2000 (12) LJSOFT 83

IN THE HIGH COURT OF BOMBAY

WRIT PETITION NO.4675 OF 1999

31-7-2000

(A.P. SHAH, V.C. DAGA, JJ.)

Subhash Krishna Kanitkar

Vs.

Bhiwandi Nizampura Municipal Council & Ors.

Appearances :

Shri Abhay S. Oka, for Petitioner.

Shri R.M. Agarwal, for Respondent Nos.1 and 2.

Shri V.P. Malvankar, A.G.P., for Respondent No.3.

Shri R.V. More, for Respondent Nos. 4 to 6.

Constitution of India, 1950 \_ Articles 19(1)(a), 21, 226 \_ Right to know or Right to Information \_ Public documents \_ Inspection of \_ Maharashtra Regional and Town Planning Act, 1966 \_ Unauthorised construction \_ Demolition.

1) Petitioner contended that respondent Nos.4 to 6 obtained repair permission but started work on a completely new construction and the building consisting of ground and six upper floors has been constructed \_ Petitioner complained to the Municipal Council and sought extracts of the assessment register \_ Respondent No.2 refused to provide the extracts of assessment register on the ground that property in question does not stand in the name of the petitioner \_ Right to live as emphasised under Art. 21 of the Constitution of India includes the right to know or right to information \_ If a citizen is prepared to pay requisite fee and if he is asking for requisite copies of public documents, he is entitled to the inspection of such documents \_ Municipal Council was not right in declining the petitioner's request for certified copies of the documents.

2) Bhiwandi Municipal Council passed the resolution to regularise all the unauthorised constructions by imposing penalty and compounding offences under Sec. 43 of M.R.T.P. Act, 1966 \_ Not sanctioned by the State Government \_ Not permissible for the Municipal Council to propose regularisation of all the unauthorised constructions defeating the very purpose of introducing the rules for planned development of the city.

Held : a) "The Supreme Court has thus widely discussed the meaning and scope of right to live as emphasised under Art. 21 of the Constitution of India so as to include the right to know or right to information. Indeed, if the democracy has to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State or local bodies like Municipal Corporation, Municipal Councils etc. Right to know is also implicit in the right to free expression and speech guaranteed by Art. 19(1)(a) as held in S.P.Gupta's case (supra)." (Para 13).

b) " In the present case, the petitioner is a practicing Advocate having standing of more than 15 years. He is also associated with charitable and social organisations. It is nobody's case that the petitioner is acting malafide. On the other hand, the petitioner is doing a public duty of bringing to the notice of the Council illegal and unauthorised constructions coming up in Bhiwandi town. In these circumstances, the Municipal Council was not right in declining the petitioner's request for certified copies of the documents." (Para 13).

c) "It is averred by respondent Nos. 4 to 6 in the plaint that the structure. has been assessed for payment of taxes and, therefore, the Municipal Council is estopped from demolishing the structure. We fail to appreciate as to how mere recovery of taxes in respect of the unauthorised construction would amount to regularisation of such structure." (Para 16).

d) "This Court in numerous cases has held that no sympathy should be shown to the builder or any other persons whose construction is unauthorised. Unauthorised construction, if it is illegal, and cannot be compounded has to be demolished. We are of the view that tendency of unauthorised construction and unauthorised encroachments is increasing day by day in the recent times and such activities are required to be dealt with firm hands." (Para 18).

e) "In the instant case, the building of ground plus six upper floors has been constructed by respondent Nos. 4 to 6 in utter violation of the building rules. Such constructions should not be allowed to be regularised. In a given case the Municipal Council may consider regularisation of an unauthorised construction if it is permissible to do so, within the parameters of the relevant rules, and regulations. However, it is not permissible for the Municipal Council to propose regularisation of all the unauthorised constructions in the city by throwing all the norms to the wind. Such a course of action would defeat the very purpose of introducing the rules for planned development of the city. Violation of rules has to be dealt with sternly and such constructions should be demolished, if noticed by the local authorities." (Para 18).

Result : Accordingly.

Case Law Referred :

1. Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and others AIR 1989 Supreme Court 190 (Para 8).

2. Bombay Environmental Action Group and others v. Pune Cantonment Board Writ Petition No. 2733 of 1986, decided on 7.10.1986 (Para 8).

3. S.P. Gupta and others v. President of India and others AIR 1982 SC 149 (Para 8).

4. State of Uttar Pradesh v. Raj Narayan AIR 1975 SC 865 (Para 9).

P.C.

