

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13714 OF 2018

Niraj Eknath Kabadi

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr.Sachin Ramrao Pawar with Ms.Sagar Kadam, Mr.Nikhil Mallelwar and
Mr.Dewang Mhatre for Petitioner.

Ms.Savita Prabhune, AGP, for State.

Mr.Vishwajeet Surve with Ms.Sakshi Jadhav and Ms.Suchitra Ballal for Applicant
in IA.1184/2025

Mr.R.S.Apte, Senior Advocate, with Mr.Mandar Limaye for Respondent nos.2 to 4.

Ms.Sonal S.Kale, (AMC) Officer, Respondent no.4 present.

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

DATE: 22nd September 2025

P.C.

1. This is another case which would shock the conscience of the Court inasmuch as on the land in question subject matter of the present proceedings, there are three buildings which are illegally constructed without obtaining any permission whatsoever from Thane Municipal Corporation, which clearly appears the blessings of the then Municipal Corporator, as alleged in the petition paras 2, 3 and 4, which read thus :

“2. The petitioner states that Shri Navin Virendra Singh, Shri Laxman Sabha Jadhav and Shri Bhusna Devram Bhoir had constructed 3 buildings which are consisting of A, B and C Wings respectively. The building A wing is consisting of Ground + 7 upper floors and building B and C wings consisting of ground + 5 upper floors. Hereinafter for the sake of brevity be referred as the ‘Said Building’. The said building is standing on the plot of land bearing

survey No.262 and 378 situate at Mauje Majiwada, Taluka and Dist.Thane. Hereinafter for the sake of brevity be referred as 'The Said Plot of Land'.

3. The petitioner states that Shri Laxman Saba Jadhav and Shri Bhushan Devram Bhoir who is corporator of respondent no.1 had started 'Mogambo Bar and Family Restaurant' (Madhushala Bar and Family Restaurant) illegally on the plot of land in the name of their wife. The petitioner further states that the above mentioned persons had carried out unauthorized family restaurant without prior permission and sanction of respondent No.2 to 4.

4. The petitioner states that the said buildings as well as 'Mogambo Bar and Family Restaurant' (Madhushala Bar and Family Restaurant) were constructed by the said persons illegally without prior permission from the respondent no.2 on the said plot of land. The aforesaid persons had constructed the said buildings as well as 'Mogambo Bar and Family Restaurant' and is running their business and the same is been used for various events, parties, functions."

2. We may observe that insofar as Thane Municipal Corporation is concerned, this is not the first time that such proceedings have reached this Court. In this context we may refer to the judgment of this Court in **Smt.Subhadra Ramchandra Takle Vs. State of Maharashtra (Writ Petition No.5898 of 2025)** in which the Petitioner had approached this Court in regard to 17 structures / buildings which were constructed without obtaining any permission from Thane Municipal Corporation. In such proceedings a Division Bench of this Court of which one of us (G.S.Kulkarni, J.) was a member, passed an order dated 12th June 2025 considering the settled principles of law in regard to these illegal constructions laid down in series of judgments of the Supreme Court namely in **M.I.Builders Pvt.Ltd. Vs. Radhey Sham** [1999(6) SCC 464], **Friends Colony Development Committee Vs. State of Orissa and others** [(2004)8 SCC 733], **Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and others** [(2013)5 SCC 336], **Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & others** [(2021) 10 SCC 1], **Kerala State Coastal Zone Management Authority vs. Maradu Municipality and others** [Civil Appeal Nos.4784-4785 of 2019), **High**

Court on its own motion (In the matter of Jilani Building at Bhiwandi) Vs. Bhiwandi Nizampur Municipal Corporation and others [(2022) SCC OnLine Bom 386] etc. The relevant observations as made by this Court in the said judgment are as follows :

“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*¹, 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)

5. In *Friends Colony Development Committee vs. State of Orissa & Ors.*², the Supreme Court has made the following observations :

“20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff

¹1999 (6)SCC 464

²(2004) 8 SCC 733

consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.”

