

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

WRIT PETITION (L) NO. 10166 OF 2026

1. Mahesh Sham Shetty
Legal Heir of Nalini Shetty

2. Manisha Praveen Shetty
Legal heir of Smt. Nalini Shetty

...Petitioners

Vs.

1. The State of Maharashtra
Through Govt. Pleader

2. The Municipal Corporation of
Greater Mumbai.

3. Assistant Commissioner

4. Maharashtra Housing and
Area Development Authority.

...Respondents

Adv. Yashodeep Deshmukh a/w Adv. Babita Kesharwani - Advocate
for the Petitioners

Adv. Vineet B. Naik, Senior Counsel a/w Adv. Smita Tondwalkar and
Adv. Eshaan Saroop - for the Respondent-BMC

Officer present Shri Paresh Shaha, Sub Engineer (Main) K/W Ward
Adv. Anjali Ghuge – for Respondent-BMC

Mr. Santosh Tukaram Salve, Dy. Superintendent (H-West) Ward
Shri Suraj Gupte – AGP for Respondent-State

CORAM : M. S. KARNIK AND
S. M. MODAK, JJ.

DATE : 27th MARCH 2026

P. C. :-

1. Heard Mr. Deshmukh, the learned counsel for the Petitioners, Shri Naik, the learned Senior counsel for the Respondent-BMC.
2. By this petition filed under Article 226 of the Constitution of India, the Petitioners pray for the following substantial reliefs:-
 - a. Issue an order or direction under Article 226 of the Constitution of India, thereby quashing and setting aside the Impugned Notices dated 26.02.2026 issued by Respondent No.2 declaring the Petitioners' structures as "non-eligible";
 - b. Issue an order or direction under Article 226 of the Constitution of India, thereby quashing and setting aside the speaking order dated 16.03.2026 bearing No. ACKW/70366/AEM/OD/2 in respect of Structure No. 33, issued by Respondent No.2 declaring the said structure as "Non-Eligible";
 - c. Direct the Respondents to reconsider the eligibility of the Petitioners' structures afresh in accordance with the Circular dated 20.03.2017 and the applicable policy, by properly considering all documentary evidence placed on record;

d. Direct the Respondents to grant No Objection Certificate (NOC) under Rule 34 and to provide alternate accommodation to the Petitioners in an open space not affected by the project.

3. It is submission of learned counsel that the Petitioners were handed over 28 structures which are subject matter of this petition by MHADA in the year 1958. Mr. Naik, learned Senior Advocate for the Municipal Corporation submitted that the structures in question are impacted due to the coastal road which is an important infrastructure project of the State of Maharashtra undertaken by Mumbai Municipal Corporation.

4. Learned counsel for the Petitioners submitted that though the Petitioners were handed over 28 structures, Petitioners were held to be eligible only in respect of 5 structures by a speaking order dated 16.03.2026 passed by Assistant Commissioner 'K-W' Ward. Our attention is invited to page no. 138 which is the 'Bottle Neck Policy' issued by circular dated 20.03.2017 of the Corporation. Clause no. 9 is relevant. It provides for the Appellate authority. Clause no. 9 reads thus:

“In view of the recommendations of the legal department of MCGM, A.M.C.(W.S.)/ M.C. have accorded sanction under No.MGC/F/3661 dt. 21.11.2010 to create an Appellate Authority at zonal DMC level. As per the procedure person / occupant of the structure falling under the bottleneck, if dissatisfied with the decision of the Asst. Commissioner with respect to the eligibility/non-eligibility of the person/occupant of the structure for rehabilitation as a PAP, as also any person having suggestion/objection with respect to draft PAP list, shall be at liberty to file an appeal before zonal DMC within 15 days. The zonal DMC shall decide the appeal filed before him within 07 days from the date of receipt of the objection and submit the proposal/scheme to AMC with recommendation for sanction. The methodology to be followed is elaborated in Table 3.”

5. It is contention of learned counsel for the Petitioners that the Respondent-Corporation has acted in a high handed manner. It is submitted that an appeal is provided to the Deputy Municipal Commissioner. The appeal can be filed within 15 days upon eligibility/non-eligibility being declared by the Respondent-Corporation. Even without waiting for these 15 days and thereafter for the period of 7 days during which Appellate Authority is to decide the appeal, the Corporation proceeded demolish the structures hurriedly and only with a view to defeat this petition.

6. This Court by an order dated 23.03.2026 passed the following order and protected the structures, if not already demolished:-

1. Not on board. Taken on board in view of the urgency.
2. According to the learned Counsel for the Corporation, it is submitted that so far as the subject structures are concerned, the same have already been demolished. If any of the structure which is subject matter of this Petition is not demolished, the same not to be demolished, till tomorrow.
3. Stand over to 24th March 2026.

7. The learned Senior advocate Shri Naik submits that except structure no. 40, all other structures have been demolished. The project in question is an important infrastructure project for constructing coastal road. We do appreciate the concern of the Corporation. However, it would have been advisable for the Corporation to have awaited the decision on the appeal, if preferred before the Appellate Authority before taking any action against the structures.

8. Shri Naik, the learned Senior Advocate on instructions submitted that even before the order passed by this Court could be communicated by Counsel for the Corporation to the officers at site, other structures were demolished. However, after the order of this

Court was brought to the notice of the concerned officials, demolition action was halted and therefore, structure no. 40 was not demolished. This structure No.40 is the residential premises of the Petitioners.

9. The learned Senior Advocate Shri Naik on behalf of the Corporation submits that structure no. 40 was 66.5 sq. mtr. for which a larger area of 90.5 sq. mtrs has been provided. In addition, the Petitioners are held eligible for 5 structures by order dated 26.02.2026, of which four are commercial and one is residential structure.

10. Considering the nature of the project and now that almost five structures have been held to be eligible, if the Petitioners have any grievance in respect of ineligibility of the structures, it is open for the Petitioners to file an appeal before the Deputy Municipal Corporation within a period of two weeks from today. If such an appeal is filed, the same shall be decided within a period of seven days in accordance with the procedure prescribed under the Bottleneck policy referred above.

11. The Petitioners are at liberty to prefer appeal. If such appeal is filed, the same shall be decided after considering the grounds raised and materials produced in accordance with law expeditiously and within a period of seven days from the date of filing of the appeal.

12. So far as structure no. 40 is concerned, the same being residential premises, learned counsel for the Petitioner on instructions requests for time to voluntarily vacate the structure no. 40, subject to an undertaking filed by the Petitioners that they would vacate structure No. 40 within a period of four weeks from today. No coercive action be taken against structure no. 40 for the period of four weeks from today.

13. The learned counsel for the Petitioners submits on instruction that within four weeks from today the Petitioners would vacate the structure no. 40 and handover the vacant possession to the Corporation. Statement accepted as an undertaking to this Court. In such view of the matter, the electricity and water connection be restored forthwith.

14. It is made clear that undertaking should be filed by the Petitioners and all the occupants within one week from today on usual terms that shall also contain a clause that no third party interest will be created in the said structure no. 40 and the Petitioners will not part with the possession till handing it over to the Corporation.

15. Learned Senior Advocate Shri Naik submits that if within a

period of 7 days from tomorrow the Petitioners' approach the concerned authority, they will be given the option of choosing PAP tenements in accordance with the scheme.

16. With the above observations, the petition is disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)