in the case of *Om Sai Builders and Developers Vs. Assistant Controller (A.B.) Mumbai Metropolitan Region Development Authority Sub-Regional Office & ors*¹.

12. Smt. Srivastava further submitted that, since the Courts below have concurrently declined to exercise the discretion in favour of the petitioners and the facts of the case are so gross that the petitioners cannot claim any equity, this Court need not interfere with the impugned orders.

13. Mr. Shinde, the learned Counsel for the Respondent No.4 – MMRDA also supported the impugned action. It was urged that, there was neither a challenge to the Notification dated 09th July, 2024 nor to the delegation of power by the MMRDA, vide letter dated 03rd January, 2025. Under the said delegation

1 WP/10429/2010 dt. 13/03/2012

dated 03rd January, 2025, the District Collectors were empowered to exercise the powers of the Planning Authority in accordance with the prevailing operating procedure in the matter of discharging the functions of the Planning Authority. The District Collectors were empowered to exercise the powers and perform the duties under MRTP Act, 1966 by following the prevalent operating procedure at their level. Therefore, the exercise of the power by the Tahsildar under the delegated authority, cannot be questioned.

14. Mr. Godbole joined the issue by canvassing a submission that, before the Special Planning Authority came to be appointed the Collector could have exercised the powers of Planning Authority and even delegated his powers to an Officer not below the rank of Tahsildar under Section 18 of the MRTP Act, 1966. However, after CIDCO and MMRDA were successively appointed as the Planning Authorities, the Collector could not have delegated the powers to the Tahsildar; the former being a delegate of the Special Planning Authorities. Therefore, the support sought to be drawn from the letter dated 03rd January, 2025 whereunder the powers of MMRDA were delegated to the District Collector, cannot be countenanced.

15. To start with, it is necessary to note that, the fact that the petitioners have erected structures over the suit property sans permission of any Planning Authority is rather incontrovertible. Though initially an endeavor was made by the plaintiffs before the Courts below that the Village Panchayat, Boisar had granted the NOC, yet, the said case was not pursued further. It is indubitable that, the Village Panchayat is not a Planning Authority within the meaning of MRTP Act, 1966. It is also not in dispute that, an application preferred by the petitioners before the District Collector under Section 143 of the MRTP Act, 1966, came to be rejected. The situation which, thus, emerges is that, the structures erected by the plaintiffs are completely unauthorized and illegal. The only question that merits consideration is whether the petitioners are entitled to protect the unauthorizedly erected structures on the premise that, the order dated 03rd February, 2026, passed by the Tahsildar (D-2), is without any authority.

16. As the controversy revolves around the question as to whether the impugned action was taken in pursuance of the authority delegated by the Planning Authority, it may be appropriate to note the definition of the various authorities envisaged by MRTP Act, 1966.

17. Under sub-section (19) of Section 2 of the MRTP Act, 1966, 'Planning Authority' means a local authority; and includes, -

(a) Special Planning Authority constituted or appointed or deemed to have been appointed under section 40;

(b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;

18. Sub-section (8) of Section 2 defines 'Development Authority' to mean a New Town Development Authority constituted or declared under section 113. Under sub-section (24) of Section 2, 'Regional Board' or 'Board' means the Regional Planning Board constituted under Section 4 of the MRTP Act, 1966. Sub-section (31) of Section 2 defines 'Town Planning Officer' as the Officer appointed for the time being to be the Town Planning Officer for all or any of the provisions of that Act.

19. Section 40 of MRTP Act, 1966 empowers the State Government to appoint a Special Planning Authority for

developing the notified area. Under Section 160, the State Government is empowered to dissolve the Special Planning Authority or declare that the Planning Authority shall cease to function as the Planning Authority in relation to specified area.

20. Since in the facts of this case, there is no challenge to the power of the Planning Authority to invoke the powers under Sections 52, 53 and 54 of the MRTP Act, 1966, it would be superfluous to note the import of those provisions. It would be appropriate to straightway notice the provisions contained in Section 151 of the MRTP Act, 1966. It reads as under :

“151. Power to delegate

(1) The State Government may, by a notification in the Official Gazette delegate any power exercisable by it under this Act, or rules thereunder to any officer of the State Government [in such case and subject to such conditions, if any, as may be specified in such notification] .

(2) The Director of Town Planning may, by an order in writing, delegate any power exercisable by him under this Act or rules thereunder to any officer subordinate to him in such case and subject to such conditions, if any, or may be specified therein.

(3) Any Regional Board, Planning Authority or Development Authority may, by a resolution, direct that any power exercisable by it under this Act, rules or regulations thereunder (except the power to prepare any

Regional plan, Development Plan, town planning scheme or the plan of the New Town or to make regulations) may also be exercised by any officer of the State Government with the previous consent of the State Government, the Regional Board, Planning Authority or local authority or Development Authority as may be mentioned therein, such cases and subject to such conditions, if any, as may be specified therein.

(4) The Town Planning Officer of any Regional Board, Planning Authority or Development Authority may, by an order in writing, delegate any power exercisable by him under this Act, or rules or regulations thereunder to any officer of the Regional Board, Planning Authority or local authority or Development Authority in such cases and subject to such conditions, if any, as may be specified therein.”