(emphasis supplied)

6. In *Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.*³, the Supreme Court held following observations:

“29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

(emphasis supplied)

7. In a recent decision of the Supreme Court in *Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Ors.*⁴, 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**

3(2013) 5 SCC 336

4(2021) 10 SCC 1

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)

8. In *Kerala State Coastal Zone Management Authority vs. Maradu Municipality & Ors.*, the Supreme Court again made the following observations:

".....This Court in *Vaamika Island (Green Lagoon Resort) vs. Union of India & Ors.* [(2013) 8 SCC 760], has observed:-

“26. The petitioner had affected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No.32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will fall has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 **are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same.** The Director of Panchayat also vide letters dated 7.3.1995, 17.7.1996 directed all the panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Committee on Sciences Technology and Environment (KSCSTE) was accepted.

28. Further, the directions given by the High Court in directing

demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decisions of this Court in *Piedade Filomena Gonsalves v. State of Goa* [(2004) 3 SCC 445], wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.”

In *Piedade Filomena Gonsalves vs. State of Goa & Ors.* [(2004) 3 SCC 445], this Court has observed :

“4. We do not think that any fault can be found with the judgment of the High Court and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the Constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 meters of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondent, has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18.8.1994 introduced in the notification dated 19.2.1991 entitled the Coastal Regulation Zone notification issued in exercise of the power conferred by section 3(1) and Section 3(2)(v) of the Environment Protection Act, 1986, while the appellant's construction was completed before the date of the amendment and, therefore, the appellant cannot take benefit of the order dated 25.9.96 passed in writ petition No. 102 of 1996.

6. The Coastal Regulation Zone notifications have been issued in the interest of protecting the environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment.”

We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate.

In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.”

(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.**⁵ in which one of us (G. S. Kulkarni, J.) was a member,

5 2022 SCC OnLine Bom 386

this Court taking into consideration the decisions of the Supreme Court in **Friends Colony Development Committee Vs. State of Orissa**⁶ and **Dipak Kumar Mukherjee V. Kolkata Municipal Corporation & ors.**⁷ reached to a conclusion that the unauthorised and illegal construction cannot be tolerated and would be required to be demolished. The Court issued several directions in disposing of the Public Interest Litigation. The observations as made by the Division Bench as also its directions relevant for the present proceedings are required to be noted, which read thus:

“93. We also cannot forget the role of the municipal officers and its law officers in not showing promptness and/or in delaying to move the Courts for vacating any orders passed on illegal constructions and dilapidated buildings. They cannot remain mute spectators in the event the situation requires a stay or injunction, warranting to be urgently vacated. The Municipal Commissioner needs to take appropriate actions on the concerned officials, if it is found that prompt actions are intentionally not being taken or are delayed for extraneous purposes and for unexplainable reasons.

99. In the scheme of Constitutional governance, it is not possible for us to assume that a public official, howsoever high, or mighty or low, can remain without public accountability to “We the People”. Failure of accountability and discharge of public duties and responsibilities which the law would mandate them to discharge, in our opinion, are anathema not only to the expectations of lawful governance, but would also bring about a colossal case of derailment of the Constitutional and legal machinery, resulting into patent societal injustice and a civic regime opposed to the rule of law. The issues, which we have discussed above, certainly cast a serious doubt as to whether the above expectations of the rule of law are at all fulfilled and/or are followed in breach. It is for such reason, when there is a glaring and an apparent failure on the part of the statutory authorities to comply their lawful duties and Constitutional expectations, and/or when there is a dent or a breach in enforcement of the laws, the Courts unhesitatingly are required to step in, so as to correct those who are failing in the discharge of their lawful duties, of not only to remind them of such duties and obligations but use the strong arm of law to set the same enforced and restore the confidence and expectations of the citizens, in the rule of law. This would also certainly require the Court to strictly deal with such officials, as the law would mandate the Court to so deal with them. They ought not to be under any impression that they can evade law with impunity. The famous quote of Lord Acton that “power corrupts and absolute power corrupts absolutely” ought to be realized to be untrue and something of the past, in its applicability in public governance. This, more particularly, when the aim is to compete with the other countries of the world where not only the building laws are stringently followed but also the aesthetics in relation to constructions and building designs are given a great impetus, so that the cities do not become eye sores of brick and mortar. This apart, as echoed in every public policy, corruption in municipal governance should be brought to the books by establishing multiple layers