Heard the learned Counsel appearing for the parties. Respondents waive service. By consent, petition is taken up for hearing.

2. By this petition under Art. 226 of the Constitution, the petitioner is seeking appropriate directions to the first and second respondents to demolish the building consisting of ground and six upper floors constructed by respondent Nos.4 to 6 on the land bearing City Survey No. 3331 and House Property No. 358 and 358/1 at Kasar Alley, Bhiwandi, District Thane. The petitioner is also seeking a direction to the first and second respondents to furnish the certified copies of extracts of assessment register/book and permission dated 5th May, 1995 granted to respondent Nos. 4 to 6 in respect of the aforesaid property.

3. The petitioner is an Advocate practicing in the Courts at Bhiwandi as well as District Court at Thane for the last 15 years. He says that he is also associated with various social activities and is presently acting as the chief trustee of Ganpati Devasthan, Bhiwandi. The petitioner has alleged that during the last few years, illegal constructions had started coming up in the town of Bhiwandi on private as well as Government lands. The petitioner, therefore, repeatedly approached the Municipal Council for obtaining the certified copies of the building permissions/ commencement certificates etc. but the request of the petitioner was turned down. The petitioner contends that he has been making complaints to the respondent Nos. 1 and 2 about various illegal constructions carried out in the city of Bhiwandi. Over the span of last 3 years, the petitioner has raised the issue of illegal constructions with the Municipal Council by filing complaints time and again and copies of those complaints are attached to the petition.

4. The present petition is filed by the petitioner in respect of the above mentioned unauthorised building consisting of ground plus 6 upper floors constructed by respondent Nos. 4 to 6. The case of the petitioner is that originally there was only a single storeyed structure on the said property. Respondent Nos.4 to 6, however, managed to obtain the

repair permission from respondent Nos.1 and 2 for the purpose of carrying out repairs work to the ground floor and two upper floors although the said two upper floors were never in existence. The repair permission is stated to have been issued on 5th May, 1995. As per the said repair permission, the work of repair ought to have been started within a period of one year from the date thereof. According to the petitioner in 1998, respondent Nos.4 to 6 started the work of completely new construction in violation of the repair permission and constructed a building of ground plus 6 upper floors. The petitioner complained to the Municipal Council against the said unauthorised construction vide representation dated 21st July, 1998 and sought extracts of the assessment register for the purpose of establishing the nature of the original structure in the said property. The petitioner was, however, informed by respondent No.2 that since the property in question does not stand in the name of the petitioner, extracts of assessment register cannot be granted to him. The petitioner states that respondent Nos. 1 and 2 had issued the notice under sec. 189(8) of the Maharashtra Municipalities Act in respect of the said illegal construction and a complaint under sections 52 and 53 of M.R. & T. P. Act, 1966 was also lodged. However, no steps are taken for demolition of the said building though the entire building has been constructed unauthorisedly without obtaining the prior permission from the Municipal Council. The petitioner has alleged that the officials of the respondent No.1 Council are colluding with the respondent Nos. 4 to 6 who have carried the said illegal construction. The illegal construction of respondent Nos. 4 to 6 had come up solely due to negligence and default on the part of the respondent Nos. 1 and 2 to take necessary action in time. There is no F.S.I. available on the plot to construct such a huge building. The construction made by respondent Nos. 4 to 6 is thus completely unauthorised and is liable to be demolished.

5. The petitioner has contended that a citizen has a right to get the certified copies of the building plans, commencement certificate and other relevant records of the Municipal Council and the Municipal Council is duty bound to give inspection and supply copies of such documents. The petitioner is also entitled to certified copy of the repairs permission granted by respondent Nos.1 and 2 to respondent Nos.4 to 6. These documents are not at all of confidential nature. As a matter of fact it gives a complete transparency to the functioning of the Municipal Council and such documents should be readily made available to public at large on payment of copying charges. The petitioner has therefore, sought a direction against respondent Nos. 1 and 2 to make available the certified copies of the relevant record in respect of the construction made by respondent Nos. 4 to 6.

