

MHMM21010
6812017



Received on : 18.08.2017

Registered on : 18.08.2017

Decided on : 17.07.2026

Duration : 08Y 10M 30D

IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
42 ND COURT, SHINDEWADI, DADAR, MUMBAI.
(Presided over by : S. D. Chakkar)

Exhibit :30

- a) Serial No. of case : 4210552/SS/2017
- b) Date of Commission : 20.05.2017.
of the offence
- c) Name of the : The Municipal Corporation Mumbai.
complainant (if any) (Through: Senior Legal Assistant,
Mr. Anil A Mhatre,
D/ward, MCGM Mumbai).
- d) Name of the accused : 1. Milapchand Bokadia
person and their (Seprated from accused no.2 and 3)
parentage and
residence 2. Anuj @ Ajun J. Mehta
Age : 43 yrs, Occup.: Business
Add.: - Manav Builders Pvt. Ltd.,
112/122, Hira Bhavan, Rajaram Mohan
Roy Road, Prathana Samaj, Mumbai-4.
3. Sangram Abbas Ali (Architect)
Age : 46 yrs. Occu.- Architect
Add.: - M/s. Design Group, 149/5, Feet
Wala Compound, CST Road, Kurla (W),
Mumbai - 70.

- e) Offence complained of or proved : Offence of contravening the provisions of section 353A of The Mumbai Municipal Corporation Act, 1888, which is punishable under section 471 of The MMC Act.
- f) Appearance : Ld. Assistant Law Officer Mrs. Kamini Pagare for the Municipal Corporation.
Ld. Advocate Shri. S. M. Yadav
- g) Plea of the accused and their examination (if any) : Accused Pleaded not guilty.
- h) Final Order : Accused are acquitted.
- i) Date of Judgment : 17.07.2026

J U D G M E N T

(Delivered on 17.07.2026)

It is alleged by the complainant the Municipal Corporation that the accused no.1 Milapchand Bokadia have occupied and accused no.2 Anuj @ Ajun Mehta and 3. Sangram Abbas Ali have allowed them to occupy the flat no.331 situated in Siddhesh Jyoti, E wing, Pathe Bapurao Marg, Mumbai (Hereinafter referred to as 'the premises' for brevity), without obtaining occupation certificate, as required by section 353A of The Mumbai Municipal Corporation Act, 1888 (Hereinafter referred to as 'The MMC Act' for brevity). Therefore, all the accused committed the offence punishable under section 471 of The MMC Act. Hence, this complaint. All the accused pleaded not guilty to the offence and claimed for trial. Their defence is of total denial and false implication.

02. In order to prove the offence leveled against the accused, the complainant has examined Sub Engineer Mr. Khade (CW-1), Assistant Engineer Mr. Dichwalkar (CW-2), Notice Clerk Mr. Kadam (CW-3). Apart from the oral evidence, the complainant has relied upon following documentary evidence viz. First and Second Inspection reports, approval, Notice, acknowledgment, prosecution letter, IOD, notice service report, Authority letters, Deputation orders and Intimation letters.

03. The evidence of Sub Engineer Mr. Khade (CW-1) discloses that on 20/05/2017, he visited the Siddhesh Jyoti Apartment, E and F wing. At that time, he found that the flats on 24th floor to 40th floor i.e. total 144 flats were unauthorisedly occupied without occupation certificate. Therefore, he prepared inspection report and submitted said inspection report to Executive Engineer, who granted approval for issuing notice under section 353A of The MMC Act. After issuing notice, he again inspected the said building after seven days to verify whether the flat was vacated. The notices were issued to the architect, developer and all the occupants of the said building. After 7 days, Mr. Khade (CW-1) took 2nd inspection at that time, he found that the occupants failed to vacate the premises as per the notice. Therefore, he prepared second inspection report. Thereafter, a final letter was issued to vacate the premises. He forwarded the documents to legal department for initiating legal action against the occupant, developer and architect.

04. The Assistant Engineer Mr. Ratish Dichwalkar (CW-2) has corroborated the version of Sub Engineer Mr. Khade (CW-1). Mr.

Dichwalkar (CW-2) deposed that as per direction of Executive Engineer, he issued notices to the architect, developer and all the occupants of the said building.

05. The notice clerk Mr. Vilas Kadam (CW-3) deposed that he served notice of Manav Builder in his office at Prathana Samaj, Girgaon, which was received by official employee namely Mrs. Rachana, who was present at that time. He served said notice on the same day on the architect M/s. Design Group. The said notice was also received by Mrs. Rachana. He also served notices to the occupiers on different days, some notices were accepted by the concerned occupiers and some are received by the relatives of the concerned occupiers. Thereafter, he prepared notice service report and submitted it to the Sub Engineer Mr. Khade (CW-1).

06. Heard the Assistant Law Officer and learned Advocate for accused persons. Ld. Assistant Law Officer has argued that the Municipal Corporation, by bringing cogent evidence on record, has proved that the accused have occupied the said premises without obtaining occupation certificate and despite of giving notice to vacate the premises, the accused have failed to vacate it. Therefore, the accused are liable for the offence. On the other hand, the learned advocate for the accused have argued on various points.

07. At the outset, it needs to be mentioned that the cardinal principal of criminal jurisprudence is that the prosecution must prove the guilt of the accused beyond reasonable doubt so that no innocent person should be punished.