6 (2006)3 SCC 581

7 (2013)3 SCC (Civ) 72

of anti-corruption mechanism within and outside the organization and achieve strict application of the provisions of the Prevention of Corruption Act, 1988. This ought to be implemented with immediate urgency by keeping a vigil on those officers who in the absence of any hurdles are deliberately not taking actions against illegal and unauthorized constructions. It is only then that there can be a ray of hope and sunshine for the future generations.

101. It is with the above parting words, we close the present proceedings by the following orders:

ORDERS

- i)
- ii)
- iii) The planning authorities through its Competent Officers shall keep informed the Urban Development Department of the Government of Maharashtra on the numbers of illegal constructions in the respective municipal and jurisdictional areas and the action being taken in regard to such illegal constructions, which shall be notified on the website of the planning authority.
- iv) The names and designations of the officers/Municipal Officers and employees in charge of the respective municipal and jurisdictional areas, reposed with the authority to initiate action in regard to the illegal, unauthorized and ruinous structures, shall be notified by the planning authorities/Municipal Corporations ward-wise on its official websites, so that accountability can be attributed and fixed in deciding complaints which may be filed by the aggrieved persons.
- v) Municipal Commissioner and/or the competent authority of a designated planning authority, is directed to take a review of the illegal buildings/structures in every ward and actions taken thereon, periodically between the 25th to 30th day of every month.
- vi) **Except for an acceptable and lawful reason, if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than six months, the Municipal Commissioner shall take penal action against such erring municipal officers including lodging of prosecution under the Municipal laws, in addition to the relevant provisions of the Indian Penal Code, apart from initiating disciplinary proceedings.**
- ix) **The persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law.**
- x) The concerned Municipal Commissioners are directed to give effect to the provisions of Section 152A of the MMC Act and Section 267A of the Maharashtra Municipal Corporations Act to levy penalty which shall be

equal to twice the property taxes leviable on such building, so long as it remains unlawful and recover such amounts as arrears of property taxes.

xi) The Permanent Standing Committee (Encroachment Prevention Committee) as constituted under the Government Resolution dated 15th December 2004, shall forthwith be made functional by the State Government so as to commence its functioning with effect 15th March 2022. Such committee shall hold periodical sittings twice every month so as to take account of the actions on illegal structures in Mumbai. Such Committee shall also be constituted in respect of other cities in Maharashtra and it shall hold sittings accordingly.”

(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.

13. Today, we have the affidavit of Mr. Shivraj Prasad Nagargoje, Assistant Municipal Commissioner, who surprisingly has opposed this Petition as set out in Paragraphs 1 and 2 as also has made allegations against the Petitioner, however, at the same time it has been categorically admitted in the affidavit that there is unauthorised construction on these land being Survey Nos.178, 179 and 180. It is stated that there are 17 identified structures which are illegally put up in respect of which some action was being resorted by the Municipal

Corporation. It appears that the said Officer has awakened only after the proceedings were heard by this Court on 9th June 2025 when he states in Paragraph 6 that on 10th June 2025 the said officer had addressed a letter to the Water Supply Department as well as to the Electricity Distribution Company regarding disconnection of the water and electricity supply. A statement of 17 structures as also the persons who have undertaken the same is annexed to the reply affidavit. It is further stated that the structures are partially occupied by the occupants and that now action could be resorted for removal of these unauthorised construction for which sanction is being obtained from the Municipal Commissioner under Section 268(5) of the Maharashtra Municipal Corporation Act, 1949. It is also stated that the Corporation is empowered under Sections 478, 260, 267, 267A alongwith other provisions to take action and that the said action would be resorted.

