

P.H. Jayani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1004 OF 2025

Farouk Merwan Irani	 Petitioner
V/s.	
Maharashtra Housing Development Authority, Mumbai and Ors.	 Respondents

**WITH
INTERIM APPLICATION (L) NO. 13304 OF 2026
IN
WRIT PETITION (L) NO. 1004 OF 2025**

Farah Firdaus Bakshay and Ors.	 Applicants
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In the matter between :-

Farouk Merwan Irani	 Petitioner
V/s.	
Maharashtra Housing Development Authority, Mumbai and Ors.	 Respondents

Mr. Girish Godbole, Sr. Advocate a/w. Mr. Devashish Godbole and
Mr. Prasad Nagargoje for the Petitioner/Applicants.
Ms. Manisha Jagtap for Respondent No.1 – MHADA.
Ms. K.H. Mastakar for Respondent Nos.2 and 3 – BMC.
Mr. Rakesh H. Pathak, AGP for Respondent No.7 – State.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
SHYAM C. CHANDAK, J.**

DATE: 17th APRIL 2026

P.C.:

The petitioner who is involved in litigation with the respondent nos.4 to 6 has invoked jurisdiction of this Court under Article 226 of the Constitution of India for a direction upon the 2nd respondent – Municipal Corporation of Greater Mumbai (for short

'MCGM') and its Executive Engineer to forthwith act upon and take further action in furtherance of the stop work notice dated 31st December 2024 issued by 9th respondent.

2) In pre-lunch session, Mr. Devashish Godbole, the learned counsel for the petitioner stated that the petitioner passed away during pending of this writ petition and an application *vide* interim application (l) no.13304 of 2026 has been filed for substitution. However, after having formed a *prima facie* opinion regarding maintainability of this writ petition, we adjourned the hearing for post-lunch session.

3) Mr. Godbole, the learned senior counsel for the petitioner refers to a decision of Hon'ble Supreme Court in *Rajendra Kumar Barjatya and Another v/s. U.P. Avas Evam Vikas Parishad and Others*¹ and two decisions of this Court in *Baban Nana Kene v/s. The Municipal Commissioner, KDMC & Ors. in civil writ petition no.1392 of 2025* and *Raphael Domnic Philip Patricio v/s. State of Goa and Others*² in civil writ petition no.243 of 2023.

4) To support this writ petition, Mr. Godbole, the learned senior counsel for the petitioner submits that the petitioner is constrained to approach this court on account of inaction on the part of the respondent – Authorities who have failed to take further action pursuant to a stop work notice dated 31st December 2024. It is submitted that a writ petition seeking mandamus to the statutory authorities shall lie where the statutory authority has failed to perform his statutory duty.

5) At the outset, we may indicate that R.A.E. & R Suit No.230/458 of 1998 was filed in the Small Causes Court at

¹ 2024 SCC OnLine SC 3767

² (2023) 1 HCC (Bom) 742

Mumbai by the plaintiffs viz. Mrs. Gool Merwan Irani (since deceased) and Mr. Farouk Merwan Irani where Abbas Ali Talebi, Mrs. Latha Prabhakar Shetty, Charan Prabhakar Shetty and Prabhakar L. Shetty were arrayed as the defendants. The plaintiffs who are the petitioners before this Court claiming themselves owner of Rustom Court building at 103, Dr. Annie Besant Road, Worli, Mumbai instituted the suit for the following reliefs :-

“(a) For a decree against the Defendants for vacant possession in respect of Shops Nos.3 & 4 on the ground floor of ‘Rustom Court’ at 103, Dr. Annie Besant Road, Worli, Bombay – 400 018.

(b) For a decree against the Defendants for Rs.5,684/- being the rents unpaid by the Defendant No.1 from July, 1997 to February, 1998.

(c) For an order directing an inquiry into mesne profits from the date of the decree till delivery of possession.

(d) For the costs of the Suit. ”

6) A judgment was delivered on 6th December 2023 in R.A.E. & R. Suit No.230/458 of 1998 by which the suit was decreed and the defendants were directed to handover possession of the suit premises which comprised of two shops on the ground floor of Rustom Court building. The said judgment was put to challenge in Appeal No.25 of 2024 which, as stated by the learned senior counsel for the petitioner, has been dismissed on 25th February 2026. Thereafter, writ petition no.8325 of 2024 filed by the respondent nos.4 to 6 came to be disposed of by an order dated 11th July 2024 modifying the appellate order dated 18th April 2024 to the extent that the interim compensation of Rs.3,00,000/- per month was reduced to Rs.2,75,000/- per month.

7) In the aforementioned factual background, the present writ petition was filed in the year 2025. A mandamus shall no

doubt lie where a statutory duty is cast on the respondent-Authority which it has failed to perform. As the prayer at clause (a) would indicate a stop work notice has been issued by 9th respondent on 31st December 2024. If at all, there is any statutory duty cast upon the statutory authorities who are respondents in the present proceeding, then it must be held that they have performed their duty. The powers of the writ Court under Article 226 of the Constitution of India cannot be exercised to monitor every action of the statutory authority. The writ Court shall not act as an executing court and it shall remain alive at all times to the basic purpose for exercising the jurisdiction under Article 226 of the Constitution. The High Court exercises its powers in furtherance of justice, equity and good conscience and not to promote individual interest. This is well remembered that the powers of the High Court under Article 226 of the Constitution is plenary in nature but that power must be exercised having regard to the facts and circumstances of the case.

8) In our opinion, the present writ petition lacks bonafide. The petitioner intends to utilize the process of the Court as a weapon of harassment to the respondent nos.4 to 6. Therefore, we decline to entertain the substitution application *vide* interim application (l) no.13304 of 2026.

9) Writ petition (l) no.1004 of 2025 stands dismissed.

[SHYAM C. CHANDAK, J.]

[CHIEF JUSTICE]

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