



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.362 OF 2025

Hanuman Jairam Naik]
Age: 54 Years, Occupation: Service]
Residing At: House No.340,]
Darave Village, Unit No.1,]
Ward – Belapur, Navi Mumbai,]
Taluka and District Thane.] ...Petitioner

V/s.

1. The State of Maharashtra]
2. The Controller of Unauthorised]
Construction (U) CIDCO Ltd]
Having office at: Raigad Bhavan,]
Second Floor, CBD Belapur,]
Navi Mumbai 400 614.]
3. Venu Nayar]
(Officer of Respondent No.2)]
Age: About 50 Years,]
Occupation: Service,]
Having Office At: Raigad Bhavan,]
Second Floor, CBD Belapur,]
Navi Mumbai, 400 614.]
4. The Assistant Commissioner of]
Navi Mumbai Municipal Corporation.]
Having Office At: A Ward,]
Navi Mumbai Municipal Corporation]
(Belapur Node), Navi Mumbai.] ...Respondents

Mr. Tapan Thatte for the Petitioner.
Mr. Shahaji Shinde, 'B' Panel, a/w Ms. Snehal Jadhav, AGP for the
Respondent-State.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 6th February, 2025.
PRONOUNCED ON : 25th February, 2025.

JUDGMENT (Per Kamal Khata, J) :

1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks the following reliefs:

“A. Declare the demolition dated 18th December 2024 of the property in issue, namely ‘House No.340, multi storied, situate on Plot No.16/7 and 16/8 being Survey Nos. 66 of Sector 23 Darave Navi Mumbai admeasuring about 418 square meters’, by the Respondent No. 2 as being illegal and affront to the fundamental rights of the Petitioner.

B. Direct Respondent No.3 to pay the Petitioner a compensation of Rs 50000000/- (Rupees Five Crores Only) compensate the Petitioner for the loss caused by the illegal demolition dated 18th December 2024 and the mental agony suffered by the Petitioner.

C. Direct the Respondent No.2 to restore the possession of the property in issue, namely, ‘House No.340, multi storied, situate on Plot No. 16/7 and 16/8 being Survey Nos. 66 of Sector 23 Darave Navi Mumbai admeasuring about 418 square meters’ and the lands underlying thereof to the Petitioner.”

BRIEF FACTS:

2) The Petitioner claims that he resided on plot No.16/7 and 16/8 bearing Survey Nos.66 of Sector 23 Darave, Navi Mumbai, that measured about 418 square meters since 1975 i.e. more than 50 years. Due to the dilapidated condition of his house, he demolished

the same in 2022 and has reconstructed a multi-storied building as per his requirement.

3) The Petitioner admits not seeking any permission for either the demolition or the reconstruction of the said premises from the relevant competent authorities under the law, claiming illiteracy.

4) On 18th July 2022, the Petitioner received a notice under Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (“MRTP”) from the Respondent No.4 to which he did not respond. But instead, on 30th January, 2023 he instituted a Civil Suit bearing No. RCS 58/2023 before the Civil Court at Belapur, against the officer of Respondent No.2-The Controller of Unauthorised Construction (U) CIDCO Ltd and his superior - Respondent No.4-Assistant Commissioner Navi Mumbai Municipal Corporation (“NMMC”) seeking to quash the Notice dated 18th July, 2022. Later, on 15th February 2023 the Civil Court at Belapur directed the parties to maintain status quo as regards property in issue.

5) Pending the disposal of the Suit, on 3rd March 2023 the Petitioner received another notice regarding the property from Respondent No.2. The Petitioner contends that, despite the status quo Order the Respondent No.2 proceeded to demolish the house of the Petitioner on 27th December 2023 under the pretense of implementing the directions of the High Court in PIL No.138 of 2012. Since the entire house was not demolished and substantial

portion remained, the Petitioner amended his suit to impugn the notice dated 3rd March 2023. On 4th July 2024 the Suit was unconditionally withdrawn.