14. We are thoroughly dissatisfied with the affidavit as filed by the Assistant Commissioner. We are further shocked that considering the nature of such large illegal construction, the Corporation is delaying matters to take action in a manner as suggested in the affidavit when categorically it is admitted that the construction has been put up without any permission from the Municipal Corporation that too on land where no construction can be undertaken. Considering the seriousness of the matter that this is a clear case of land grabbing as also the complaints having fallen to the deaf ears of the Municipal Officers, as a Constitutional Court cannot overlook this complete abdication of the Petitioner to the rule of law, at the hands of the Municipal Authorities and/or the citizens taking law into their hands and putting up illegal constructions.”

3. We may also observe that the aforesaid order dated 12th June 2025 was assailed by one Danish Zaheer Siddiqui before the Supreme Court in the proceedings of Special Leave Petition (Civil) No.33024 of 2025. The said SLP was not entertained and was dismissed as withdrawn. In pursuance to such orders passed by this Court, an action was taken in respect of these 17 buildings which were demolished to ground zero.

4. We may also refer to the proceedings before this Court in the case of **Feroz Talukdar Khan vs. The Municipal Commissioner, Thane Municipal Corporation & Anr.** (Writ Petition No.4210 of 2025), which was again a case of brazen and illegal construction of ground+6 floors. A Division Bench of this Court by its judgment dated 18th June 2025 disposed of the said petition following

the order passed by this Court in the case of **Smt.Subhadra Ramchandra Takle Vs. State of Maharashtra** (supra). The relevant observations made by this Court are as follows :

“8. Having heard learned Counsel for the parties and having perused the record, we may observe that it is indisputed 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. Subhadra 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.

15. Insofar as the contentions as urged on behalf of Respondent No. 3 are concerned, that Respondent No. 3 intends to regularize the construction is a plea which outrightly needs to be rejected. Such a plea as urged is on a complete misunderstanding and misreading of the provisions of law and the settled principles which are laid down in a catena of decision on the principles of regularization.

16. It is no rule of law that a person with impunity would breach law by undertaking such defiant illegal construction and thereafter take recourse to regularization. Regularization can never be of an illegal and/or of rank unauthorized construction. It can be considered by the planning authority of some minor deviation in the construction which would not disturb the sanctity of the permitted legal construction made as per the sanctioned plans and can be effected only on genuine and bonafide reasons. If we accept a proposition that a planning authority having not taken an action and/or permitted such unauthorized construction to take place, and thereafter it considers an application to regularize the same, this would amount to recognizing a regime unknown to the provisions of law opposed to the settled constitutional principles, as also to the settled principles and norms on municipal planning. According any legitimacy to such actions would create a situation of absolute lawlessness of unauthorized and illegal constructions, being permitted to come up, with the municipal/planning authorities doing nothing to arrest unauthorized construction and subsequently considering regularizing such constructions. This would also evolve a regime of total lawlessness and recognize illegality of the persons who have resources to undertake such construction without obtaining any permission from the planning authorities, as per the requirements of law. This is a case where no construction permission was applied for.

17. We may refer to the decision of the Supreme Court in **Mahendra Baburao Mahadik & Ors. Vs. Subhash Krishna Kanitkar & Ors.** (2005)4 S 99 rendered on the context of the powers of regularization as conferred under the Maharashtra Regional Town Planning Act, 1966 (for short “**MRTP Act**”). The Supreme Court has held that the municipal authority did not have any jurisdiction to direct regularization of unauthorized constructions and that such power was confined to the provisions of the Act and no action could be taken for regularization of unauthorized constructions.

“37. The Municipal Council is a 'local authority' as well as Planning Authority within the meaning of the provisions of Sections 2(15) and 2(19) of the MRTP Act.

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four-corners thereof. Being a statutory authority, it was required to follow the rules scrupulously.

Concededly, the Municipal Council is not possessed of any statutory power to regularize unauthorized constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorized constructions in terms of Section 124E(2) of the MRTP Act.”

