



AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11769 OF 2012

Mohammed Bashir Ansari ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11770 OF 2012**

Talib Hussain Abdul Aziz Qureshi ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11771 OF 2012**

Patel Maulana Bee, through Constituted
Attorney Kamrunissa Hamidali Maniyar ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11772 OF 2012**

Shaikh Gulab Maulana, through C.A.
Abdul Qayyum Mogis Khan ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11773 OF 2012**

Shaikh Garibi Rokiddin, through C.A.
Smt. Saida Shaikh Jaffer ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents



**WITH
WRIT PETITION NO.11774 OF 2012**

Mashakabi Patel, through C.A.
Mahesh Laxmanrao Vanprati ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11285 OF 2012**

Taranom Sufiyan Khan ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11286 OF 2012**

Sufiyan Anwar Khan ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
CIVIL APPLICATION NO.1852 OF 2016
IN
WRIT PETITION NO.11286 OF 2012**

Vishwas Pandurang Ghadigaonkar ... Applicant
In the matter between
Sufiyan Anwar Khan ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11287 OF 2012**

Sufiyan Anwar Khan ... Petitioner
V/s.
The State of Maharashtra & Others ... Respondents

**WITH
WRIT PETITION NO.11288 OF 2012**



Shaikh Alimuddin Junde

... Petitioner

V/s.

The State of Maharashtra & Others

... Respondents

Ms. Aditi Naikare with Ms. Priyanka Bhoite i/by Mr. Pradeep Thorat for the petitioner in all writ petitions.

Smt. Mamta Shrivastav, AGP for State in WP/11285/2012.

Ms. S.S. Jadhav, AGP for State in WP/11288/2012.

Smt. S.D. Chipade, AGP for State in WP/11286/ 2012.

Ms. S.R. Crasto, AGP for State in WP/11769/2012.

Mr. P.V. Nelson Rajan, AGP for State in WP/11772/2012.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2026

P.C.:

1. Since all these writ petitions involve common questions of law and arise out of an interconnected factual background, they are being heard together and are disposed of by this common judgment and order. For the sake of convenience, Writ Petition No.11769 of 2012 is treated as the lead matter, and the facts therein are referred to as the principal case.

2. By these writ petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners in each matter have called in question the legality, validity, and propriety of the notice dated 20 November 2010 and the consequential order dated 29 March 2012 passed by the respondents. The petitioners seek appropriate writ, order and direction for setting aside the impugned actions as



being contrary to law.

3. The brief facts giving rise to the present proceedings, as pleaded in Writ Petition No.11769 of 2012, are thus. The premises in question are situated upon land bearing Survey No.263, admittedly belonging to respondent No.1, being the State of Maharashtra. One Patel Maulanabee was allotted a plot beneath the said structure pursuant to an order dated 26 June 2000 passed by respondent No.1, by way of permanent alternate accommodation, in view of the destruction of the premises earlier occupied by her at Sanjay Nagar, Kurla. It is the case of the petitioner that in the year 1996, owing to a natural calamity, the structures occupied by thirteen families at Sanjay Nagar, Kurla were destroyed. The said affected families thereafter made representation to respondent No.1 seeking allotment of alternate sites for reconstruction of their shelters. Upon consideration of such request, the Secretary, Ministry of Housing and Special Assistance, State of Maharashtra, passed an order dated 26 June 2000 directing the Deputy Collector (ENC), Mumbai Suburban District, to permit the said thirteen persons to erect structures upon Survey No.263, CTS No.7, opposite Asmita Co-operative Housing Society. In furtherance of the aforesaid Government order dated 26 June 2000, the Tahsildar (ENC), Borivali, by communication dated 17 July 2001, requested the Senior Police Inspector, Kandivali Police Station, to extend police protection to the said thirteen families so as to enable them to construct their structures on the allotted land. It is stated that after the structures were erected, officers of respondent No.1 threatened demolition



thereof. Consequently, the said thirteen occupants instituted S.C. Suit No.3910 of 2002 before the City Civil Court at Bombay seeking injunctive relief restraining respondent No.1 and its officers from demolishing the thirteen structures standing on Survey No.263, CTS No.7, Marve Road, Malad (West), Mumbai. By order dated 29 July 2002 passed in Notice of Motion No.2717 of 2002, the City Civil Court granted interim relief in terms of prayer clause (a), thereby restraining respondent No.1 and its officers from carrying out demolition.

