



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

**WRIT PETITION (LODGING) NO.12465 OF 2026**

- |                               |                  |
|-------------------------------|------------------|
| 1. Mahendra Builders,         | ]                |
| A Partnership Firm,           | ]                |
| having registered address at: | ]                |
| Shah House, Colaba, Mumbai    | ]                |
| 2. Pratibha Mahendra Shah,    | ]                |
| Partner of Petitioner No.1,   | ]                |
| having office address at:     | ]                |
| Shah House, Colaba, Mumbai    | ] .. Petitioners |

***Versus***

- |                                               |                 |
|-----------------------------------------------|-----------------|
| 1. Municipal Corporation of Greater Mumbai    | ]               |
| having its office at Mahapalika Marg, Mumbai  | ]               |
| 2. Designated Officer, Ward "G/South",        | ]               |
| G/S Ward Office Building, Elphinstone, Mumbai | ].. Respondents |

Mr. Aspi Chinoy, Senior Advocate, with Mr. Rohaan Cama, Mr. Aman Sadiwala, Mr. Rohan Dakshini, Ms. Shweta Jaydev and Ms. Azraa Millwala, Advocates, i/by Rashmikant and Partners, for the Petitioners.

Dr. Milind Sathe, Senior Advocate, with Ms. Rasika Satone and Ms. K.H. Mastakar, Advocates for the Respondent-MCGM.

Mr. Rumi Mirza with Ms. Rinika Jain, i/by Mr. Ronnie Mirza, Advocates for the Proposed Intervener.

Mr. Ranjit C., Designated Officer, G/South Ward, MCGM is present in Court.

Mr. Satish Anerao, Assistant Engineer (B & F), G/South Ward, MCGM is present in Court.

Mr. Shrikant Khairnar, Sub. Engineer (Building Proposal), MCGM is present in Court.

Mr. Chetan Shirudkar, Sub. Engineer (B & F) Department, G/South Ward, MCGM, is present in Court.

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

**DATE : 17<sup>TH</sup> APRIL 2026.**



**Per, Shree Chandrashekhar, CJ.**

Mr. Rumi Mirza, the learned counsel appears for the proposed intervener and states that the intervener who is the tenant under the petitioners is suffering on account of the illegal constructions raised over the subject property. It is submitted that it was her petition on which an order was passed by this Court and a notice for demolition has been issued by the Municipal Corporation of Greater Mumbai. If that is so, it is not difficult to see that the proposed intervener had knowledge of pendency of this writ petition but she did not move the Court in time. The proceedings are pending since long and this is second round of litigation. The challenge laid in this writ petition is to the notice dated 25<sup>th</sup> March 2026 primarily on the grounds as indicated in the order of this Court dated 15<sup>th</sup> April 2026 which reads as under:

“ Heard Mr. Aspi Chinoy, the learned senior counsel for the petitioners.

2) We gather on a glance at the Circular issued by the Corporation a part of which has been extracted in the order dated 11th November, 2025 and have formed a prima facie opinion that the stipulations as to what a final order should contain as indicated under sub-clauses (b) and (c), are not reflected in the impugned order dated 25th March, 2026 vide Exhibit-A at running page no.47 of the paper book.

3) For response on behalf of the respondent – corporation, post this matter on 17th April, 2026 as ‘first on board’ on supplementary board.

4) In the meantime, the order dated 25th March, 2026 shall be kept in abeyance.”

2. There is no application for intervention in this writ petition. The petitioners have raised a question on propriety and legality of the impugned order dated 15<sup>th</sup> April 2026. The proposed intervener is not a person whose presence is necessary for passing an effective order and therefore she is not a necessary party. She cannot also claim to be a proper party in this writ petition merely



because she is a tenant or, that, she raised objection to the constructions made without permission of the MCGM. In “*Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr.*” 1962 SCC OnLine SC 130, the Hon’ble Supreme Court held as under:-

“7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled. It is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

3. In view thereof, the request for adjournment for moving an application for adding the tenant under the petitioners is declined.

