

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****SUO MOTU PUBLIC INTEREST LITIGATION NO.1 OF 2020**

**High Court on its own motion  
(In the matter of Jilani Building  
at Bhiwandi)**

... **Petitioner**

**Versus**

**Bhiwandi Nizampur Municipal  
Corporation & Ors.**

... **Respondents**

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Surve, Advocate – Amicus Curiae with Mr. Mutahhar Khan, Mr. Priyank Kapadia, Ms. Shradhha Achliya and Mr. Siddharth Joshi Advocates.

Mr. Aspi Chinoy-Senior Advocate with Mr. A.Y. Sakhare-Senior Advocate Mr. Joel Carlos, Mr. Om Suryavanshi, Mr. Rohan Mirpury, Ms. Trupti Puranik and Mr. Santosh Parad i/b. Aruna Savla for the Municipal Corporation.

Mr. R. S. Apte, Senior Advocate a/w Mr. N. S. Bobade i/by Mr. M.J. Bhatt for respondent No.1-BNMC.

Mr. R. S. Apte, Senior Advocate i/by Mr. Mandar Limaye for respondent No.5/TMC.

Ms. Swati Sagvekar for respondent no.6 VVCMC.

Mr. Vijay D. Patil for respondent NO. 4 – UMC.

Mr. A. A. Kumbhakoni-Advocate General with Mr. P. P. Kakade-Government Pleader, Mr. B.V. Samant-AGP, Ms. G.R. Golatkar, AAGP and Mr. Manoj Badgujar for State.

Mr. Sandip Marne for respondent No.8.

Mr. Nitin V. Gangal a/w Mr. Ashok D. Kadam and Ms. Prerana Shukla for respondent No.12-CIDCO.

Ms. Kavita N. Salunke a/w Mr. Mayank Mishra and Mallika Pujari for Respondent No.13 – MMRDA.

Mr. P. G. Lad for respondent-MHADA.

Mr. Sanjog Kabre-Dy. Municipal Commissioner, Mr. Kundan Valvi-Designated Officer (P/N) and Mr. Deepak Sharma-Asstt. Engineer (P/N) present.

**CORAM :      DIPANKAR DATTA, CJ &  
                         G. S. KULKARNI, J.**

**DATE :      FEBRUARY 26, 2022**

**JUDGMENT : (Per G.S.KULKARNI, J.)****PRELUDE**

1. Alarmed and deeply pained by incidents of collapse of buildings resulting in loss of lives, we had initiated this *suo motu* PIL on September 24, 2020. The incident then was a collapse of a building known as "Jilani Building" at Bhiwandi, taking away 38 lives. Added to this incident, was an incident of collapse of another structure on 9 June, 2021, this time being a slum structure situated at "Malwani Slums" in which 12 persons lost their lives. The situation is such that different categories of structures, either private or in slums, old or comparatively recent, are vulnerable to a collapse posing constant threat to the lives of innocent people. The past incidents have shown a spree of human lives being lost which has continued unabated. Being confronted with such collapse, by our order dated June 11, 2021 we appointed a commission headed by Justice Mr J.P. Devdhar (Retd.) to make a report on the questions as set out in our order, to be submitted to this court. We ponder as to how long this unending cycle of sustaining buildings in ruinous state, uncontrolled illegal and unauthorized constructions, and amongst them the ghost of countless number of dilapidated buildings, would haunt innocent people. The deeper we dive into these issues, the scene gets murkier.

2. What possessed us was a poignant hope and optimism that things would improve and drastic steps would be taken by the concerned authorities to prevent building collapses. In the deepest of our hearts, we were concerned for the human lives being lost in these building collapses. We believed, with certainty, that the strong arms of law were required to be used firmly, not only to punish the disorderly, but also, to save the lives of those who become victims of unscrupulous elements in the society, who indulge in illegal constructions at the cost of human



lives. When we say so, we are not only referring about those persons who undertake unauthorized constructions, but also about those public authorities who knowingly shut their eyes to their official duties and bring about a situation, where innocent people lose their lives, due to brazen dereliction in discharge of their public duties and/or by their contemptuous inactions.

3. We are informed by the Corporation that a vast portion of the scarce land in the city is under slums, which includes all kinds of lands, namely, the State Government lands, land belonging to public bodies as also to a small extent, private lands. The percentage of population in Mumbai and outskirts is also too large. We wonder, that when slums are openly allowed to proliferate on scarce and valuable public land, whether the well established principles under the “rule of law” at all prevails in relation to the rules, to transfer ownership of such lands from the “State” to the private parties. Something which possibly does not happen elsewhere in the country, is what has pained us, namely, that sustained encroachment on valuable government land in this city is encouraged to the benefit of encroachers and developers and becomes available for commercial exploitation. It cannot be expected, that on executive instructions and subordinate legislation, the State’s ownership of land stands divested. The severity is such that when this land is being taken away by these forces, the owner of the land, namely, the Government or a public body and sometimes the private owner (if fails to assert his rights), has no say whatsoever. It becomes a situation of *fait accompli*. Is this the manner in which the law would require scarce public largesse or private land to be siphoned off, merely because it has the garb of a slum? Whether or not the doctrine of public trust applies when the government land is taken away in a manner not known to the Constitution? Whether the might of the unscrupulous forces is so strong

buildings/constructions is undertaken. Our directions would also pertain to actions to be taken against officers who are negligent in their duties and by whose inaction and illegal conduct not only human lives are lost, but also large government lands and large public lands vanish from the government's treasure.