21. Sub-section (1) of Section 151 envisages the delegation by the State Government of the powers exercisable by it under the MRTP Act, 1966, to any Officer of the State Government. Sub-section (3) of Section 151 enables the delegation of the power exercisable by any Regional Board, Planning Authority or Development Duthority to an Officer of the State Government, albeit with the previous consent of the State Government, subject to such conditions as may be specified therein. The State Government and the Authorities referred to therein are thus empowered to delegate the powers exercisable under the

MRTP Act, 1966 by prescribing the contours of the delegated authority. The term subject to such conditions appears to be elastic enough to include in its fold the manner of exercise of the delegated powers by the Officers of the State Government.

22. As a matter of fact, there is no dispute over the appointment of CIDCO as a Special Planning Authority vide Notification dated 4 March 2024. The Notification dated 9th July, 2024, indicates that the State Government in exercise of its powers under Section 160 of the MRTP Act, 1966 and all enabling provisions : (i) withdrew the appointment of CIDCO as Special Planning Authority for the villages described in Schedule I appended to the said Notification, including Village Boisar, (ii) notified the area specified in Schedule II, III and IV appended thereto, as the Mumbai Metropolitan Region's Extended Notified Area and (iii) appointed MMRDA to be the Special Planning Authority for the said notified area, excluding the area of Planning Authority, Special Planning Authority and Development Authority in the said notified area.

23. MMRDA, in turn, vide letter dated 3 January 2025, delegated its power as the special planning authority in relation to the MMR's extended notified area to the District Collectors

Palghar and Raigad in exercise of the powers under Section 151(3) of the MRTP Act, 1966.

24. In light of aforesaid nature of the enabling provision to delegate the power exercisable under the MRTP Act, 1966, if the letter dated 3 June 2025 delegating the powers of the MMRDA as a Special Planning Authority in relation to MMR's extended notified area is considered, the sanction of the State Government for the delegation of the authority becomes evident from the said letter. It becomes abundantly clear that the Collector was empowered to exercise the power in accordance with the prevailing operating procedure. In a sense, delegation of the authority to perform functions and discharge the duties under the MRTP Act, 1966 in accordance with the prevailing operating procedure resurrects the order passed by the Collector delegating the power to the Tahsildar.

25. If the order passed by the Tahsildar is perused, the Tahsildar has drawn support from the delegation of the authority by the Collector vide order dated 31 March 2022. Pertinently, this order pre-dates the appointment of CIDCO as the special planning authority, which was pursuant to the notification dated 4 March 2024, and the appointment of the

MMRDA as the special planning authority.

26. The question whether a prior order or notification would survive the appointment of the Special Planning Authority subsequently, may warrant consideration. The provisions contained in Section 18(1) (iii), especially the proviso appended thereto, in the considered view of this Court, deserves to be read in conjunction with the delegation of the power by the Special Planning Authority to the Collector under the provisions of Section 151(3) of the MRTP Act, 1966.

27. Section 18 of the MRTP Act, 1966, provides restrictions on change of user of land or development thereof. Sub-section (1) of Section 18 is relevant for the purpose of the determination of the controversy at hand. It reads as under :

“18.Restriction on change of user of land or development thereof (1) No person shall, on or after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved, institute or change the user of any land for any purpose other than agriculture or carry out any development in respect of any land without the Previous permission,-

(i) in case the land is situated in the limits of a Municipal Corporation or a Municipal Council, or a Nagar Panchayat or a Special Planning Authority or

any other planning authority, of such Municipal Corporation or Municipal Council, Nagar Panchayat or Special Authority or other planning authority, as the case may be, or

(ii) in case the land is situated in the gaathan, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966, of the village panchayat concerned, or

(iii) in case the land is situated in areas other than those mentioned in clauses (i) and (ii) above, of the Collector of the District :

Provided that, the Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.

Explanation. - For the removal of doubt, it is hereby declared that, no such permission of the Collector shall be required in the gaathan area of a revenue village within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966.”

28. Section 18 (1) (iii) proscribes the change of user of the land or any development thereof without previous permission of the Collector of the District, in case the land is situated in areas other than those mentioned in clause (i) and (ii). The proviso to clause (iii) empowers the Collector to delegate his powers under the said clause to an officer not below the rank of Tahsildar. The rationale of enabling the delegation of the power of the Collector to Tahsildar in the matter of enforcement of the

provisions of the MRTP Act, 1966 is required to be appreciated in the light of the necessity of such delegation. It would be impracticable to enforce the provisions of MRTP Act, 1966 in letter and spirit, if a view is taken that every action envisaged by the MRTP Act, 1966, must be taken by the Collector.

29. Under the principles of legislation, the continuation of re-enacted notifications and orders passed under a repealed enactment which are not inconsistent with the reenacted provisions is the well recognized. The provisions contained in Section 24 of the General Clauses Act, and Section 25 of the Maharashtra General Clauses Act, 1904, recognize this principle. Lest, the operation of the new legal regime would come to a standstill for want of appointment, notification or order under the new regime.

