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Received on : 06/08/25

Registered on : 06/08/25

Decided on : 09/06/26

Duration : 00Y 10M 03D

IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
42 ND COURT, SHINDEWADI, DADAR, MUMBAI.

(Presided over by : S. D. Chakkar)

C.C. NO. 6716/SS/2025

Exh. No.39

The Municipal Corporation Mumbai.

Through: The Legal Assistant,

Shri. Ingle, B/ward,

MCGM, Mumbai.

.... Complainant

V/s.

1. Imran Ali Mohammed Latif.

Age: Adult. Occu. - Business.

Add.: M/s. Classic Corporation, 179,

3rd Floor, Commercial Chamber,

Y.M. Ali Road, Mumbai-03.

09.06.2026

2. Mr. Nilesh Kanchanlal Kadakia.

Age: Adult. Occu. - Business.

Add.: Room No.176, 4th Floor,
Sardar Griha Building, 198, L.T. Road,
Crawford Market, Mumbai-02.

3. Mrs. Afshanabanu Vahidhusein Sodagar.

Age: Adult, Occu. - Nil.

Add.: 1703, 17th Floor, Burj Ashraf Building,
Mandvi Division, Kambekar Street, Y.M. Road,
B Ward, Mumbai-09.

....Accused.

Charge : Offence under section 353-A which is punishable under section 471 of Mumbai Municipal Corporation Act, 1888.

Appearance : Ld. A.L.O. Mr. Ingle for the MMC.
Ld. Adv. Mr. Surendra Yadav and Adv. Priti R. Gangurde for all accused.

J U D G M E N T

(Delivered on 09/06/2026)

The accused are prosecuted for the offence under section 353-A, which is punishable under section 471 of Mumbai Municipal Corporation Act, 1888. (Hereinafter referred to as the 'MMC Act' for brevity).

Brief facts of the case of complainant are as under :-

2. The complainant has filed this private complaint alleging

commission of an offence u/s. 353-A r/w. 471 of MMC Act. Accused have taken the possession of premises i.e. C.S. No. 1172, 1173, 1/1173, 1175 & 1176 of Mandvi Division, Kambekar Street, B-Ward, Mumbai-09 (Hereinafter referred to as 'the site' for brevity) without obtaining occupation certificate from BMC. Accordingly, Mr. Nikhil Suryawanshi (CW-1), Sub Engineer conducted inspection of the said premises and found that the accused have entered in the possession without occupation certificate. Sub Engineer issued notice u/s. 353-A of MMC Act. The said notice served to the accused. Despite service of notice accused failed to comply notice requisition. Hence, this complaint.

3. This court read over and explained particulars of the offence under section 353-A r/w. 471 of the MMC Act to all accused in vernacular. They pleaded not guilty and claimed to be tried. The statement of accused u/sec. 313 of The Code of Criminal Procedure came to be recorded. Their defence are that of total denial and false implication.

4. The points for determination along with my finding thereon are as under :-

POINTS

FINDINGS

- 1) Does complainant prove that on or before 01/04/2025, accused persons permitted/occupy 'the site' without obtaining completion certificate ?

.....No.

- 2) What order ?

Accused are acquitted.

REASONS

5. In order to establish the guilt of accused, complainant has examined Mr. Nikhil Suryawanshi (Sub Engineer) as (CW-1), Mr. Dattatraya Ramdas Chormale, BEST Department officer, as (CW-2), and Mr. Roshan Jibhkate (Assistant Engineer) as (CW-3).

6. Apart from oral evidence, complainant also relied upon documents i.e. Authority Letters, First and Second Inspection Reports Notices, Offence Sheet, etc. And closed their evidence by filing pursis. Heard, both sides learned counsels.

7. The Ld. Assistant Law Officer for the complainant submitted that, construction of the building which is occupied by the accused in this case is completely unauthorized. He further submitted that, in this case where none of accused have contended that they occupied the flats on representation that occupation certificate was granted. He further submitted that, this was a case where the accused had entered possession of the flat with full knowledge that the building had not occupation certificate. Notice u/s. 488 of MMC Act is not required and mandatory provision if 'the site' in question is occupied without Occupation Certificate. Ld. Assistant Law Officer further submitted that, meter consumer list shows that meter is in the name of accused no.3. Therefore, it is clear that accused no.3 is in occupation of the flat.

