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

WRIT PETITION NO.3448 OF 2023

- | | | | |
|----|--|---|-----------------|
| 1. | Siesta Industrial & Trading Corporation, |] | |
| | a partnership firm Through its partner, |] | |
| | Mr. Rakesh Shetty Having office at |] | |
| | Kartar Singh Compound, |] | |
| | Guru Nanak Nagar, Ghatkopar (West), |] | |
| | Mumbai – 400086. |] | |
| 2. | M/s JAJ Creations Impex Pvt. Ltd. |] | |
| | A company incorporated under |] | |
| | Companies Act, 1956 having its |] | |
| | Office at Gala No.5, Bharat Coal |] | |
| | Compound, Plot No.60, Survey |] | |
| | No.36, Hiss No.16 & C.T.S. No.66(Part), |] | |
| | Kurla (West), Mumbai – 400 070. |] | |
| 3. | Paresh P. Parekh, |] | |
| | Adult, Indian Inhabitant of Mumbai, |] | |
| | Having his address at Gala No.3, |] | |
| | Bharat Coal Compound, Plot No.60, |] | |
| | Survey No.36, Hiss No.16 & |] | |
| | C.T.S. No.66 (Part), |] | |
| | Kurla (West), Mumbai – 400 070. |] | ... Petitioners |

V/s.

- | | | | |
|----|--|---|-----------------|
| 1. | The Municipal Corporation of |] | |
| | Greater Mumbai, a Body Corporate |] | |
| | Incorporated in accordance with |] | |
| | the provisions of M.M.C. Act, 1888 |] | |
| | having its head office at Mahapalika Bhavan, |] | |
| | Mahapalika Marg, C.S.T., Mumbai – 400 001. |] | |
| 2. | The Designated Municipal Officer, |] | |
| | S.G. Barve Marg, Ambedkar Nagar, |] | |
| | L Ward, Kurla (West) – 400 070. |] | ... Respondents |

**WITH
INTERIM APPLICATION (L) NO.5806 OF 2026
IN
WRIT PETITION NO.3448 OF 2023**

- | | | | |
|----|--|---------------------------------|----------------|
| 1. | Municipal Corporation of Greater
Mumbai, A Body Incorporate,
incorporated in accordance with the
provisions of the MMC Act, 1888
having its head office at Mahapalika
Bhavan, Mahapalika Marg,
CTS, Mumbai 400001. |]
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] | |
| 2. | The Designated Municipal Officer,
L Ward, Kurla (West) 400 070 |]
] | ... Applicants |

In the matter between:

- | | | | |
|----|---|----------------------------|-----------------|
| 1. | Siesta Industrial & Trading Corporation,
A partnership firm through its partner,
Mr. Rakesh Shetty, Having office at
Kartar Singh Compound, Guru Nanak
Nagar, Ghatkopar (West), Mumabi 400 086. |]
]
]
]
] | |
| 2. | M/s. Jaj Creations Impex Pvt. Ltd.
A company incorporated under Companies
Act, 1956 having its Office at Gala No.5,
Bharat Coal Compound, Plot No.60, Survey
No.36 Hissa No.16 & CTS No.66 (part),
Kurla (West), Mumbai 400 070. |]
]
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]
]
] | |
| 3. | Paresh P. Parekh
Adult, Indian inhabitant of Mumbai, having
address at Gala No.3, Bharat Coal
Compound, Plot No.60, Survey No.36,
Hissa No.16 & CTS No.66 (part),
Kurla (West), Mumbai – 400 070. |]
]
]
]
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] | ... Petitioners |

V/s.

- | | | |
|----|--|--------|
| 1. | The Municipal Corporation of Greater
Mumbai, A Body Incorporate, incorporated |]
] |
|----|--|--------|

in accordance with the provisions of the]
 MMC Act, 1888 having its head office at]
 Mahapalika Bhavan, Mahapalika Marg,]
 CST, Mumbai 400001.]

2. The Designated Municipal Officer,]
 L Ward, Kurla (West) 400070] ... Respondents

Mr. S. U. Kamdar, Senior Advocate a/w. Mr. Chirag Kamdar, Ms. Sakshi Agarwal, Mr. Nilesh Jadhav i/by Mr. Bipin Joshi, for the Petitioners.

Mr. Shailesh Shah, Senior Advocate a/w. Mr. Joel Carlos, Ms. S.V. Tondwalkar i/by Ms. Komal Punjabi for the Respondent-BMC.

**CORAM : A. S. GADKARI AND
 KAMAL KHATA, JJ.**

RESERVED ON : 17th April, 2026.

PRONOUNCED ON : 29th April, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By this Writ Petition under article 226 of the Constitution of India, the Petitioners seek to quash and set aside seven impugned Notices dated 22nd December, 2022, as well as seven Speaking Orders dated 10th March, 2023, with respect to property situated at Bharat Coal Compound, Bail Bazar, Kurla West, Mumbai – 400070.

