



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

WRIT PETITION NO. 3078 OF 2024

Sunil B. Jhavei H.U.F.

... Petitioner

Vs.

The Municipal Commissioner, Brihan Mumbai  
Municipal Corporation & Ors.

... Respondents

With  
IAL/8422/2025 in WP/3078/2024  
With  
IAL/7774/2025 in WP/3078/2024  
With  
IAL/9647/2025 in WP/3078/2024  
With  
IAL/9013/2025 in WP/3078/2024  
With  
Writ Petition (L) No.8855 of 2025  
With  
Writ Petition (L) No. 8860 of 2025  
With  
Writ Petition (L) No. 8875 of 2025  
With  
Writ Petition (L) No. 8943 of 2025

Mr. Sharan Jagtiani, Sr. Adv. a/w Mr. Karl Tamboly, Ms. Shradha Achliya, Ms. Diksha Shetty, Mr. Parth Turakhia, Ms. Prachi Shah i/b AAK Legal for Petitioner in WP/3078/2024.

Ms. Madhavi Nalluri a/w Mr. Parth Jain, Mr. Ansh Agal, Mr. Ravi Ruparelia i/b Jain Law Partners LLP for Petitioner in WPL/8855/2025.

Mr. Himalaya Chaudhari a/w Mr. Vikram Trivedi, Mr. Sunil Tilokchandani i/b Manilal Kher Ambalal & Co. for Petitioner in WPL/8860/2025.

Mr. Dinyar Madon, Sr. Adv. a/w Mr. Ziyad Madon, Mr. Ravi Gandhi, Mr. Rashmin Jain, Mr. Prathamesh Jadhav i/b Kanga & Co for Petitioner in WPL/8875/2025.

Mr. Anoshak Daver a/w Deepa Pohuja, Sarabjot Singh i/b Law Associates for Applicant in IAL/7774/2025 and for Petitioner in WPL/8943/2025.

Mr. Abhishek Matkar, Mr. Malhar Bageshwar, Mr. Sanket Dorugade for Applicant in IAL/9647/2025.

Mr. Renjith Nair a/w Mr. Abhishek Mookherjee i/b Shardul Amarchand Mangaldas & Co. For Applicant in IAL/9013/2025.

Mr. S. U. Kamdar, Sr. Adv. a/w Mr. Chaitanya Chavan a/w Ms. Rutuja Bodake i/b Ms. Komal Punjabi for R. No. 1 To 6 BMC in WP/3078/2024.

Mr. Prakash Jha Building Proposal D Ward.

Assistant Engineer- Madhukar Shelar B & F 'D' Ward.

Deputy Chief Fire Officer S. D. Sawant

Ms. Rutuja Bodake i/b Ms. Komal Punjabi for BMC in all other matters.  
Mr. Prakash Jha Building Proposal D Ward.  
Assistant Engineer- Madhukar Shelar B & F 'D' Ward.  
Deputy Chief Fire Officer S. D. Sawant.  
Mr. Vikrant Parshurami, AGP for State in WPL/8943/2025.  
Ms. Dipali Rathod, Asstt. Elect. Inspector Electrical Inspection Division Mumbai Central in WPL/8943/2025.  
Mr. Ritesh K. Jain a/w Mr. Krishkumar A. Jain & Mr. Kalpesh A. Bandre for R. No. 4 in WP/1785/2019.  
Mr. Girish S. Godbole, Sr. Adv. a/w Mr. Ziyad Madon, Mr. Ravi Gandhi, Mr. Rashmin Jain, Mr. Prathamesh Jadhav i/b Kanga & Co for R. No. 8 in WPL/3078/2024.

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**CORAM: G. S. KULKARNI &  
ARIF S. DOCTOR, JJ.**

**DATE: 15 JULY 2025**

**P.C.**

1. This batch of petitions was listed from time to time before different Benches and now before us including on the earlier occasions. There are more than two categories of petitions. There are petitions filed by purchasers/members of the Cooperative housing society, namely, Willingdon View Cooperative Housing Society Limited, (for short **"the society"**) who are intending to defend the illegal constructions under the garb of regularization. Also in such interest there is a petition by such society formed by the flat purchasers. There is a Writ Petition filed by Shri. Sunil B. Jhaveri H.U.F. who is assailing the several illegalities of the building and most importantly of the same having no occupation certificate from 17 to 34 floors and further the entire building having no "Fire NOC" hence, the building being not fit for occupation.

2. Thus on one hand, the Court is required to delve on issues of the illegality in regard to the constructions of this 34 storied building and on the other hand

attempt of the society and other flat purchasers to protect such illegal construction on the count that steps are being taken for regularization etc.