(emphasis supplied)

18. In **Kaalkaa Real Estates Pvt. Ltd. & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors.** 2022 SCC OnLine Bom 2536, in the context of regularization of unauthorized constructions, this Court reiterated the principles that it cannot be said as a matter of general rule an unauthorized construction could be regularized. It was also observed that the legislature has not intended that the provisions in the planning laws including building by-laws and regulations relating to health, safety, fire safety, safety of the inhabitants of the buildings and the neighborhood have to be ignored or brushed aside in undertaking legitimate constructions. It was observed that the Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings and that the Supreme Court has warned that the authorities must take into consideration public safety, health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns. It was also held that retention of unauthorized works and constructions cannot result in wholesale condonation and relaxation or exemption from the building regulations and by-laws or else there will be a chaos and break down of the rule of law. It was further held that by imposition of fine and charging compounding fees, large scale unauthorized constructions if are regularized, would encourage builders and developers, as also others having interest in the development activities, to openly violate laws, as such persons would always proceed on the basis that the building regulations can be breached with impunity, and all that they would be visited with, is high compounding fees. It was observed that this is not the intention of the legislature that in making the regularization provisions under the MRTP Act, including the penal provisions (referring to Sections 52 and 53 thereof) which were enacted with a defined object and purpose to discourage unauthorized and illegal development and also punish the wrong doers. The Court further observed that the exercise of the discretionary powers of regularization must not result in a licence to break the planning laws. It was held that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute. For such reasons, the Planning Authority cannot, as a matter of rule, regularize unauthorized constructions by allowing the wrong doer to achieve condonation of the illegality.

19. In a recent decision of the Supreme Court in **Rajendra Kumar Barjatya & Anr. Vs. U. P. Avas Evam Vikas Parishad & Ors.** 2024 SCC OnLine SC 3767, 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.** 2025 SCC OnLine SC 995 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)]”

21. Adverting to the aforesaid settled principles of law, the proposition on regularization as urged on behalf of Respondent No. 3, if accepted, would also bring about the situation of creating two categories of citizens as observed by the Division Bench of this Court in the proceedings of **High Court on its own motion (In the matter of Jilani Building at Bhiwandi)** (Supra) i.e. firstly, a category of citizens who would intend to adhere to the rule of law; who would approach the planning authority by applying for a planning / development permission by putting up plans through their architects and to undertake legal and authorized constructions; and on the other hand a category of citizens who have no regard for law and merely because they have large resources (possibly not legitimate) at their disposal to undertake unauthorized construction. What would be these resources is only to be imagined, being utilized in connivance with the official machinery in putting up illegal constructions.

22. We may observe that it is likely that many such illegal constructions have remained unattended and / or have flourished or impliedly protected by the municipal machinery. They remain unattended for years together with such blessings of the official machinery. We are not aware as to when an inspection and audit of this illegal / unauthorized construction ward wise would be undertaken. It needs to be immediately commenced by the Municipal Commissioner and prevent further lawlessness.”

5. In the present case a co-ordinate Bench of this Court (Coram : A.S.Gadkari and Kamal Khata, JJ.) accepting the stand of the Municipal Corporation that the construction in question was unauthorized, granted police protection for demolition of structures in question. The said order dated 7th January 2025 is required to be reproduced, which reads thus :

- “1. It is the grievance of learned Advocate for the TMC that, despite demanding police protection it was not provided to the Officers of TMC for carrying out their drive of demolition of suit structure. We are unable to accept such a statement.
2. In view thereof, we direct the Respondent no.3 to file a detailed reply to the Petition. This be done within a period of two weeks from today.
3. We direct the Respondent no.3 not to delegate its powers to any subordinate Officer. We request the Respondent no.3 to consider the law of the land

enunciated by the Hon'ble Supreme Court under Article 141 of the Constitution of India before filing the affidavit.”