6. On behalf of respondent Nos.1 and 2, affidavit in reply has been filed by the Chief Officer of the Council in whereby it is inter alia contended that an F.I.R. has been lodged on 4th June, 1999 with Bhiwandi Police Station in respect of the offence alleged to have been committed by respondent Nos. 4 to 6 under Sec. 43 read with 52 of M.R. & T.P. Act, 1966 and under sections 119 and 217 read with Sec. 34 of I.P.C. wherein respondent Nos. 4 to 6 as well as various officers of the Municipality including the then Chief Surveyor and Chief Engineer have been named as accused. It is further contended that respondent Nos. 4 to 6 have filed Reg. Civil Suit No. 321 of 1999 in the Court of Civil Judge (J.D.) Bhiwandi and have obtained ad-interim order of status quo which has also been contested and detailed say has been filed. Then a reference is made to the resolution dated 12th October, 1998 passed by the Municipal Council whereby it has been resolved to regularise all the unauthorised constructions in the area of the Municipal Council by imposing penalty and compounding offences under Sec. 43 of M.R.T.P. Act, 1966. It is stated that there are about 100 to 150 such cases in Bhiwandi town and the said resolution of the Council recommending regularisation of the said illegal constructions has been forwarded for sanction to the State Government on 20th November, 1998. It is stated that the Municipal Council will take appropriate steps for demolition after the Civil Court vacates the interim order and in case the resolution of the Municipal Council is not approved by the State Government.

7. The State Government has filed the affidavit of Principal Secretary to the Urban Development Department. It is stated that as regards the unauthorised construction on CTS No. 3321, the Municipal Council has already initiated action by issuing notice to

respondent Nos. 4 to 6. However, the respondent Nos. 4 to 6 have filed the suit in Bhiwandi Court and Court has issued orders of status quo in the said suit. It is stated that act of making unauthorized construction has already been made a cognizable offence under M.R.& T.P. Act, 1966. Although the affidavit has not specifically dealt with the resolution passed by the Municipal Council dated 12th October, 1998 for regularisation or the unauthorised structures in the city, it can be safely gathered from the contents of the affidavit that the State Government is not inclined to sanction the aforesaid resolution passed by the Municipal Council and this position is reiterated by the learned A.G.P. before this Court during the course of his arguments. Respondent Nos. 4 to 6 have not cared to file affidavit although they were served.

8. We have heard Shri Oka for the petitioner, Shri R. M. Agarwal for respondent Nos. 1 and 2, Shri Malvankar, A.G.P. for respondent No. 3 and Shri More for respondent Nos. 4 to 6. The first question which falls for our consideration is of considerable importance that is whether it is incumbent upon the Municipal Council to disclose to the petitioner all these documents and to supply the certified copies thereof on payment of charges. Shri Oka, the learned Counsel appearing for the petitioner contended before us that under Article 19(1)(a) of the Constitution of India a citizen has a right to get such an information. Even under the relevant provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the Municipal Council cannot refuse to give inspection of these public documents or to furnish the certified copies thereof to the citizen . Shri Oka referred to an unreported decision of the Division Bench comprising of Dharmadhikari and Sugla JJ. in the case of Bombay Environmental Action Group and others v. Pune Cantonment Board Writ Petition No. 2733 of 1986, decided on 7.10.1986, Shri Oka submitted that right to know is also a part of fundamental right to life guaranteed under Article 21. He referred to the decision of the Supreme Court in the case of Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and others AIR 1989 Supreme Court 190. He also referred to the decision of the Supreme Court in S.P. Gupta and others v. President of India and others AIR 1982 SC 149. On the other hand, Shri Agarwal argued that the Municipal Council is not bound to give inspection or supply copies of any of the documents. There is no provision in the Act, Rules or By-laws which cast a duty upon the Municipal Council to give inspection of the documents much less supply copies of the same.

9. In support of his submissions, Shri Oka drew our attention to the observations of Mathew J. in State of Uttar Pradesh v. Raj Narayan AIR 1975 SC 865, which were cited with approval in S.P. Gupta's case and reads as follows:

"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary. when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover of with veil secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safe-guard against oppression and corruption."

10. Shri Oka has also drawn our attention to the observations of Bhagwati J. (as he then was) in S.P. Gupta's case which read as follows:

"This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information regard to the functioning of Government must be the rule and

secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret Sec. 123 of the Indian Evidence Act."

11. Earlier in para 63 at page 232 Justice Bhagwati justified the right to know and right to information on another constitution principle:

"Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creeded faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy."

The learned Judge at page 233 further observed:

"...If secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means of information available to the public; there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency."