3. We have accordingly heard learned counsel for the parties, on these proceedings, however primarily on Writ Petition No.3078 of 2024 (Sunil B. Jhaveri H.U.F. Through its Karta and Manager Vs. Brihanmumbai Municipal Corporation & Ors.). The case of the petitioner in this petition, who is one of the flat purchasers is of manifold illegalities in regard to the said building in question which is located in a prime residential area at Tardeo, in South Mumbai.

4. At the outset, we may observe that the purchasers of the flats and/or the occupants are not persons who are poor or illiterate but who belong to the elite class of the society, having sufficient resources to purchase flats in the prime locality and that too such resources that they can afford to purchase flats in a building which has no basic legal compliances, and over and above the same undertake gross illegal works of alteration and modifications contrary to the sanctioned plans, probably under the assumption that such affairs can easily be either overlooked or regularized by the Municipal authorities. They ought to have been more concerned with the legality of the constructions, as the things would unfold in the discussion to follow.

5. We may however note that there are two glaring issues of brazen illegality which falls for our consideration, in the adjudication of the present proceedings; **firstly**, in the entire building which consists of Ground plus 34 floors having no “Fire NOC” or in other words for want of NOC from the Chief Fire Officer of the Municipal Corporation of Greater Mumbai (for short "MCGM"), such multi-

storied building is being occupied. The **second** concern is in regard to a further gross illegality namely floors from 17 to 34 having no occupation certificate (for short ‘OC’) and nonetheless the members of the said cooperative society having occupied 17 to 34 floors. On behalf of the Municipal Corporation, a case of several illegalities in the construction of the 17 to 34 floors including the amalgamation of 26<sup>th</sup> and 27<sup>th</sup> floors, contrary to the plans and several FSI violations is asserted. It is in the course of adjudication of such issues that the proceedings fell for consideration of the Court on the earlier occasions. When the proceedings were listed before a coordinate Bench of this Court on 20 March 2025, while adjourning the proceedings to 27 March 2025 although no reasons were recorded, an ad-interim protection came to be granted in terms of the following order:

“1) Writ Petition (L) Nos.8875 of 2025, 8855 of 2025, 8860 of 2025, 8943 of 2025 and 3018 of 2024 are not on board. Taken on board.

2)Learned Advocate appearing for Respondent-BMC on instructions submitted that the Designated Officer ‘D’ Ward, Executive Engineer (Building Proposal) and Deputy Chief Fire Officer will inspect the premises in the building of Willingdon Cooperative Housing Society tomorrow from 10.00 a.m. and will submit a report to this Court regarding alleged illegalities or irregularities in a detailed report on 27<sup>th</sup> March, 2025 at 2.30 pm.

3)At the request of learned Advocate for BMC, stand over to 27<sup>th</sup> March, 2025 at 2.30 pm.

**4)Till the returnable date, we direct the officers of BMC not to precipitate their action further. The designated officer will take necessary assistance from the concerned officers while inspecting the premises.”**

(emphasis supplied)

6. The aforesaid protection has continued to operate. The consequence of such protection is to the effect that the Municipal Corporation was prevented to take steps in accordance with law in regard to such illegalities which are multifarious as also gross, which would permit the occupation in the building in the absence of

Fire Safety clearance and secondly, and more significantly, to permit the illegal occupation of the members of the society who occupy flats from the 17 to 34 floors.

7. Very recently i.e. on 23 June 2025 after hearing the learned counsel for the parties, we passed an order wherein referring to a Joint Inspection Report in regard to the building, which pointed out several illegalities, recording the submissions as urged on behalf of the society that regularization application has been made in respect of the several deviations, the Court in its order made the following observations:

“4. After hearing learned counsel for the parties, it appears to us to be quite clear from the Joint Inspection report of the Municipal Corporation dated 26 March 2025, which has been placed on record earlier that there are gross illegalities stated to be on the part of the developer, in undertaking the construction of the building in question. On account of such unauthorized constructions, we are informed that as on date there is a part Completion Certificate (CC) from ground floor to sixteenth floor and most significantly from seventeenth floor to thirty-fourth floor, no Occupation Certificate has been granted. Despite this, the flats are occupied by the members of the society. This is quite surprising, as to how the possession of these flats can be taken over by these persons without the building being granted an Occupation Certificate.

5. Be that as it may, the law has to take its own course. The entire unauthorized alteration, modifications and constructions would be required to be removed and the building would be required to be restored/brought in a manner as per the sanctioned plans.

6. We may observe that a Joint Inspection report of the unauthorized construction/alteration is on record and all the parties are aware as to what are the glaring deviations/unauthorized alterations/construction etc., we direct the petitioners to place on record a statement in regard to all such unauthorized alterations, modifications, and constructions, so that the Municipal Corporation, at the cost of the society and/or the society itself can take immediate corrective actions so as to enable the Municipal Corporation to consider society's application for an appropriate occupation certificate to be accorded as per law, qua the ground to seventeenth floor and as also in respect of the seventeenth to thirty-four floors.