6. However, it appears that there were planned obstructions, as despite police protection, serious attempt was not made to clear the land and take action of demolition of such illegal construction.

7. In the present case there is another undisputed position that the land in question is government land on which such rank illegal construction has been undertaken without obtaining any permission whatsoever for conversion of said land, which is '**Gur Charan Land**' (land for grazing cattle), as per the revenue records maintained with the Deputy Superintendent of Land Records, in respect of this Government land. This is seen from the communication dated 23rd October 2020 of the Deputy Superintendent of Land Records addressed to Tahsildar, Thane. If such Government land is a '**Gur Charan Land**', the Petitioner has submitted that the proceedings would stand covered by the decision of Supreme Court in the case of **Jagpal Singh and others Vs. State of Punjab and others**⁸ in which the Supreme Court issued the following directions:

“23. Before parting with this case we give directions to all the State Governments in the country that **they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village.** For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. **The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing.** Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularization should only be permitted in exceptional case e.g. where lease has been granted under some government notification to landless labourers, or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

(emphasis supplied)

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8. It is the Petitioner's contention that no steps have been taken by the State Government to convert this land to any other user as seen from the revenue records. It is submitted by the Petitioner that there is no permission granted by the State Government to utilize this land for the purpose of any commercial exploitation namely construction of buildings of the nature as put up which are residential as also commercial structures. In this view of the matter, certainly it was the obligation of Collector, Thane to safeguard the land of the Government and further an obligation of the Commissioner, Thane Municipal Corporation to take appropriate action to remove the illegal structures which were put up without obtaining an NOC of the State Government and by putting up plans for constructions and obtaining development permission from the planning authority. However, from what has transpired in this case is that illegal construction was undertaken on the blessings of the ex-municipal corporator as alleged by the petitioner to which there is no denial, and for such reason it appears that the Municipal Corporation had adopted an approach to subsist such illegality and was not very keen to undertake and implement the law of land, by removing such illegal construction although police protection was granted. We do not know why action of demolition was delayed, which in our opinion is contrary not only to the several decisions of the Supreme Court which we have referred hereinabove but also the decision of Supreme Court in the case of **Jagpal Singh Vs. State of Punjab** (supra).

9. Mr.Apte, learned Senior Advocate appearing for Thane Municipal Corporation has taken a fair stand. He submits that the Municipal Corporation at all material times was keen to take an action to demolish these illegal structures. However, same could not be taken forward considering that attempts were made to defeat the action by arranging gathering of public. We cannot accept such submissions of Mr.Apte, that despite police protection the action could not be taken forward. It appears that there was no real intention inasmuch as the Municipal Corporation ought not to have stopped the demolition. This is not the correct approach. We say so as if the real intention of the Municipal Corporation was to undertake demolition, then the first step towards the same would have been that a notice / action to disconnect electricity and water supply could have been resorted and the occupants being called upon to vacate the structures/tenements on such backdrop.

10. In these circumstances, in our opinion, now the proper procedure is required to be set into motion. Mr.Apte fairly submitted that by tomorrow a fifteen days notice for disconnection of electricity and water supply will be issued calling upon the occupants of structures to vacate the respective premises within a period of fifteen days thereafter. The aforesaid submission is being accepted only as a matter of indulgence considering the ensuing festive season, as all the occupants of these illegal structures are aware for a very long period, that they are occupying unauthorized structures and the law of the land would require these structures to be demolished.

11. We may also refer to an order passed by the Division Bench in the proceedings of **Smt.Subhadra Ramchandra Takle Vs. State of Maharashtra** (supra) in which the Court has appreciated the efforts taken by the Thane Municipal Corporation in demolishing 21 illegal buildings. We may also refer to an order passed by the Division Bench in the said case wherein the Thane Municipal Corporation stated before the Court on affidavit that 21 illegal buildings have been demolished after the orders passed by this Court in the case dated 12th June 2025 (supra). We refer to an order dated 4 August 2025 passed in the said case in which the Court had recorded compliance of the said orders passed by this Court. The Court made following observations :

“3. Today, Mr. Kumbhakoni, Learned Senior Counsel appearing on behalf of the TMC tendered another additional affidavit of Mr. Prashant Rode, Additional Municipal Commissioner, Thane Municipal Corporation to place on record the various further steps taken by the TMC after submission of the earlier affidavit.