Brief facts.

2) The Petitioner No.1 is carrying on business in partnership from Bharat Coal Compound on land bearing Survey No.36, Hissa No.15, Old C.T.S. No.66 (Part) corresponding to new C.T.S. No.704 admeasuring 1340.70 square meters, bearing Survey No.36, Hissa No.16, C.T.S. No.66

(Part) admeasuring 432.33 square meters, aggregating to 1773.12 square meters, together with industrial shed admeasuring 13061 square feet on the ground floor of the building. The industrial shed originally consisted of 6 industrial galas which has been assessed to Municipal taxes prior to 1962. The Petitioners assert that, their premises constitute a tolerated structure existing prior to the datum line of 1st April 1962, for non-residential structures, as supported by Tikka Sheets and Brihanmumbai Municipal Corporation ('BMC') assessment records.

3) Mr. S.U. Kamdar, learned senior counsel for the Petitioners argues that, the assessment records bearing No.L3345(3) revealed that said Gala was assessed to Municipal taxes prior to 1962. He submitted that, the Petitioners have various documents to show their lawful use and occupation and possession.

3.1) He submits that, the impugned Notices are issued at the behest of interested parties who were bound to convey the property to the Petitioners. He principally relies upon the decision of the Supreme Court in the case of *UMC Technologies Private Limited vs. Food Corporation of India & Anr.* reported in (2021) 2 SCC 551 to contend that, the impugned Notices should be adequate and set out the grounds necessitating action and the penalty/action proposed, should be mentioned specifically and unambiguously. An Order travelling beyond the bounds of Notice is impermissible and without jurisdiction to that extent. It is essential for the

Notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard. Relying on this Judgment, he submitted that, the speaking Order was beyond the scope and purview of the Show Cause Notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act').

3.2) He invited our attention to the various documents annexed to the Petition in support of his contention. He particularly relied upon a communication dated 19th January, 1993, to submit that, the said document was addressed by the Assistant Assessor and Collector of the BMC to the partner of the Petitioner No.1 which categorically stated that, the property bearing No.L3345(3) has been assessed to Municipal taxes since 1st April, 1962. He also invited our attention to the Assessment bill dated 29th December 2012 and particularly to the date 1st April, 1962 in the row immediately after the address of the Petitioner with a description first Assessment date being 1st April, 1962.

3.3) He also drew our attention to the communication addressed by the BMC dated 26th October, 1993 granting them repair permission to the said structure, whereby the Petitioner was permitted to construct the mezzanine floor. He further heavily relied upon the IOD granted by the BMC to another structure in the said compound which was dated 17th

February, 1971. Relying upon the calculations made therein he submitted that, the fact that the area of the Petitioners' plot was reduced to determine the FSI and constructed area available to them would indicate that, their structure existed prior to the datum line. He accordingly submitted that, the Petitioners would be gravely prejudiced if the prayers in the Petition were declined.

4) *Per contra*, Mr. Shailesh Shah, learned senior counsel appearing for Respondents-Corporation relied upon the Affidavit of Mr. Sanjay Mallinath Dudhbhate dated 24th July, 2023. He submitted that, the Tikka Sheets, relied upon by the Petitioners, clearly reveal that, there were no structures on the said plot of land prior to the datum line.

4.1) He submitted that, the Petitioners heavily relied upon a layout plan of the entire plot in support of their contentions. The said layout plan itself showed structures thereon marked in hatched lines and the empty plots with dotted line boundaries. The Petitioners' plot was clearly an empty plot with dotted line boundary. Therefore, the claim of the Petitioner that structure existed prior to datum line was baseless and unfounded. Moreover, the City Survey Department had prepared MR plan which showed the notice structure in a red hatch which indicated structures erected at a later point in time than the datum line. In that view of the matter, he submitted that, the Petition deserves to be rejected.

Analysis and Conclusion:

5) This is yet another case which highlights the two classes of citizens which approach the Court. First, those who scrupulously follow the law and second, those who blatantly violate it and thereafter raise spacious pleas to justify their actions. The present case pertains to the later category.

6) Upon carefully examining the documents on record, we posed a query to Mr. Kamdar as to whether he had any documents other than the Tikka Sheet and assessment bill, that would prove the existence of a structure prior to the datum line. He promptly submitted that there were several other supporting documents to suggest and prove the existence of the Petitioners' structure prior to the datum line. According to us, there were no other documents on record to clearly prove that a structure existed on the plot prior to the datum line, leave aside the exact constructed area.

7) A bare perusal of the notices indicates that, the entire structure viz. the shed comprising of ground and mezzanine is illegal. The impugned orders elaborately state as to why the structures are held to be illegal and deserve to be demolished.