7. It is also seen from the record that the construction of this building commenced in the year 1990 and was completed in the year 2010, and the occupation of all the flats is from 2011, that too without a Fire NOC. This is something which is shocking to say the least, that the Municipal Corporation

for a period of almost 15 years, permitted the building to be occupied without the Fire NOC, which has risked the lives of the occupants of this high-rise building which stands at the prime location in South Mumbai. The consequences of an untoward incident of a fire in a building which has no Fire NOC qua the requisite installations are just to be imagined. We put the Municipal Corporation to appropriate notice for dereliction of its statutory duty on these issues.

8. We also find that when such glaring unauthorized construction is resorted by the developer and the building itself is not constructed as per the approved plans, and when there is no occupation certificate granted by Municipal Corporation for a major portion of the building, in these circumstances, we can have no option but allow the course of law be set into motion. The members of the society, occupying seventeenth floor to thirty-fourth floors are required to be directed by the Municipal Corporation to vacate their respective premises, so that all corrective actions can be taken to bring the building in line with the sanctioned plans and the OC proposal of the society can be considered in accordance with law. The Municipal Corporation, at least now needs to take such steps and accordingly put all such members of the society to such notice.

9. However, before we pass further appropriate orders, we would request the petitioners to place on record a proper statement of all the deviations which are apparent from the report similarly, the Municipal Corporation is directed to place on record all the deviations. The Competent Officer of the Municipal Corporation shall place such deviations on record on affidavit on the adjourned date of hearing.

10. As we are informed by Mr. Madon, learned counsel for the Respondent No.8 - Society, that a regularization application has been filed, we have grave doubt about any regularization application being maintainable, considering settled principles of law as laid down in catena of decisions of the Court as taken into consideration in a recent decision of this Court in **Feroz Talukdar Khan Vs. The Municipal Commissioner, Thane Municipal Corporation & Anr<sup>1</sup>**.

11. Ad-interim protection granted shall continue to operate till the adjourned date of hearing.

12. Reply affidavit to be served before 27 June 2025.

13. List the matter on **30 June 2025 (FOB)**.”

8. On 30 June 2025, on the backdrop of the aforesaid order, the Court observing that this is a case which involves brazen illegalities in respect of the building in question, and that, even in respect of floors 1 to 17 only part OC was granted, as also noting that the Chief Fire Officer had recommended that the part

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**1** Writ Petition No.4210 of 2025 dated 18 June 2025

OC which was granted be also revoked, in view of non-compliance of the Fire requirements, we had passed the following order, permitting affidavits to be filed:

“1. The proceedings are before us on the backdrop of our order dated 23<sup>rd</sup> June 2025.

2. At the outset, we may observe that this is another case of shockingly brazen illegality, in respect of a building known as “Willingdon View CHS Ltd.” (“the said building”) which is located in a prime residential area of Mumbai which was constructed by Respondent No. 9 “M/s. Satellite Holdings” (“original developer”). Since the year 2012, if not earlier, there have been numerous proceedings pending in this Court in respect of the misdeeds stated to be of the original developer have continued to haunt the various flat purchasers i.e. the members of Respondent No.8 Society to date, and by the present state of affairs, will continue to do so.

3. We may at the outset observe that apart from several illegalities with regard to the unauthorized construction, as noticed by the Municipal Corporation, one of the glaring illegalities is the fact that the said building, which is of 34 floors, does not at all have any approval from the Chief Fire Officer of the Mumbai Municipal Corporation i.e. no fire NOC. It is submitted before us that the building has been partly occupied since the year 2008, by 50 flat purchasers, out of the total 62 flats.

4. What would further shock our conscience is that the 17 to 34 floors were never issued even a part Occupancy Certificate (“OC”). We are informed that even in respect of floors 1 to 17 only a part OC had been issued in the year 2012 and was subject to certain conditions which were not fulfilled. If this be so, then the occupation of the entire building is illegal. It is well settled that the law would not countenance such illegal occupation of a building/flats, which have no Occupancy Certificate issued by the Municipal Corporation and this becomes more vital when there is no fire NOC to the entire building.

5. In the aforesaid circumstances, we are at a complete loss to understand as to how such illegalities and that too with impunity can at all be tolerated by the Municipal Corporation and as to how mere pendency of any regularization application would confer any sanctity to the occupation which is patently illegal and of a building which has mass unauthorized construction as the developer has undertaken several unauthorized works which could potentially compromise the structural stability of the building, and to name only one, remove the slab of the 26<sup>th</sup>/27<sup>th</sup> floor to merge them into one duplex unit. Given the gross violations and/or breach of the building laws and the planning permissions we fail to discern on what basis the occupants justify their use and occupation of such the said building simply by chant of the routine mantra ‘that a regularization has been filed and is pending’. By taking such a stand, the occupants are not only imperiling their own lives, but also the lives of their family members and all those who work for them and who may visit the said building.

