

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

WRIT PETITION NO. 3078 OF 2024

Sunil B. Jhaveri H.U.F.

...Petitioner

Vs.

Brihanmumbai Municipal Corporation & Ors.

...Respondents

WITH
INTERIM APPLICATION (L) NO.8422 OF 2025
IN
WRIT PETITION NO. 3078 OF 2024
WITH
INTERIM APPLICATION (L) NO.7774 OF 2025
IN
WRIT PETITION NO. 3078 OF 2024
WITH
INTERIM APPLICATION (L) NO.9647 OF 2025
IN
WRIT PETITION NO. 3078 OF 2024
WITH
INTERIM APPLICATION (L) NO.9013 OF 2025
IN
WRIT PETITION NO. 3078 OF 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
WITH
WRIT PETITION NO. 1785 OF 2019

Mr. Sharan Jagtiani, Sr. Adv. a/w Ms. Shradha Achliya, Ms. Disha Shetty i/b AAK Legal for Petitioner in WP/3078/2024.

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

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

Mr. Vineet Naik, 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.

Mr. Aseem Naphade a/w Mr. Abhishek Matkar, Mr. Malhar Bageshwar for Applicant in IAL/9647/2025.

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

Ms. Rutuja Bodake i/b Ms. Komal Punjabi for BMC in all other matters.

Mr. Vikrant Parshurami, AGP for State in WPL/8943/2025.

Mr. Ritesh K. Jain a/w Mr. Krishkumar A. Jain & Mr. Kalpesh A. Banaru 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.

**CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.**
DATE: 30 JUNE 2025.

P.C.

1. The proceedings are before us on the backdrop of our order dated 23rd 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 26th/27th 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 Chief Fire Officer's communication dated 6th 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 16th 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 5th 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 **3rd 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.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)