101. It is with the above parting words, we close the present proceedings by the following orders:

### **ORDERS**

i) We accept the report of the learned Commissioner on the questions as framed by us in terms of the findings as recorded by the learned Commissioner qua each of such questions.

ii) In particular we accept the following findings of the learned Commissioner in regard to question no. (h) and direct the Principal Secretary to initiate action against the Municipal and State Government officials and Employees in the manner as directed in the subsequent part of this order:-

"MCGM being the local authority for Greater Mumbai, which includes Malwani Village, Officials of the MCGM viz. Junior Engineer and Building Mukadam attached to the Office of the Designated Officer of MCGM for Malwani Village were responsible to maintain vigil and supervision in respect of unauthorized developments at Malwani Village. Similarly, since the said unauthorized construction was on the State Government land, Officials from the Office of the Additional Collector (ENC), Malad 2 viz. the Surveyor in the Office of the Deputy Collector (ENC / Removal), Malad 2 was



responsible to maintain vigil and supervision in respect of unauthorized developments on Government land at Malwani Village.”

iii) The planning authorities through its Competent Officers shall keep informed the Urban Development Department of the Government of Maharashtra on the numbers of illegal constructions in the respective municipal and jurisdictional areas and the action being taken in regard to such illegal constructions, which shall be notified on the website of the planning authority.

iv) The names and designations of the officers/Municipal Officers and employees in charge of the respective municipal and jurisdictional areas, reposed with the authority to initiate action in regard to the illegal, unauthorized and ruinous structures, shall be notified by the planning authorities/Municipal Corporations ward-wise on its official websites, so that accountability can be attributed and fixed in deciding complaints which may be filed by the aggrieved persons.

v) Municipal Commissioner and/or the competent authority of a designated planning authority, is directed to take a review of the illegal buildings/structures in every ward and actions taken thereon, periodically between the 25<sup>th</sup> to 30<sup>th</sup> day of every month.

vi) Except for an acceptable and lawful reason, if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than six months, the Municipal Commissioner shall take penal action against such erring municipal officers including lodging of prosecution under the Municipal laws, in addition

to the relevant provisions of the Indian Penal Code, apart from initiating disciplinary proceedings.

vii) In so far as the notified slum areas are concerned, in respect of all illegal and unauthorized constructions, in accordance with the provisions of Section 3Z-2 (7) of the Slums Act, the State Government is directed to lodge prosecution including against the competent authority and the other officers of the SRA for having aided or abetted the construction of unauthorized or illegal structures and also against the persons responsible for putting up these structures. In the event there is a collapse of a structure/building in the slum area, the direction in (vi) above shall be applicable against the competent authority and other officers who are in-charge of supervising and taking actions on illegal constructions in slum areas.

viii) In the event of a building collapse resulting in loss of lives, the Principal Secretary (UDD) and/or the Municipal Commissioner, as the case may be, shall immediately conduct an enquiry to be completed within a period of fifteen days from such collapse, so to determine the responsibility of the concerned Municipal and Government Officials failing to discharge their duties, and after so ascertaining, institute criminal proceedings against the concerned officers and employees in-charge of the Ward and those who were responsible to take action on the dilapidated buildings, as also against the higher officials under whom such ward officer/designated officer would immediately work. Such criminal prosecution not only shall be under the provisions of the municipal laws but also under the relevant provisions of the Indian Penal Code.



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- ix) The persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law. This apart those who are victims of a building collapse, in the absence of any fault on their part, would also be entitled to seek reliefs in appropriate civil and criminal proceedings against the owners of the building and the municipal officers, notwithstanding their right in law to claim compensation from such parties.
- x) The concerned Municipal Commissioners are directed to give effect to the provisions of Section 152A of the MMC Act and Section 267A of the Maharashtra Municipal Corporations Act to levy penalty which shall be equal to twice the property taxes leviable on such building, so long as it remains unlawful and recover such amounts as arrears of property taxes.
- xi) The Permanent Standing Committee (Encroachment Prevention Committee) as constituted under the Government Resolution dated 15<sup>th</sup> December 2004, shall forthwith be made functional by the State Government so as to commence its functioning with effect 15<sup>th</sup> March 2022. Such committee shall hold periodical sittings twice every month so as to take account of the actions on illegal structures in Mumbai. Such Committee shall also be constituted in respect of other cities in Maharashtra and it shall hold sittings accordingly.



- xii) In so far as the State Government's land and/or other public lands in respect of which, till date no slums schemes are approved by the Slum Rehabilitation Authority, such lands shall not be redeveloped under slum redevelopment schemes, unless the State Government or the concerned public authority gives a 'no objection', to be published, in at least two local newspapers, that in future it does not require such public lands for any of its purposes, or for the public purposes of any other public bodies under the State or the Central Government. Unless, such no objection is received from the State Government or the Central Government or any other public body, the development of any slum scheme or private utilization of such land shall stand freezed.
- xiii) The State Government and the public bodies shall take appropriate steps as permissible in law, to remove the encroachments of the public lands as described in (xii) above, so that land is made encroachment free, to be utilized for public purpose.
- xiv) In the event the encroached lands are required by the State Government or by any public body, steps be taken to remove the encroachment and make the land encroachment-free within one year, by rehabilitating the slum dwellers of such lands, if they are protected occupiers. Such eligible slum dwellers be rehabilitated in any other part of the city or in the municipal jurisdiction of the adjoining municipal corporation as the State Government may decide.

**NEED FOR MASS PUBLIC HOUSING :**

102. On our way towards conclusion, we may note that a chaotic state of affairs of mushrooming of slums and unauthorized and illegal constructions in every possible pocket of open land could have been avoided, provided there was a desire to have a proper vision and an