8) A careful perusal of the impugned orders clearly indicates that, they are well reasoned and have duly considered the documents as well as the contentions of the Petitioners. The impugned orders are certainly not lacking reasons or perverse.

9) In our view, an unauthorized structure cannot be tolerated or protected and is liable to be demolished. It is settled law that, illegality is incurable.

10) The Apex Court in its Judgment in the case of *Shanti Sports Club vs. Union of India* reported in (2009) 15 SCC 705, has observed that over the last four decades, almost all cities, big or small, have seen unplanned growth. The menace of illegal and unauthorized constructions and encroachments have acquired monstrous proportions and everyone has been paying a heavy price for the same. The Courts have consistently upheld the principle that, unauthorized constructions and illegal structures must be removed, irrespective of the identity of the occupants. In a recent decision, the Hon'ble Supreme Court in the case of *Rajendra Kumar Barjatya vs. U.P. Avas Evam Vikas Parsihad & Ors.* reported in 2024 SCC OnLine SC 3767, reiterated the dictum "illegality is incurable", in paragraph No.20, has held as under :-

"20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would

amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory

obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc."

10.1) The Hon'ble Supreme Court in case of *Kaniz Ahmed Vs. Sabuddin and Ors.*, reported in *2025 SCC OnLine SC 995*, in paragraph No.7 has held as under:

*"7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: *Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)*]"*

11) In our view, the Tikka Sheet relied upon by the Petitioners does not support them, but on the contrary, supports the case of the BMC - that

no structure existed prior to the datum line. The Petitioners have no explanation as to why their plot did not indicate any structure with hatched lines and only showed the plot boundary that with dotted lines to indicate their plot. None of the other documents relied upon by the Petitioners show the dimensions of the structure prior to the datum line.

12) In view of the above, we are unable to accept the contention of Mr. Kamdar that production of an assessment invoice or receipt, by itself, would mean that both land and building were assessed. The assessment sheet produced does not record that land and building were assessed.

13) The reliance placed by Mr. Kamdar on the IOD issued to the adjacent plot owner particularly the calculations shown therein for evaluating the FSI available to the owners of that plot cannot be a proof of existence of a structure on the said plot. It may well be a calculation based on the entitlement to build on the said plot. The contention that the area shown in the calculation would conclusively prove the existence of a structure is an unacceptable proposition.

14) In our view, the contents of IOD granted for an adjoining plot, by itself does not prove the existence of a structure on the Petitioners plot. The submission of Mr. Kamdar is only a presumption and not based on any direct evidence of existence of the said structure. The Petitioners have failed to produce any document that would show that a structure admeasuring a certain area existed on the plot prior to the datum line.

15) The communication addressed by the BMC on 19th January, 1993, relied upon by the Petitioners, is a document issued by the Assistant Assessor and Collector on 15th January, 1993. It categorically records that the Municipal taxes levied on the property was without reference to the details of the property under reference. This would indicate that, the said document by itself is not conclusive evidence that the property was assessed for land alone or alongwith the structure.

16) In our view, the repair permissions granted by the BMC, would not by itself, conclusively prove that a structure existed prior to the datum line. Any permission/s granted by the BMC either for alteration or modification a structure, though it may carry a presumption regarding the existence of such structure, cannot conclusively establish that the structure existed prior to the datum line unless the same is independently substantiated by supporting documents. In our view, such a permission granted would only show the abysmal state of BMC affairs. The BMC could not have granted any such permission without ascertaining the legality of the said structure.

17) In our considered view, the concerned Officers who gave such permissions are responsible and the cause of these rampant illegalities in the State. It is imperative for the Officers of the BMC to check as to whether the structure is authorized before granting any such repair permission. The failure per se cannot inure to the benefit of the wrongdoer. A permission to

repair a structure, given subsequent to the datum line, cannot prove either its existence prior to datum line or it being authorised. In our view, granting reliefs to the Petitioners would only encourage the public perception that one can construct illegally and regularise the same by obtaining such permissions subsequently. It would render the entire object of the legislature to have a planned development and having the Municipal Act nugatory and otiose resulting in illegalities being confirmed and ratified by subsequent repair permissions.

18) In view of the above, the Petition is dismissed.

19) In view of disposal of the Writ Petition, the Interim Application (L) No.5806 of 2026 does not survive and is also disposed off.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

20) At this stage, learned counsel for the Petitioners submitted that, there is an ad-interim relief in favour of the Petitioners since 19th April, 2023, and it may be extended for a period of four weeks from today to enable the Petitioners to test correctness of this Judgment before the Hon'ble Supreme Court.

21) Mr. Shah, learned counsel for the BMC opposed the said request.

22) In view of the facts mentioned hereinabove and after recording the evidence that, the suit structure is palpably illegal, we are not inclined to entertain such a request. The said request is accordingly rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)