6. After hearing Learned Counsel for the parties for some time, we are of the clear opinion that insofar as the compliance of the fire safety norms and the clearance by the Chief Fire Officer for any high rise building and that too of a building which is 34 floors with 62 families and presently 50 families residing, would be non-negotiable. There cannot be relaxation of such norms in any manner

whatsoever, not even for a minute. This more particularly in view of the several fire incidents witnessed in high rise buildings in Mumbai in the past wherein there has been severe loss to human life, when such buildings had breached the terms of the Fire NOC and/or not complied with the same. Such examples are too many including an incident of huge fire in the high rise building at Kamla Mills Compound. This is all a matter of public knowledge.

7. Thus, the question before us is whether such daylight violations of the requirements for occupancy can at all be overlooked, whether persons can be permitted to occupy the flats, which have no Occupancy Certificate and most importantly whether any building and which is a high rise building of this nature can at all be permitted to be occupied in a gross situation of the fire norms being not complied. To any prudent and reasonable body of person, the answer would not be in negative.

8. In this view of the matter, we are of the clear opinion that those flat purchases, who are occupying flats, from 17 to 34 floors, which have no Occupancy Certificate are illegally occupying these flats. They are required to consider their position. Learned Senior Counsel for the Society and such members fairly agreed to consider such aspect and inform the Court on the adjourned date of hearing.

9. Insofar as the fire safety norms are concerned, we are of the clear opinion that the Chief Fire Officer of the Mumbai Municipal Corporation and not any other officer below him, shall file an Affidavit in regard to the position of the building insofar as the compliance of the fire safety norms are concerned and the breaches/violation thereof, so that an appropriate view of the matter can be taken.

10. In such context the Municipal Commissioner's communication dated 6<sup>th</sup> July 2012 (Exhibit – H) needs to be noted which more particularly recorded thus:-

“In view of the all above, the N.O.C. issued by C.F.O.'s office for Part Occupation Certificate shall be treated as cancelled.

It is further requested that the Part Occupation Certificate issued by the office of Dy. Chief Engineer, Building Proposals (City) under No. - EEBPC/196/D/A dated 17/03/2006 shall be cancelled and the party shall be asked to comply with the above mentioned requirements and to obtain a fresh Part Occupation Certificate from C.F.O.'s Department.”

In view of the aforesaid position taken by the Municipal Corporation, we also direct the Chief Engineer, Building and Proposals to file an Affidavit (to be vetted by the Municipal Commissioner) to place on record as to whether the building from the ground floor to 16<sup>th</sup> floor at all can be said to have any Occupancy Certificate as there is a serious doubt from what has been pointed out on behalf of the Municipal Corporation and several notices issued in regard to the building in question, whether there is at all any occupancy. This needs to be clarified in such Affidavit.

11. Let both the Affidavits be placed on record on or before the adjourned date and a copy of the same be furnished to the parties. The Municipal Corporation shall inform the Court of the steps it proposes to take if the building does not have

a valid and subsisting part OC.

12. Today, Mr. Jagtiani, Learned Senior Counsel for the Petitioner has placed on record the statement of construction carried out in deviation of approved plan dated 5<sup>th</sup> May 2007 as well as deviation in the fire safety norms. We permit the Petitioner to amend such chart after the further Affidavits, as directed by us, are received.

13. In the meantime we are of the clear opinion that in such a situation, all the flat purchasers/members of the society whosoever in our *prima facie* opinion are illegally occupying the flats and who actually need to vacate and more particularly those occupants from the 17 to 34 floors, shall continue to do so at their own risk and consequences in the event of any untoward incident including that of fire. They shall not in any manner whatsoever hold the Municipal Corporation or any other State Authorities responsible for any civil or criminal liability. We also make it clear that all such persons shall be liable to third parties in both civil and criminal proceedings or in any other manner whatsoever, if there is any damage and/or breach of the rights of third parties in the event of any untoward incident as noted by us and which would include those who visit the building, staff, servants and other third parties.

14. We also wonder that when such is the glaring state of affairs, as to why the Mumbai Municipal Corporation has not taken any steps to ensure that such a illegal structure is not occupied. As to how Municipal Corporation would continue to supply water and electricity to an illegal structure is also beyond our imagination. Let this issue be also addressed by the Mumbai Municipal Corporation.

