



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2432 OF 2023

- 1) Jitendra Jaywant Sawant,
Age 52 years, Occ. Proprietor of
Shree Sai Ganesh Estate, Shop No.4,
Plot No.22, Opp. Police Chowki,
Chedda Nagar, Chembur (West),
Mumbai – 400 089.
- 2) Yakub Ismail Shaikh
Age 86 years, Occ. Proprietor of
Goodluck Pan Shop, A1 Hair Salon,
Taj Traders, Shop Nos.1, 3 and 5,
Plot No.22, Opp. Police Chowki,
Chedda Nagar, Chembur (West),
Mumbai – 400 089.
- 3) Yusuf Ismail Shaikh
Age 54 years, Occ. Proprietor of
Arzoo Electricals, Shop No.2, Plot No.22,
Opp. Police Chowki, Chedda Nagar,
Chembur (West),
Mumbai – 400 089

.....Petitioners

vs.

- 1) The Deputy Collector,
(Enc./Removal) Chembur, 10th Road,
Near D.K. Sandu Garden,
Opp. Axis Bank, Chembur (East),
Mumbai – 400 001.
- 2) State of Maharashtra
Through the Revenue Department,
Served through the Government Pleader,
High Court, Original Side.

.....Respondents

Mr. Vishal Kanade a/w Adv. Tanya i/by Mr. Pravin V. Kamble for the Petitioners.

Mr. D.P Singh a/w. Mr. Shreeram Redij for Respondent-UOI.

Mr. Mohit Jadhav, Addl. GP for Respondent Nos.1 and 2.

Mr. Girish Godbole, Sr. Advocate a/w Mr. Jyoti Mhatre i/by. Ms. Komal Punjabi for the Respondent–BMC.

Ms. Ashwini Dahate, Officer, JE, BF, M/West Ward, present.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.
DATED : 3rd FEBRUARY, 2026.**

JUDGMENT (Per:- A.S. Gadkari, J.)

1) Rule. Rule made returnable forthwith and with the consent of parties, taken up for hearing.

2) By this Petition, under Article 226 of the Constitution of India, the Petitioners are seeking a writ in the nature of mandamus or any other appropriate writ, Order or direction calling for the records and proceedings related to CTS No.661 concerning the structure erected by the Petitioners and to quash and set-aside the Common Public Notice dated 23rd November, 2022 (Exhibit–I) issued by the Deputy Collector (Encroachment/Removal), Chembur, Mumbai and for other consequential reliefs.

3) Heard Mr. Kanade, learned counsel for the Petitioners, Mr. Singh, learned counsel for Respondent–UOI, Mr. Jadhav, learned Addl. GP for the Respondent Nos.1 and 2–State and Mr. Godbole, learned senior Advocate for the Respondent–BMC. Perused record.

4) Record indicates that, the Deputy Collector (Encroachment and

Removal), Chembur Division, Mumbai – 400 001 has issued a Public Notice dated 23rd November, 2022 calling upon the persons who have constructed illegal constructions on C.T. Survey No.661, Taluka Kurla, Chedda Nagar, to remove their illegally encroached structures. The said land is owned and belonged to the State of Maharashtra and numerous illegal structures are erected by the concerned persons. As the Government of Maharashtra is desirous of get it vacated for its appropriate utilization for the benefit of the State, the Deputy Collector, Chembur Division has issued the said Public Notice.

5) Mr. Kanade, learned counsel for Petitioners submitted that, the Petitioners have constructed their premises on the said plot of land prior to 1960 i.e. prior to the datum line and therefore their structures are tolerated *inter alia* protected. He submitted that, in Notice of Motion No.2769 of 2023 in Suit No.6910 of 1978 filed by the Petitioners against the Union of India and others, the trial court has granted interim relief in favour of the Petitioners and therefore also, the said structures cannot be demolished. He submitted that, before removal of the structures, the State ought to have given the Petitioners an opportunity of being heard and then only it can take appropriate steps. He therefore requested this Court to consider the Petition sympathetically.

6) At the outset, it may be noted here that, we are not in agreement with the submissions advanced by Mr. Kanade, learned counsel

for the Petitioners. It is an admitted fact on record that, there is no sanction or permission granted by any Competent Authority under the law, to construct the said structures by the Petitioners. The Mumbai Municipal Corporation has come into effect in the year 1888 and since then there are specific provisions which are in operation, whereby a person residing within the jurisdiction of Mumbai Municipal Corporation has to seek permission for erecting a structure. The structure whether tolerated prior to datum line or not, is a disputed question of fact and we cannot go into the said disputed question in our Writ jurisdiction under Article 226 of the Constitution of India.

7) It is an admitted fact on record that, no local Authority or no Competent Authority in the State has granted any permission to the Petitioners to construct the said structure. It is the reason the Respondent No.1 has issued the impugned Notice dated 23rd November, 2022 for removal of illegal structures.

8) At this stage, a useful reference can be made to two recent decisions of the Hon'ble Supreme Court.

8.1) In the case of *Rajendra Kumar Barjatya and Anr. v/s. U.P. Avas Evam Vikas Parishad and Ors.* reported in 2024 SCC OnLine SC 3767 and in particular, paragraph 20 thereof it is held that :-

“ 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. ”

8.2) The Hon'ble Supreme Court in the case of *Kaniz Ahmed v/s. Sabuddin & Ors.* reported in 2025 SCC OnLine SC 995 after reaffirming the principles enunciated in the case of *Rajendra Kumar Barjatya* (supra), in paragraph no.7 has held as under :-

“ 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.”

9) As far as the contention of the Petitioners that, no hearing was given by the Competent Authority before proceeding to demolish the illegal structures is concerned, the same exercise has been undertaken by this Court. We have given detailed hearing to the Petitioners. Despite repeated request by this Court, no document or authorisation or sanction permitting the Petitioners to erect the structures on the said plot of land are shown to us or produced before us. Upon a query by the Court as to within how much period, the Petitioners would remove their structures, no satisfactory answer was given by the Petitioners.

It appears from the record that, after getting interim relief, the Petitioners have not moved the Suit before the trial Court. As the Petitioners do not have lawful authorisation to construct the structures, we find that there are no merits in the Suit filed by the Petitioners. The said suit has been unnecessarily entertained and kept pending on the file of the trial Court.

10) In view of the above, we are not inclined to entertain the Petition. As noted above, there is no sanction or approval granted by any

Competent Authority to erect the structure by the Petitioners. We cannot show empty sympathy to the Petitioners which would be contrary to the ratio laid down by the Hon'ble Supreme Court in the aforementioned two decisions.

11) In view of the above, we find no merits in the Petition.

Petition is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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MASHALKAR
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