8. On the other hand, Ld. Advocate for the accused submitted

that, accused have been falsely implicated in present case. The witnesses not having valid authority. Notice is not personally served to the accused. Notice u/s. 488 of MMC Act is not given before inspection at 'the site'. The meter list is prepared by the builder before giving occupation of the flat to the purchaser and the meter list is not proof of occupation of flat. The complainant has not prepared any panchanama in respect of flat, in order to show that accused is in occupation of the said flat. The complainant failed to prove allegation beyond reasonable doubt. Hence, she prayed for accused may be acquitted.

9. I have given careful consideration to the submissions. It will be necessary to refer the relevant provisions of the said Act of 1888. The Complaint has alleged violation of sub section 2 of section 353-A which reads thus-

“Section 353-A completion certificates – permission the occupy or use -

(1.)

(2.) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any such work, until (a) the permission referred to in proviso (b) to sub section (1) has been received or,

(b) the Commissioner has failed for 21 days after receipt of the notice of completion to intimate as aforesaid his refusal of the said permission”.

10. The violation of the said provision has been made an offence by virtue of provision of section 471 of said Act. Section 471

reads thus,

“Section 471 – certain offence punishable with fine -
whoever -

(a) contravenes any provision of any of the section, sub section or any clause mentioned in the first column of the following table or of any regulation made there under or

(b) fails to comply with any requisition lawfully made upon him under any of the said section, sub section or clause, shall be punished, for each such offence, with fine which may extent to the amount mentioned in that behalf in third column of the said table, subject however, to a minimum fine which shall not be less than fine mentioned in the fourth column of the said table”.

11. On plain reading of section 471 it refers to a contravention of any section of said Act. A mere breach or failure to comply is not made an offence.

12. **As to Point No.1** :- The combine oral testimonies of Mr. Nikhil Suryawanshi (CW-1), and Mr. Roshan Jibhkate (CW-2) discloses that on 01/04/2025, Mr. Nikhil Suryawanshi (CW-1) inspected the site and found that ‘the site’ is occupied without occupation certificate. Therefore, Mr. Nikhil Suryawanshi (CW-1) prepared first inspection report and submitted before his superior, Assistant Engineer, Mr. Roshan Jibhkate (CW-2), who granted approval for issuance of notice under section 353-A of MMC Act. Accordingly, notices were prepared and served the same to the accused. However, despite of service of notices, the premises was not vacated. Therefore, on 20/05/2025, Mr. Nikhil

Suryawanshi (CW-1) prepared second inspection report and submitted before Mr. Roshan Jibhkate (CW-2), who granted sanction for prosecution. Thereafter, offence sheet was prepared and prosecution was launched against accused.

13. Witness No.2 Mr. Dattatraya Ramdas Chormale, BEST Department discloses that, he is working in BEST Department as Assistant Engineer. His work nature is to give new meter connections to consumer in customer care B Ward. He is working in B Ward since November 2024. He has given meter connections to 182 persons to Classic Corporation Builder in various years. He has filed documents i.e. authority letter, certificate u/s. 65(B) of Indian Evidence Act, list of consumer. In consumer list the name of consumer, his address, account number, meter installation date, meter is live has mentioned. The consumer list in respect of Building namely Classic Corporation, Burj Ashrafi, C.S. No.1172/73, Kambekar Street, Mandvi Division, Mumbai-02.

14. Thus, on minutely going through the evidence of Mr. Nikhil Suryawanshi (CW-1), and Mr. Roshan Jibhkate (CW-2) it appears that they have categorically deposed about site inspection, preparation of site inspection reports, issuance of notices and launching prosecution. The complainant came with the case that accused are being Developer/ Architect/ Owner/ Occupier entered the possession without obtaining completion/occupation certificate. Hence, it is necessary for the complainant to prove that accused are being Developer/ Architect/ Owner/ Occupier. In this regard, on perusal of examination in chief of

Mr. Nikhil Suryawanshi (CW-1), and Mr. Roshan Jibhkate (CW-2), it appears that none of these witnesses have deposed the said fact. It is important to note that record of proceeding shows that Mr. Nikhil Suryawanshi (CW-1) did not verify BMC record to show, who is owner of the building i.e. 'the site'. He had not seen any documents to show that accused are Developer/ Architect/ Owner/ Occupier of 'the site'. There is absolutely no evidence on record which will show that accused are Developer/ Architect/ Owner/ Occupier.