4. Mr. Kumbhakoni has in great detail taken us through the said affidavit and has meticulously pointed out the steps taken by the TMC which are both in compliance of the orders passed by this Court as also the proactive initiatives taken by the TMC suo moto. The affidavit sets out the following :

i. **That the demolition of all the 21 illegal structures in Writ Petition No.5898 of 2025 (Subhadra Ramchandra Takle Vs. State of Maharashtra and Ors.) have been demolished completely. Mr. Kumbhakoni has taken us through Exhibit-A to the said affidavit which gives a report of the demolition in detail. Mr. Kumbhakoni submits that the only aspect now remaining in respect of the demolition of the said 21 structures is the recovery of demolition charges from the developers.**

ii. **In so far as Writ Petition No.4051 of 2023 is concerned (Feroz Badruddin Khan Vs. State of Maharashtra and Ors.) it is set out that the 10 buildings which were subject matter thereof, two buildings namely building Nos.8 & 9 are completely demolished and building No.10 is demolished partly, 7th floor is completely demolished including 18 commercial shops and that the remaining demolition work will be concluded today i.e. 4th August 2025. In respect of Building Nos.1 to 7, notices have been issued under Section 268(5) of the Maharashtra Municipal Corporations Act, 1949 (MMC Act) and thus due procedure of law has also been put into motion.**

iii. In so far as Writ Petition No.7350 of 2025 (Chandrabai Sadashiv Alimkar Vs. TMC and Ors.) it is pointed out that notices under Section 268 (1) to (4) of the MMC Act have been issued to the occupants of the building in question on 27th June, 2025 and that if the premises of the said building is not vacated voluntarily

by these occupants, further notice under Section 268(5) of the MMC Act will be issued to the Police Authorities for assisting in getting these occupants evicted. After that, once the entire procedure as required by law is completed, the actual demolition of the said building will be undertaken and completed at the earliest.

iv. The affidavit then sets out that show cause notices have been issued to the erring employees of the TMC and that vide an order dated 23rd July 2025, three employees namely Sarvshri. Rohit Chatole (Beat Nirikshak), Suresh D. Pawar, (former Beat Mukadam), and Siddheshwar Kute (Beat Mukadam.) and one Assistant Municipal Commissioner, namely Shri. Bhalchandra Ghuge have been suspended. Copies of the suspension orders are annexed to the affidavit. It was at this point put to Mr. Kumbhakoni as to why no action was taken against the ward officers of the TMC, in which these illegal constructions were rampant. Mr. Kumbhakoni assured the Court that the action will be taken against the ward officers as well if they were found wanting in their duties. We accept the statement.

5. After hearing Mr. Kumbhakoni and going through the additional affidavit which has been tendered today, we must note our satisfaction for the steps being taken by the TMC to curb illegal constructions, we also must note our appreciation for the proactive steps and initiatives taken by the TMC.”

(emphasis supplied)

12. In this view of the matter, in our opinion, the petition is required to be disposed of in terms of following order :

ORDER

i) We direct the Municipal Corporation to demolish the illegal construction of the buildings on plot of land having New CTS No.233/1 (Old CTS No.262) as they are rank illegal and unauthorized constructions;

(ii) The Thane Municipal Corporation shall issue notice within one week from today intimating the occupants of illegal structures that electricity and water supply connection would be disconnected after 15 days from the date of the said notice, and demolition action will be taken 15 days after such disconnection of the electricity and water supply;

(iii) Officers of the Thane Municipal Corporation are permitted to avail of the appropriate police protection as may be requisitioned by them for the purpose

of demolition of subject illegal structures so that the action of demolition can be effectively taken;

(iv) The writ petition stands disposed of in aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)