08. First and foremost objection is taken on the point of taking inspection and preparing the inspection report. It is argued by the learned advocate for the accused that how a person can take inspection of 144 flats and prepare inspection report in a single day and that too without taking any notes of inspection. Regarding this objection, evidence of the star witness i.e. Mr. Khade (CW-1) is scrutinized. It reveals that he has taken inspection on 20/05/2017 of all the 144 flats and has prepared the inspection report in his office. In his cross examination, he has admitted that he has not maintained any field dairy or has not obtained any documents from the occupiers. He has deposed that he had verified the occupiers on the spot. However, he has not brought anything on record to show on what basis he recollected the names of all the premises occupiers and prepared the inspection report after going to office. Therefore, question arises about the authenticity of the inspection report.

09. Mr. Khade (CW-1) has admitted that there is no documentary evidence to show that the accused no.1 and 2 are the occupiers or owners of the premises. Mr. Khade (CW-1) has filed IOD (intimation and disapproval) on record. He has deposed that the IOD and Commencement Certificate was issued to architect Mr. Sangram Abbas Ali and owner Mr. Anuj @ Ajun Mehta. However, on perusal of the IOD, it reveals that the IOD is not issued in the name of the accused, it has been issued in the name of someone else. Therefore, there is no evidence to show that the accused no.3 and 4 are the developer and architect of the said building.

10. Mr. Kadam (CW-3) has deposed that he served notices upon the occupiers and developer M/s. Manav Builders Pvt. Ltd., as well as the architect Sangram Abbas Ali of M/s. Design Group. However, the name of the developer M/s. Manav Builders Pvt. Ltd. is not mentioned in the complaint. The complainant has not clarified how Mr. Anuj @ Ajun Mehta is related with M/s. Manav Builders Pvt. Ltd and the Architect Mr. Sangram Abbas Ali with the M/s. Design Group. The fact which is not mentioned in the complaint can not be accepted in the evidence. Mr. Kadam (CW-3) has also deposed about the service of notice upon 144 residents of the said building. However, there is no proof to show that they are residents of the said building.

11. It is argued that notice under section 488 of The MMC Act is not issued prior to inspection. Therefore, Mr. Khade (CW-1) has contravened the mandatory provisions. As per section 488 (b) of MMC Act, no building which is being used as a human dwelling shall be entered without the consent of occupier thereof and without giving the said occupier previous written notice of 24 hrs of the intention to make such entry. Thus the mandatory provision under section 488 of the MMC Act has not complied. The complainant have not proved that panchanama in respect of every flat was made in presence of independent panchas. The complainant failed to prove that accused was found in possession of a particular flat. Therefore, doubt creates about allegations.

12. It is argued that the witnesses had no valid authority to take inspection of the building and to initiate legal action against the accused. Objection is taken to the authority letters that there is no seal

of the Municipal Corporation, inward and outward number is not mentioned and date is manually written on the authority letter. Therefore, the entire action is invalid. On this point, it is important to mention here that in view of the provisions of The MMC Act, all the executive powers are vested in the Municipal Commissioner. He can directly delegate his powers to any of the Municipal officers or can depute any Deputy Municipal Commissioner to delegate his powers to the subordinate officers. In the present case, the Deputy Municipal Commissioner Mr. L.S. Vhatkar has delegated Municipal Commissioner's powers to Mr. Khade (CW-1) and Mr. Dichwalkar (CW-2). The witnesses have produced their authority letters on record. Deputation orders and Intimation letters show that the Deputy Municipal Commissioner Mr. L.S. Vhatkar is deputed by the Municipal Commissioners Mr. Mr. Sitaram Kunte and Mr. Ajoy Mehta to delegate their powers and accordingly, he has delegated his powers to Mr. Khade (CW-1) and Mr. Dichwalkar (CW-2). The witnesses have acted as per the executive powers delegated to them. Therefore, merely due to some technical lapses, it can not be said that the witnesses were not having any authority. Therefore, this objection is devoid of any merits.

13. Though some of the aspects are proved, the complainant has not brought any documentary evidence on record to connect the accused with the said premises and building. Therefore, the offence leveled against the accused is not proved beyond reasonable doubt. Hence, all the accused are entitled to be acquitted. The case of accused no.2 and 3 has separated from accused no.1 but on perusal the evidence it appears that there is no evidence on record against accused no.1 to warrant the conviction. Hence, I pass the following order.

ORDER

1. The accused no. 2. Anuj @ Ajun J. Mehta and 3. Sangram Abbas Ali are hereby acquitted of the offence of contravening the provisions of section 353A of The Mumbai Municipal Corporation Act, 1888.
2. The accused no.1 Milapchand Bokadia has discharged for an offence punishable u/s 353 A of the MMC Act.
3. The bail bonds of the accused are cancelled and they are set at liberty.
4. The bail furnished by the accused persons u/s 481 of the BNSS shall be enforced for further six months since today.
5. Accused are absent hence judgment is declared in their absence u/s 392 (6) of the Bhartiya Nagarik Surkasha Sanhita, 2023.
6. Judgment is dictated and pronounced in the open Court.

(S. D. Chakkar)

Judicial Magistrate (First Class),
42nd Court, Shindewadi, Dadar, Mumbai

Date : 17.07.2026

Dictated on 17.07.2026

Transcribed on 17.07.2026

Signed on 17.07.2026

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