30. This analogy can be applied to a situation of the present nature, where under Section 18 of the Act, 1966, the Collector is specifically empowered to delegate his authority to Tahsildar and the Special Planning Authority is also empowered to delegate its power to the Collector, subject to such conditions as may be prescribed. A direction for the exercise of the said power in conformity with the prevalent operating procedure,

would subsume in its fold the delegation of the powers by the Collector to Tahsildar.

31. For the foregoing reasons, I am not persuaded to agree with the submissions of Mr. Godbole that, in the facts of the case, Tahsildar could not have exercised the powers under Sections 52, 53 and 54 of the MRTP Act, 1966, as the delegate of the District Collector, pursuant to the order dated 31st March, 2022.

32. Even if this Court were to take a view that, there can be a duality of opinion on the aspect as to whether the order of the District Collector dated 31st March, 2022 delegating the power to the Tahsildar survives after the appointment of the Special Planning Authority, and that may bear upon the validity of the order passed by the Tahsildar dated 03rd February, 2026, yet, that, by itself, may not be a sufficient ground to exercise the writ jurisdiction. This Court cannot be oblivious to the facts which stare in the face and the stark reality of the situation. Thus, merely questioning the validity of the order passed by the Tahsildar on the premise of cessation of the delegated authority would not furnish a justifiable ground to exercise the writ jurisdiction. It would be incumbent upon the petitioners to

demonstrate that, the issue of writ would ensure justice and that justice lies on the side of the petitioners.

33. A profitable reference, in this context, can be made to a Division Bench judgment of this Court in the case of *State of Bombay Vs. Morarji Cooverji²*, wherein the aforesaid principle was expounded as under :-

“41. But it is not sufficient that a party should come to this Court and make out a case that a particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side.”

(emphasis supplied)

34. The supervisory jurisdiction under Article 227 of the Constitution of India is essentially corrective in nature. This Court may decline to interfere with the order, even if some legal infirmity is noticed therein, if the justice of the case does not lie in favour of the party assailing such order. If the final order appears to be broadly in consonance with the dictate of justice,

the writ Court may justifiably decline to exercise its jurisdiction.

35. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of *Garment Craft Vs. Prakash Chand Goel*³, wherein the following observations were made :-

“15. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

3 (2022) 4 SCC 181

36. On the merits of the matter, the fact that the erection of the structure was completely unauthorized, and even an endeavor on the part of the petitioners to obtain an order of regularization under Section 143 of the MRTP Act, 1966, has not succeeded, renders the prayer for interim relief in the nature of restraining the authorities from demolishing the unauthorizedly erected structures singularly unsustainable. It is not a case where the petitioners have obtained the permission and carried out the development in excess of the permission, marginally.

37. Smt. Srivastava, the learned AGP, was justified in canvassing a submission that, there was brazen erection of as many as 54 tin sheds which have been put to commercial use, with impunity. The development carried out by the petitioner was wholly illegal.

38. The unauthorized development cannot be tolerated by the Courts as an act of judicial generosity. Nor can regularization of the illegal constructions by the State and its instrumentality be a policy of governance. The Supreme Court has repeatedly emphasized that, the illegality in erecting structures throwing

the Building Control Rules to the wind must be dealt with sternly and with iron hands. The Courts ought not to show misplaced sympathy.

39. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Rajendra Kumar Barjatya & anr. Vs. U. P. Avas Evam Vikas Parishad & ors.*⁴ The observations in Paragraph Nos. 19 and 20 delineate the approach to be adopted by the Courts in terse terms. They read as under :-

“19. In a catena of decisions, this Court has categorically held that illegally of unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction. The following decisions are of relevance and hence cited herein below to drive home the point that unauthorized constructions must be dealt with, with an iron hand and not kid gloves.

.....

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.”

(emphasis supplied)

40. In the case of *Kaniz Ahmed Vs. Sabuddin & ors.*⁵, after referring to the directions issued in the case of *Rajendra Kumar Barjatya (supra)*, the Supreme Court again reminded the Courts that they must adopt strict approach while dealing with the illegal constructions and should not readily engage themselves in judicial regularization of buildings erected without requisite permission of the Competent Authority. The

observations in Paragraphs No. 6 and 7 are material and, hence, extracted below :-

“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)]”

(emphasis supplied)

41. On the aforesaid touchstone, if the facts of the case at hand are appreciated, the Courts below cannot be said to have committed any error in declining to grant equitable relief in favour of the petitioners. Any other view, in the circumstances of the case, would undermine the efficacy of rule of law.

42. Resultantly, the petition deserves to be dismissed. Hence, the following order:-

:: O R D E R ::

The Writ Petition stands dismissed.

Rule discharged.

No costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Godbole, the learned Senior Advocate for the petitioners, sought continuation of the ad-interim relief for a reasonable period.

In the light of the view this Court has been persuaded to take and the peculiar facts of the case, the prayer for continuation of ad-interim relief is wholly unjustifiable.

Thus, the oral application for continuation of ad-interim relief stands rejected.

[N. J. JAMADAR, J.]