4. The learned Advocate General appears for the respondent-MCGM.

5. This is the unanimous agreement at the Bar that this writ petition may be disposed of at this stage itself. We have heard Mr.Aspi Chinoy, the learned senior counsel for the petitioners who reiterated the stand taken on behalf of the petitioners on 15<sup>th</sup> April 2026. The learned senior counsel submits that all inferior Tribunals are obliged in law to follow the directions issued by the High Court (refer: “*East India Commercial Co. Ltd., Calcutta & Anr. v. Collector of Customs, Calcutta*” 1962 SCC OnLine SC 142). However, the Designated Officer, Ward “G/South” while exercising the statutory powers under the Maharashtra Regional and Town Planning Act, 1966 (“MRTP Act”) and the Rules framed thereunder completely ignored the directions issued by this Court on 11<sup>th</sup> November 2025 in Writ Petition (Lodging) No.35539 of 2025. Mr.Aspi Chinoy, the learned senior counsel further submitted that the impugned order dated 25<sup>th</sup> March 2026 has been passed in a



mechanical manner without proper application of mind to the guidelines issued under the Circular dated 24<sup>th</sup> April 2025. Shortly put, this is the submission made at the Bar that the Designated Officer, Ward “G/South” was required to indicate in the order dated 25<sup>th</sup> March 2026 whether the unauthorized construction is compoundable and, if it is not so, he must provide the reasons thereof. But the said order is completely silent on this aspect and a statutory right under section 53 of the MRPT Act of the petitioners to seek compounding of unauthorized construction under section 53 has been denied by virtue of the speaking order dated 25<sup>th</sup> March 2026.

6. On the other hand, the learned Advocate General would submit that the petitioners have no right in law as of now and the directions issued under Circular dated 24<sup>th</sup> April 2025 are not applicable in this case. Rather, the Circular shall apply in cases where punitive notice has been issued. These guidelines are therefore not applicable when the demolition of unauthorized structure is undertaken following the procedure prescribed under the MRTP Act and MMC Act. The petitioners who were required to make an application on receiving a notice on 22<sup>nd</sup> August 2025 failed to seek compounding of unauthorized construction and after the lapse of prescribed time, the demolition notice has been issued to them. The learned Advocate General would further submit that the petitioners who stated in their reply dated 19<sup>th</sup> July 2025 that they intended to move an application seeking regularization did not prosecute the matter further and invited the order dated 25<sup>th</sup> March 2026 which has been passed pursuant to the statutory notice issued to them on 22<sup>nd</sup> August 2025.

7. The relevant provisions under the MRTP Act are reproduced below:

**“44. Application for permission for development**

(1) *Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed:*

**Provided that,** *save as otherwise provided in any law, or any rules, regulations or by-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.*

(2) *Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute an Integrated Township Project on any land, may make an application to the Stat Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be an Integrated Township Project by notification in the Official Gazette or, reject the application.*

**53. Power to require removal of unauthorised development.**

(1) (a) *Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;*

(b) *if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.*

(1A) *Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve one months" notice on the owner, developer or occupier requiring him to take necessary as specified in the notice.*

(2) *In particular, such notice may, for purpose of sub-section (1), require—*

(a) *the demolition or alteration of any building or works;*

(b) *the carrying out on land of any building or other operations; or*



*(c) the discontinuance of any use of land.*

*(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.*

*(4) The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (3).*

*(5) If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be; and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.*

*(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the Planning Authority may—*

*(a) prosecute the owner for not complying with the notice; and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and*

*(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.*

*(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, 1 [be punished with imprisonment for a term 2 [which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine*



*which may extend to two hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.*

*(8) The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas.”*

8. The MRTP Act has been enacted to make provisions for planning the development and use of land in the regions established under the Act. This is the object behind the MRTP Act to provide for a time-bound programme for all the planning processes and the time-line regarding development permission, acquisition of land and other permissions. Section 44 of the MRTP Act provides that any person not being Central or State Government or local authority shall make an application in writing giving his intention to carry out any development on any land to the planning authority seeking permission in such form and containing such particulars as provided under the Rules. It is further provided that such application moved by any person must be accompanied by such documents as may be prescribed. Section 44 thus gives a right to any person to make development over any piece of land as permissible under the Act and the Rules framed thereunder. Section 52 makes a provision for imposing penalty for unauthorized development or use otherwise than in conformity with the Development Plan. This is the stand taken by the MCGM that the petitioners raised unauthorized construction over the subject property and they are liable to pay penalty for compounding of the unauthorized structure if an application was made under sub-section (3) of section 53.