4. According to the petitioner, notwithstanding the subsisting order of injunction passed by the City Civil Court, respondent No.1 proceeded to demolish the thirteen structures constructed by the allottees, including the structure of the predecessor of the present petitioner. Aggrieved thereby, the said thirteen persons approached this Court by filing Writ Petition No.2618 of 2002. By order dated 22 July 2003, this Court allowed the said writ petition and directed the respondents to reconstruct the thirteen structures and to provide basic amenities thereto. This Court further imposed costs of Rs.10,000/- payable to each of the thirteen petitioners. It is also stated that contempt proceedings came to be initiated against the Additional Collector (ENC) and Deputy Collector (ENC) for having acted in breach of the injunction order passed by the City Civil Court. Being dissatisfied with the order dated 22 July 2003 passed in Writ Petition No.2618 of 2002, respondent No.1 preferred Appeal (L) No.1071 of 2003 before the Division Bench of this Court. By order dated 25 February 2005, the Division Bench disposed of the appeal by holding that the said thirteen persons



were entitled to reconstruct their structures. It was further observed that if respondent No.1 intended to take any action for eviction of the said persons, an opportunity of personal hearing was required to be granted to them. In pursuance of the aforesaid orders, the predecessor of the petitioner, namely Patel Maulanabee, reconstructed the premises in question. A photopass was thereafter issued in respect of the structure admeasuring 20 x 15 feet, equivalent to 300 sq. ft., situated on Survey No.263 (part). It is further the case of the petitioner that one Sinami Rajan transferred her right, title and interest in the said structure in favour of the petitioner's predecessor, namely Narendra Laxmanprasad Sharma, who thereafter, by agreement dated 25 October 2011, transferred the said premises in favour of the petitioner. The petitioner asserts that she thereafter commenced business activities from the said premises. It is also stated that the predecessor had obtained a Shop and Establishment Certificate as well as electricity connection for the said premises.

5. Respondent No.2 issued notice bearing No.DYCEN/Malad/Sr.38/10 dated 20 November 2010 under Section 3Z-2 of the Slum Act in the name of the predecessor of the petitioner, alleging that the premises had been unauthorizedly constructed. By the said notice, the predecessor was called upon to produce documentary material showing existence of the premises prior to 1 January 1995. Upon receipt of the said notice, the predecessor submitted reply dated 22 December 2010 contending that he was using the premises for running his business. It was further stated that the structure had been erected pursuant to the



Government order dated 28 June 2001 issued by the Deputy Secretary, Housing Department, Mantralaya. Relevant documents were also relied upon to contend that the premises had been reconstructed in pursuance of judicial orders passed by this Court. Thereafter, by order dated 29 March 2012, the Deputy Collector (ENC) and Competent Authority, Malad, passed an order under Section 32-2(4), directing removal of the premises on the allegation that the same was an unauthorized structure standing on Government land. Respondent No.2 held that the petitioner's predecessor had failed to establish existence of the structure prior to 1 January 1995 and therefore the premises were not entitled to protection. It was further held that the predecessor had transferred the premises in favour of one Shri Yogesh Dhanaji Patel without obtaining prior permission, thereby violating Condition Nos.3 and 12 of the terms and conditions of Photopass No.80/H/MG/93/700.