15. The fact that the Mumbai Municipal Corporation has failed to take drastic action as the law would mandate, when there are such gross illegalities, and as to why such a situation was allowed to perpetuate is another question. All these issues would require consideration of the Court on the adjourned date of hearing when we shall pass appropriate orders after hearing all the parties and as the law would mandate and in the facts and circumstances of the case.

16. As requested on behalf of the parties, stand over to **3<sup>rd</sup> July 2025**, to be listed on the supplementary board.

17. We also direct the Inspector of Lifts, Government of Maharashtra to place on record as to how lift permission was granted in the aforesaid circumstances. Let the Learned AGP inform this order to the Head of the Department and/or the Inspector of Lifts, Government of Maharashtra and place on record his Affidavit.

18. Needless to observe that in the event the Affidavit, which is placed on record by the Municipal Corporation, records that the building in question, in view of such gross illegalities, cannot be permitted to have water supply and/or electricity as also in the event the Inspector of Lifts states in his Affidavit that the lifts are illegally operating, this Court would not have any alternative but to permit the authorities to take such appropriate actions.

19. Ad interim order, if any, passed earlier shall continue to operate till the adjourned date, subject to our aforesaid observations. ”

9. Consequent to the aforesaid orders affidavits are filed. On behalf of the society Mr. Madon, learned senior advocate has placed on record an affidavit of Shri Kiran Ramesh Mehta, Authorized signatory and Committee member of the Cooperative Society pointing out the various steps being taken by the society which are *inter alia* in respect of the compliances required to be made.

10. On such backdrop, in the course of adjudication of the present proceedings, insofar as today's hearing is concerned, we have confined the hearing in regard to the illegal occupation of floor Nos.17 to 34, admittedly in respect of which neither an Occupation Certificate (OC) was granted, nor any “Part OC” was issued by the Municipal Corporation. This apart, also there is no fire clearance qua these floors, nay the entire building.

11. Mr. Sharan Jagtiani, learned senior advocate for the petitioner has placed on record a chart of the notices which were issued by the MCGM from the year 2011.

We find that :

(i) On 10 January 2011 a Notice under Section 353-A of the MMC Act for alteration;

(ii) Notice dated 14 June 2012 was issued by the BEST calling upon the society to obtain a No Objection Certificate from the Fire Officer within 48 hours;

(iii) Notice dated 10 July 2012 under Section 53(1) of the Maharashtra Regional Town Planning Act, 1966 for removal of unauthorized construction;

- (iv) Notice dated 28 June 2018 issued under Section 488 of the Mumbai Municipal Corporation Act, to carry out the demolition of the unauthorized construction read with Section 53(1) of the MRTP Act;
- (v) Fifty (50) notices dated 18 August 2018 issued under Section 53(1) of the MRTP Act calling upon the occupants of the flats from 1 to 34 floor for demolition of the unauthorized and illegal modification, alteration;
- (vi) Notice dated 21 January 2020 issued by building proposal Department under Section 353-A of the MMC Act to all the occupants of the flats situated from 17<sup>th</sup> to 34<sup>th</sup> floors (not challenged);
- (vii) On 10 February 2020 notice was issued under Section 488 of the MMC Act to carry out demolition of the unauthorized construction under Section 53(1) read with Section 151A of the MRTP act and;
- (viii) Notice under Section 153-A of the MRTP Act dated 1 January 2025.

12. Thus, in the present context most significantly notice dated 21 January 2020 issued in respect of all the flats situated on 17 to 34 floors under Section 353-A of the MMC Act, to all the occupants, directing them to vacate their flats within seven days and not to reoccupy the same until the construction qua the compliances of the building norms and the sanctioned plans is certified for occupation by issuance of OC was not completed. Also the said notice was never challenged.

13. Mr. Jagtiani, learned senior counsel for the petitioner submits that it may be the case of the society that insofar as the 1 to 16 floors are concerned, steps are being taken to regularize the construction/violation, however, he submits that

considering the legal consequences which are brought about under the provisions of the MMC Act and the MRTP Act, there can be no justification whatsoever, for these persons to occupy the floors 17 to 34, in the absence of OC being issued by the Municipal Corporation. Mr. Jagtiani next submits that there is no question of any regularization application being maintained in respect of the premises which have no OC to regularize the large scale violations, in respect of which, the construction is not in accordance with the plans.

14. Mr. Jagtiani has also drawn our attention to the various documents on record, that the application of the Fire Safety Requirements and its approval/clearance by the Chief Fire Officer, even to occupy 17 to 34 floors was mandatory. It is submitted that in the absence of all such compliances, any regularization in respect of the building as urged on behalf of the society would be untenable. He would thus submit that the Municipal Corporation was perfectly right in its action in issuance of the several notices, and calling upon the occupants/members of the society having flats from 17 to 34 floors to vacate the same and only after regularization and all clearances are granted of an OC, the building could be occupied.