9. After having gone through the records and, in particular, the order dated 11<sup>th</sup> November 2025 in Writ Petition (Lodging) No.35539 of 2025, we have formed an opinion that the impugned order dated 25<sup>th</sup> March 2026 is liable for interference. One of the grounds on which the notice dated 22<sup>nd</sup> August 2025 was assailed before the writ Court was that the said order was passed in breach of natural justice inasmuch as the statutory authority had failed to take note of the stand taken by the petitioners. As we read the order dated 11<sup>th</sup> November 2025, it was incumbent upon the Designated Officer to take note of the guidelines issued under Circular dated 24<sup>th</sup> April 2025. There is a substance in the submission of the learned Advocate General that on lapse of thirty days, the petitioners lost their right to seek regularization under section 44 of the MRTP Act, but then, such an objection should have been raised at the first instance when the directions were issued by this Court in Writ Petition (Lodging) No.35539 of 2025. The order dated 17<sup>th</sup> October 2025 stands recalled by the MCGM but the impugned order dated 25<sup>th</sup> March 2026 again suffers from the same infirmity and does not seem to be in consonance with the directions issued by this Court. The petitioners state that the subject building was constructed in and around 1940s. According to them, there is an approved amended plan of the year 1981 which permitted construction of additional two floors in the said building and the Commencement Certificate was issued on 2<sup>nd</sup> October 1978. They further state that an Intimation of Disapproval (in short "IOD") was issued on 30<sup>th</sup> November 1977. In sum and substance, the petitioners have endeavoured to justify construction of additional floors constructed in the building. However, to put a quietus to the litigation with the MCGM, Mr. Aspi Chinoy, the learned senior counsel for the petitioners submits that the petitioners may be permitted to move an



application under sub-section (3) to section 53 of the MRTP Act and the statutory authority shall take a decision thereon in the light of the statutory right created in the petitioners by virtue of section 44 of the MRTP Act.

10. As we have recorded that the order dated 25<sup>th</sup> March 2026 does not confirm to the directions issued by this Court in Writ Petition (Lodging) No.35539 of 2025, the same is quashed. We grant a liberty to the petitioners to move an application as contemplated under sub-section (3) of section 53 of the MRTP Act within a period of four weeks which shall be considered having regard to the statutory right conferred in the petitioners and that should not be ignored or overlooked on mere technical grounds. The statutory authority shall also take note of the directions issued under Circular dated 24<sup>th</sup> April 2025 under clause (C) captioned as “Final Order” which provides as under:

**“C. FINAL ORDER**

- i. Upon hearing, the designated officer shall pass a final order.
- ii. The final order shall contain:
  - a. the contentions of the noticee, and if the designated officer disagrees with the same, the reasons thereof;
  - b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefore;
  - c. if the designated officer finds that only part of the construction is unauthorized /non-compoundable, then the details thereof.
  - d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.”

11. We are alive to the large-scale unauthorized constructions raised in the city of Mumbai and, therefore, would like to indicate that this order may not be cited as a precedent. This order has been passed in the peculiar facts and circumstances of the case such as the building was constructed about half a century back, direction issued by this Court was not followed by the statutory



authority etc. The statutory authority shall also keep in mind that this is the second round of litigation and this is not in public interest that the litigation should multiply. Therefore, and as mandated in law, the statutory authority shall consider the application for compounding if so moved by the petitioners in the light of the statutory rights created in every person who intend to raise the construction, if permissible in law.

12. Writ Petition (L) No. 12465 of 2026 is allowed with the aforesaid directions.

**[ SHYAM C. CHANDAK, J. ]**

**[ CHIEF JUSTICE ]**

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