15. In the entire deposition of Mr. Nikhil Suryawanshi (CW-1), and Mr. Roshan Jibhkate (CW-2) a case is not at all made out that the accused had taken possession of 'the site' with the knowledge that occupation certificate was not issued. It is not the case of complainant that the accused was responsible for obtaining the occupation certificate.

16. If the evidence of officer examined by complainant is perused, it is obvious that case is not established. Even if, submission of Ld. Assistant Law officer for complainant are accepted at highest what can be stated is that there are two views possible, one in favour of accused and other in favour of complainant. The settled law is that, if two views are possible, one in favour of the accused has to be preferred.

17. It is further alleged that the inspection has been taken without giving notice under section 488 of The MMC Act to the flat/shop owners i.e. 'the site'. Therefore, the inspection can not be said to be legal one.

Section 488 of MMC Act Provided that—

- (a) except when it is in this Act otherwise expressly provided, no such entry shall be made between sunset and sunrise;
- (b) except when it is in this Act otherwise expressly provided no building which is used as a human dwelling shall be so entered unless with the consent of the occupier thereof, without giving the said occupier not less than twenty-four hours, previous written notice of the intention to make such entry, and unless for any sufficient reason it shall be deemed it expedient to furnish such information, of the purpose thereof;
- (c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed;
- (d) due regard always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

18. In the present case, Mr. Nikhil Suryawanshi (CW-1) has admitted that no such notice was given to the residents of the building, prior to inspection. No specific reason is assigned for non compliance of Section 488 of MMC Act. The provision of giving prior notice under section 488 of The MMC Act is a mandatory provision. Therefore, the inspection taken by Mr. Nikhil Suryawanshi (CW-1) without issuing the said notice becomes invalid in the eyes of Law.

19. Witness No.2 Mr. Dattatraya Ramdas Chormale has

admitted in his cross-examination that, he does not know what is the relation of the document consumer list with accused persons. Further, he has admitted that, the C.S. No.1172/73 is big area. This witness has produced document in regards to 'the site', but, he cannot tell about which electricity meter has allotted to whom. His testimony is not trustworthy. Ld. ALO relied on the list of electricity meter but electricity meter is not proof of physical custody of the flat. Hence, for this reason also the allegation could not proved.

20. Further record shows that complainant has not produced any documentary evidence to show that accused are Developer/ Architect/ Owner/ Occupier of 'the site'. Hence, Complainant is failed to prove his case beyond the reasonable doubts.

21. For all these aforesaid reasons, the offence leveled against the accused are not proved. Hence, I answered point No. 1 in the negative and proceed to pass following order :

ORDER

1 Accused Nos. 1. Imran Ali Mohammed Latif, 2. Mr. Nilesh Kanchanlal Kadakia and 3. Mrs. Afshanabanu Vahidhusein Sodagar are hereby acquitted of the offence under section 353-A, which is punishable under section 475-A of the Mumbai Municipal Corporation Act, 1888 vide section 278 (1) of Bharatiya Nagarik Suraksha Sanhita, 2023.

- 2 Bail bonds of accused are cancelled and they are set at liberty.
- 3 Accused furnished surety bond under section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023. Their bail bonds shall be in force for a period of six months from today.
- 4 Accused No.2 & 3 are absent hence, judgment is declared in their absence Under Section 392(6) of the Bharatiya Nagarik Suraksha Sanhita, 2024.
- 5 Judgment dictated and pronounced in open court.

Date : 09/06/2026

(S. D. Chakkar)
Judicial Magistrate (First Class),
42nd Court, Shindewadi, Dadar Mumbai

Dictated on 09.06.2026

Transcribed on 09.06.2026

Signed on 09.06.2026

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