15. Mr. Kamdar, learned senior counsel for the Municipal Corporation has wholly supported the contentions as made by Mr. Jagtiani. Mr. Kamdar has drawn our attention to the several notices which were issued in respect of floor Nos.17 to 34 which we have noted hereinabove. He has also pointed out the illegalities and the several unauthorized deviations in regard to the construction being undertaken from the 17 to 34 floors. He submits that such construction would be required to

be restored to be in conformity and in accordance with the plans which were originally submitted. He submits that although there was initially a “Construction Fire NOC”, however, admittedly, the building as on date has no fire NOC and in these circumstances, it would be contrary to law to permit any occupancy insofar as 17 to 34 floors is concerned, and in fact in respect of the entire building, since there is no Fire NOC. He has drawn our attention to the fact that Officers of the Municipal Corporation have acted very diligently and notices were issued under Section 353-A of the MMC Act to the individual flat members to vacate their respective premises, as also to restore the the construction as per the sanctioned plans. He has submitted that apart from issuance of notices under Section 353-A in respect of such illegal occupation, the other course of action which is open to the Municipal Corporation, was to lodge a prosecution under Section 471 in which the punishment of a maximum fine of Rs.25,000/- and minimum fine of Rs.5,000/-.

Mr. Kamdar's submission is that any unauthorized construction in regard to which Section 53(1) MRTP Act notices were issued to the building, such notices were required to be complied and such unauthorized construction or breaches were required to be removed. He submits that it was mandatory that the Fire Safety requirements are complied which admittedly are not complied and the building has continued to be in occupation. Mr. Kamdar submits that in such circumstances, in fact the building was required to be sealed considering the provisions of Section 8 of the Maharashtra Fire Prevention & Life Safety Measures Act, 2006. He states that the Municipal Corporation now intends to take recourse to the provisions of the said Act. He therefore submits that insofar as the occupants of the building and

more particularly those who are occupying flats on 17 to 34 floor are concerned, there is no justification whatsoever for them to continue occupations. Mr. Kamdar would in fact submit that the occupation of the entire building as on date is extremely dangerous in the absence of the any Fire Safety norms being complied and a Fire NOC being granted by the Chief Fire Officer.

16. Mr. Madon, learned senior advocate for the society has very limited submissions. The thrust of his arguments is on the basis of the affidavit tendered today on behalf of the society, which is to the effect that the society is now in the process of taking all appropriate actions to pursue its regularization application and the endeavor of the society would be to comply with all the requirements which would be not only in respect of the ground plus sixteen floors, but also from the 17 to 34 floors. Mr. Madon, however, would not dispute that floor Nos.17 to 34 has no occupation certificate. He is also not contending that the occupation of the flats on 17 to 34 floors can at all be said to be illegal. His submission however is that the society need to have some time, and although while the members are occupying their respective tenements, measures can be taken to align and/or bring the construction in accordance with the sanctioned plans and then the regularization application needs to be decided by the Municipal Corporation. Insofar as the occupation of 17 to 34 floors are concerned, Mr. Madon would submit that such aspect of the matter is required to be considered on two grounds, firstly, on humanitarian grounds that the occupants need to be permitted to continue in occupation for some time, so that appropriate steps can be taken within such time to seek regularization of the irregularities and an OC can be obtained. In

supporting such submission, Mr. Madon has placed reliance on the decision of the Supreme Court in **Campa Cola Residents Association & Anr. Vs. State of Maharashtra & Ors**<sup>2</sup> to submit that on humanitarian consideration, the Supreme Court had granted time in such case to vacate such premises. It is Mr. Madon's submission is that this is not the case of a rank unauthorized construction being put up, but of irregularities in the construction and in respect of which part OC was granted namely for the construction from ground floor to sixteen floor, which according to Mr. Madon, can be retained and regularization application can be pursued. He would submit that although the 17 to 34 floors are without OC however, such construction in occupation is also required to be considered on the same parameters as in respect of the ground plus sixteen floors. On a query made to Mr. Madon, as to how much time will be required for the occupants of 17 to 34 floors to vacate. Mr. Madon although initially said about six months, later on, on instructions, he submits that about a year may be granted to the occupants to vacate the premises, so that corrective measures can be taken and the construction can be attempted to be regularized.