6) On 18th May 2024 the Petitioner instituted another Civil Suit bearing No. RCS 152 / 2024 before Civil Court at Belapur, against Respondent Nos.2 and 4 seeking a declaration of title to the land and of his residential premise. On 18th May 2024 itself an ad-interim order was passed by the Civil Court directing to maintain status quo regarding the property in issue. On 21st November 2024, the Respondent No.2 moved an application and sought time to file a written statement.

7) On 10th December 2024, the status quo order was extended upto 9th January 2025. The Petitioner's contention is that despite the aforesaid order on 18th December 2024 the Respondent No.2 demolished the entire property.

8) Mr. Thatte representing the Petitioner argues that, the Respondent Nos.2 and 3 officers have disobeyed the Civil Court's order and proceeded to demolish the Petitioner's residential structure. It is in these circumstances that the prayers in the Petition including directing the Respondent No.2 to restore the possession and the structure are sought.

8.1) He argues that unless personal accountability is foisted onto the officers responsible for the illegal demolition, it would be an

affront to the fundamental rights of the Petitioner. He asserts that relegating the Petitioner to Civil Court would not be an efficacious remedy.

8.2) The learned counsel asserts that the demolition was *ex facie* illegal and thus the Respondent No.3 was personally liable for the loss caused to the Petitioner. In support of his contentions, he refers to the judgment of the Hon'ble Supreme Court reported in *2024 SCC OnLine SC 3291*. Particularly to paragraphs 90 and 91 of the Judgment in support of his contentions.

9) We have heard the arguments of Mr. Thatte and perused the entire record.

10) In our view, a citizen who seeks a right under the Constitution is obliged to perform his duties as a citizen. In the garb of being an illiterate the Petitioner has sought to blatantly violate the law. The Petitioner in the garb of being an illiterate seeks support of the judgment of the Apex Court in Civil Writ Petition No.295 of 2022 in Re : Directions in the matter of demolition of structures reported in *2024 SCC OnLine SC 3291*.

11) In our view the Apex Court neither intended to nor permitted a citizen to construct illegally. They did not depart from the dictum "illegality is incurable" held in the case of *Sri K. Ramadas Shenoy V/s. The Chief Officers, Town Municipal Council, Udipi And Others reported in (1974) 2 SCC 506*.

12) Apart from bald statements made in the Petition, the Petitioner has failed to annex any supporting documents to prove his ownership. If the Petitioner could file Civil Suits for injunction, he could well approach An architect. He chose not to. The Petitioner followed a widespread belief that, one can first construct and then regularize it, if any notice is issued by any competent authority.

13) We find that this belief is often true as we have seen the rise in slums and illegal constructions in the State of Maharashtra over a period of time and no action has been taken to raze them. It is this inaction by the state authorities that fuels the desires of the persons like Petitioners.

14) In the case of *High Court on its Own Motion V/s. The State of Maharashtra reported in 2024 SCC OnLine Bom 918*, this Court has dealt with a similar argument and emphatically rejected it. In a recent judgment in the case of *Rajendra Kumar Barjatya and Another V/s. U.P. Avas Evam Vikas Parishad & Ors. reported in 2024 SCC OnLine SC 3767*, the Supreme Court has reiterated the view and the settled law that illegality cannot be cured.

15) In view of the settled law and the admitted fact that the Petitioner neither has proved the ownership of the land nor has proved the existence of the structure being 50 years old cannot claim any equities and expect the Court to believe his statements. A Petitioner cannot simply seek defense on the ground of illiteracy to

perform illegal acts. If these Petitions are entertained there would be utter lawlessness. We are bound by the law enumerated by the Apex Court and we concur with the observations of the co-ordinate bench and dismiss the Petition.

16) We find that despite settled law, such Petitions are filed only with a view to take a chance and obtain interim reliefs by misguiding the Courts in some manner or form. To deter this class of Petitioners, we were inclined to impose exemplary costs of Rs.5 lakhs on the Petitioner and dismiss the Petition. However, at the sincere request of the learned Advocate for the Petitioner, we refrain ourselves from doing it.

(KAMAL KHATA, J)

(A. S. GADKARI, J.)