6. The petitioner contends that a copy of the order dated 29 March 2012 was served upon her at about 4.00 p.m. and, taking advantage of the intervening weekend, respondent No.2 proceeded, without affording any reasonable opportunity to challenge the said order, to demolish a portion of the premises on 31 March 2012. It is further stated that the petitioner thereafter repaired the damaged portion and continued to carry on business therefrom. Immediately thereafter, the petitioner preferred Appeal No.212 of 2012 before the Administrator and Divisional Commissioner, Konkan Division, Mumbai, challenging the order dated 29 March 2012 passed by the Deputy Collector (ENC) and



Competent Authority. It was contended therein that as per a Circular issued by respondent No.1 in January 2012, transfer of structures in respect of which pitch cards had been issued could be regularized upon payment of penalty. The petitioner also sought permission to reconstruct the portion of the premises demolished by respondent No.2.

7. By order dated 29 October 2012, the Administrator and Divisional Commissioner, Konkan Division, Mumbai, dismissed Appeal No.212 of 2012. Respondent No.3 held that the notice dated 20 November 2010 under Section 3Z-2 of the Slum Act had been issued in the name of Sinami Rajan and that the documents relied upon by the petitioner did not pertain to the premises in question. It was further held that since the original allottee had committed breach of Condition Nos.3 and 12 of the photopass terms, the power of attorney executed by such allottee could not be recognized. Respondent No.3 also observed that although reliance was placed on orders of the City Civil Court and the High Court, no satisfactory proof had been produced. It was therefore concluded that, since the original structure had been transferred in violation of the allotment conditions, no fault could be found with the order passed by respondent No.2. It was further held that the petitioner had raised unauthorized construction on Government land and hence issuance of notice under Section 3Z-2 was justified. According to the petitioner, the said appellate order was never served upon her, and taking advantage thereof, respondent No.2 pasted a public notice upon the premises on 7 November 2012 and demolished the structure on the same day. It is alleged that the



petitioner's goods remained lying on the open site thereafter.

8. Being aggrieved by the order dated 23 October 2012 passed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai in Appeal No.212 of 2012, as also by the preceding actions of the authorities, the petitioner has approached this Court by way of the present writ petitions seeking appropriate reliefs in exercise of writ jurisdiction.

9. At this stage of hearing, learned counsel Ms. Naikare appearing for the petitioners submits that the structures which are subject matter of all these petitions are in fact not falling within any notified slum area. It is also her contention that the petitioners are not claiming any right *dehors* law, but are only seeking consideration of their request for regularization of the structures as well as transfer in their favour in accordance with applicable policy and circulars.

10. Having considered the said submission, I find that the issue whether the structures are situated within a slum area or not is a foundational fact which must be first determined before any exercise of regularisation is taken.

11. If upon such ascertainment it is found that the structures are situated within a slum area, then in that event, the request made by the petitioners for regularization of the structures and transfer shall not be entertained. However, if it is found that the structures are not falling within any slum area, in such case, respondent No.2 shall proceed to consider the request of the petitioners for regularization of the structures as well as transfer in their favour,



strictly in accordance with law, applicable policies and relevant circulars.

12. In view of the foregoing discussion and findings, the following order is passed:

- (i) Respondent No.2 shall, as a preliminary exercise, ascertain and determine whether the structures which are subject matter of the present petitions are situated within a notified slum area or otherwise;
- (ii) In the event it is found that the said structures are situated within a slum area, the request of all the petitioners for regularization of the structures and transfer in their favour shall not be considered;
- (iii) In the event it is found that the said structures are not situated within a slum area, respondent No.2 shall consider the request of the petitioners for regularization of the structures and transfer in their favour, in accordance with law, applicable policy and relevant circulars;
- (iv) While undertaking the aforesaid exercise, respondent No.2 shall permit all petitioners to place all relevant documents in support of their claim;
- (v) Respondent No.2 shall pass a reasoned order in accordance with law as expeditiously as possible and preferably within a period of twelve weeks from the date of receipt of proposal for regularisation;



(vi) The writ petitions are disposed of in the above terms.

No order as to costs.

13. In view of disposal of the writ petitions, all pending interim application(s) stand disposed of.

(AMIT BORKAR, J.)