17. It is on such backdrop, we have heard learned counsel for the parties and perused the record. We may observe that admittedly, there is no "Fire NOC" i.e., any approval/clearance and/or permissions from the Chief Fire Officer to occupy a building of 34 floors in the heart of a busy and posh area in South Mumbai. The affluent occupants nonetheless are occupying their flats at the peril of their lives and a danger of any untoward incident of a fire, which may not only affect them

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**2** (2014) 13 SCC page 557

but the adjoining buildings and the entire surrounding area. It is with such imminent danger they are intending to occupy the building. We are thus of the opinion that it is for such reason, this building cannot be permitted to be occupied. We may observe that the plea as urged on behalf of the society, that although 17 to 34 floors are without OC, such members of the society be permitted to occupy their respective flats, is a proposition which is completely opposed to law. The Court cannot grant any relief to any litigant, if such relief is in the teeth of the provisions of law and more particularly when it concerns the occupation of the premises which have no occupation certificate i.e. the construction is in major violation of the building plans, above all endangering human safety as discussed hereinabove. In the present case, such parameters of compliance of law are required to be applied to the entire building, inasmuch as, the same is being occupied in the absence of the Fire clearance and/or the building needs to be certified to the same for human habitation.

18. Admittedly, insofar as floor Nos.17 to 34 are concerned, in our opinion, it is a brazen illegality on the part of the occupants to occupy the said tenements without such construction being granted an OC by the Municipal Corporation. If we accept the proposition as urged by Mr. Madon to be any norm, much less prudent, that persons can occupy constructions which has no Occupation Certificate, we would render the entire statutory regime requiring stringent compliances, to be made for lawful constructions to be put up, and certified by the Planning Authority, [the MCGM], wholly nugatory and inconsequential. Accepting such submissions has a devastating consequence that all the provisions of

law in that regard would be required to be discarded. This would amount to recognition of lawlessness, insofar as occupation of the buildings, with no occupation certificates are concerned.

19. This issue has bothered us for quite some time. As noted previously, the flats in the present building are not purchased by poor illiterate persons, who are not aware of the consequences of law, and/or persons who are not aware as to what would be meant by occupying flats in a building situated in a very prime locality in South Mumbai, which has no occupation certificate granted by the Municipal Corporation. The construction itself is not in accordance with law, this is a glaring case wherein despite repeated notices, every possible attempt was made by the society and its members to overcome and bring about a situation that lawful actions being taken by the Municipal Corporation, are defeated with the mighty resources they have, including to resort to litigation by approaching the Courts for protective orders, plainly on equity, merely that these persons are occupying flats *albeit* illegally, which are tainted with gross violations of the building norms. However the fact remains that all such reliefs as sought by them clearly shows, that their case did not have a semblance of any legal right or any legal basis whatsoever, in supporting such plea's or any such relief, to be granted on such proceedings. This appears to be the position right from the beginning.

20. As noted hereinabove, merely for the reason that the developer, and the society and its members have resources in abundance, to first resort to illegalities and then by every possible means try to protect the illegalities ought not to prevent the Municipal Corporation to take an appropriate action as the law mandates. Time

to time actions being initiated by the Municipal Corporation in accordance with law, were however sought to be stalled. In fact, such conduct of the society and its members who are gross violators of law has been deprecated by the Supreme Court in several decisions, including the decision as cited by Mr. Madon in **Campa Cola (supra)**.

21. To prevent such lawful course of action of the Municipal Corporation, the society and its members, who are taking law in their hands, are setting up a very bad example, to protect construction which is without Occupancy Certificate. They are asserting that they be permitted to occupy such construction with impunity, that too by raising pleas contrary to law, to the effect that the Court nonetheless permits occupation of such construction. There cannot be a plea more audacious than this. This would bring about a regime of total lawlessness, and such lawlessness in respect of the premises with which we are dealing can never be permitted.

22. We are thus of the clear opinion that this is not a case where we need to continue the ad-interim protection. All the occupants/members of the society who are illegally occupying floors 17 to 34 are required to vacate their respective premises, and in the event they fail to vacate, the Municipal Corporation needs to take appropriate steps in accordance with law to get the tenements vacated.

23. Moreover, we would be justified to say that in the present facts, the flat purchasers who have taken law into their own hands in occupying construction which has no OC, are a selfish lot, who not only with open eyes are acting contrary to the building regulations but also have means, to defeat legal actions being taken

by the Municipal Corporation, by indulging in several statutory violations, which can never be permitted. In the present context, we may also refer to an order passed by the Bench of one of us (G. S. Kulkarni, J.) in the case **Bhairavi Co-op. Hsg. Soc. Ltd. Vs. Heena Lifestyles**<sup>3</sup> wherein in somewhat similar facts, the Court observed that unless an occupation certificate is granted by the municipal corporation, the members of the society cannot be permitted to occupy the tenements. The following observations are required to be noted which read thus:

“.....It needs to be noted that in law no member of the petitioner society is permitted to occupy unless an occupation certificate is granted by the municipal corporation. The society cannot be a mute spectator to such illegality of its members. Such conduct/illegality of the society and its members is sufficient to decline any reliefs.”

24. Insofar as Mr. Madon's submission relying on the orders of the Supreme Court in **Campa Cola (supra)**, we find that it is an order which is passed by the Supreme Court in the context of its detailed judgment dated 27 February 2013 dismissing the Civil Appeal in the Case of **Esha Ekta Apartments Cooperative Housing Society Ltd. & Anr. Vs. Municipal Corporation of Mumbai**<sup>4</sup>. Post the judgment a plea that some time be granted on the humanitarian consideration for the subject matter of consideration. The Supreme Court in its judgment in **Esha Ekta (supra)** has in fact made significant observations insofar as occupation of such illegal construction is concerned :

“56. In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularise the construction made in violation of the sanctioned plan. Rather, the ratio of the abovenoted

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**3** 2022 SCC OnLine Bom 522

**4** (2013) 5 SCC 357

judgments and, in particular, Royal Paradise Hotel (P) Ltd. Vs. State of Haryana is clearly attracted in the present case. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

(emphasis supplied)

25. In the context of the aforesaid observations and when a plea was made that some time be granted, the Supreme Court in paragraph No.9 of its order in **Campa Cola** (supra) as relied by Mr. Madon, has made the following observations:

“9. Having considered the entirety of the matter, we deem it proper to extend the time fixed in the earlier orders up to 31-05-2014. This order has been passed on purely humanitarian considerations and will not, in any manner, dilute the judgment and orders passed by the Court earlier and the occupants of the flats will have to vacate the premises in their occupation on or before 31-05-2014. The benefit of the aforesaid direction would be available subject to the filing undertakings by all the occupants before this Court within a period of six weeks from today. It is made clear that if all the occupants fail to file the required undertakings within the specified, then the Municipal Corporation shall be entitled to take action in accordance with the judgment dated 27-02-2013.”

(emphasis supplied)

26. We fail to understand as to how in the teeth of such vital observations as made by the Supreme Court and in the facts of the said case the Supreme Court clearly exercising its jurisdiction under Article 142 in passing such order is of any avail, to the society and its members. We therefore reject Mr. Madon's contentions that on humanitarian considerations a plea can be urged by the members of the society who are occupying premises which has no occupancy certification. We may observe that the Court in exercise of the Jurisdiction under Article 226 cannot pass any order which is contrary to the law. The Municipal Corporation, for years

together is attempting to take legal actions against these illegalities. There being no fire NOC, no OC for 17 to 34 floors, itself is glaring. It appears that the persons who are occupying the 34 storied building are least bothered about their own lives, if this be so, how can they be bothered about anybody else, in the event of any untoward incident of any nature taking place. Such approach which is wholly contrary to law, cannot be countenanced, in fact, it would set an example to perpetuate illegalities. It needs to be deprecated.

27. In the aforesaid circumstances, we vacate the ad-interim order dated 20 March 2025 passed by the coordinate bench.

28. We order that the occupants of floors 17 to 34 shall vacate their respective tenements within two weeks from the day a copy of this order is available, failing which the Municipal Corporation shall proceed to take an appropriate action in accordance with law and in respect of which long time back notices are issued. We clarify that such members would be entitled to occupy the tenements, only after OC is granted.

29. Insofar as the occupation of the flats from 1 to 16 floors are concerned, as such construction originally had a part occupation certificate, we shall hear the parties on the issues other than on the consequences of there being no fire NOC. Mr. Kamdar intends to take instructions on reply affidavits filed on behalf of the society.

30. Before parting, we unreservedly note that considering our observations made hereinabove and in the earlier orders which we have extracted, we do not approve the members continuing their occupation in the absence of the Fire NOC to the

building even in regard to the 1 to 16 floors which has no fire clearance or approval from the Fire Department, by way of a Fire NOC.

31. As we would now hear the plea in regard to those who occupy 1<sup>st</sup> to 16<sup>th</sup> floors on the adjourned date of hearing, the Municipal Corporation, shall stay its hands in resorting to any demolition, under the notices and insofar as the illegal constructions in respect of which notices were issued.

32. Accordingly list the proceedings on **29 July 2025 (HOB)**. In the meantime, let pleadings in that regard be completed.

33. At this stage, Mr. Madon, learned senior counsel for the society, seeks stay of this order. However, in the facts and circumstances of the case, the request for stay is rejected and more particularly, when on earlier several occasions, the illegal occupation of the persons/members, who are occupying flats from 17 to 34 floors being required to make alternate arrangements, was emphatically made known to them.

**(ARIF S. DOCTOR, J.)**

**(G. S. KULKARNI, J.)**

**The order is corrected as per speaking to the minutes of the order dated 23 July 2025.**