12. It would also be useful to refer to the decision of the Supreme Court in the case of Reliance Petrochemicals Ltd. (supra), Justice Sabyasachi Mukharji (as he then was) speaking for the Bench held as under:

"People at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age of our land under Art. 21 of the Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform."

13. The Supreme Court has thus widely discussed the meaning and scope of right to live as emphasised under Art. 21 of the Constitution of India so as to include the right to know or right to information. Indeed, if the democracy has to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State or local bodies like Municipal Corporation, Municipal Councils etc. Right to know is also implicit in the right to free expression and speech guaranteed by Art. 19(1)(a) as held in S.P.Gupta's case (supra). Shri Agarwal was unable to show any provision in the Act or rules or bye laws which prohibit the issuance of certified copies of the building plan or commencement certificate etc. In these circumstances, we have no hesitation to hold that if a citizen is prepared to pay requisite fee and if he is asking for requisite copies of public documents, he is entitled to the inspection of such documents and also the certified copies thereof on payment of necessary charges. In the present case, the petitioner is a practicing Advocate having standing of more than 15 years. He is also associated with charitable and social organisations. It is nobody's case that the petitioner is acting malafide. On the other hand, the petitioner is doing a public duty of bringing to

the notice of the Council illegal and unauthorised constructions coming up in Bhiwandi town. In these circumstances, the Municipal Council was not right in declining the petitioner's request for certified copies of the documents.

14. In Bombay Environmental Action Group's case (supra) an argument was advanced by the Cantonment Board to the effect that if the request of the Action Group for inspection of document is granted, then it will practically amount to creating an extra legal authority to supervise and control the working of the Cantonment Board which is not permissible. The Division Bench expressly rejected this argument by the following observations:

"9. Further, as observed by the Supreme Court in Narendra v. Manikrao AIR 1977 SC 2171, Elections to the local bodies and vesting powers in the units of self Government are part of Directive Principles of State Policy (Art. 40 of the Constitution) and in a sense a homage to the Father of the Nation, standing as he did for participative democracy through decentralisation of Power. "Real democracy cannot be worked by men sitting at the top. It has to be worked from below by the people of every village and town. That sovereignty resides in and flows from the people. So said the Father of Nation in whose name we swear. Therefore, "who will watch the watchman is the vexed question before our democracy. For this people's participation at all levels is a must.

Further as observed by the Supreme Court in R.L. and E Kendra, Dehradun v. State of U.P. AIR 1985 SC 652, the question involving issues relating to environment and ecological balance, brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in larger interest of the people residing within the area and the country. Therefore, it cannot be said that action groups are trying to meddle in the affairs of Cantonment Board or are claiming any Extra-legal authority. On the other hand as observed by the Supreme Court in Neeraja Chaudhary case it is high time that the Cantonment Board should start taking their assistant instead of looking at them askance and distrusting them. The vested interests will undoubtedly be against such social action groups, However, their help might check sabotage of development plans by unscrupulous persons and corruption at all levels. It may be noted at this stage that the petitioners are only claiming a right of inspection of the documents referred to above and nothing more."

15. In the above case the Division Bench categorically held that the citizen would be entitled to inspection subject to convenience of both the Board and the citizen such time and place as may be fixed by the Board and payment of requisite fees. The decision rendered by the Division Bench was in respect of the Cantonment Board established under the Cantonment Boards Act. However, the principle underlying the said decision would be squarely applicable to all the local authorities including the Municipal Corporations, Municipal Councils, Gram-panchayats etc. The decision of the Division Bench in Bombay Environmental Action Group's case was confirmed by the Supreme Court by dismissing the S.L.P. The order passed by the Supreme Court clearly recognises the right of any person residing in the area of local authority to take inspection of the plan along with related documents except in case where the question of security involves, such inspection cannot be permitted. The order of the Supreme Court is reproduced below.

"ORDER

Special Leave Petition is rejected on the facts and circumstances of the present case. We may make it clear that it is not in every case where construction has started or rights of third parties have intervened that the Courts will necessarily refuse to exercise their discretion to grant relief under Article 226. Every case must end on its special facts and circumstances and there may be cases where the ends of justice may demand that the High Court should intervene and grant relief despite the rights of third parties having come into existence where the petitioner may not be guilty of lacks or of undue delay. We would direct the Pune Cantonment Board to take care while giving sanction for construction to ensure that none of the By-laws is violated. We would particularly draw

the attention of the Pune Cantonment Board to by-law 10 of which observance must be strictly secured in the future. We would also direct that any person residing within the area of a local authority or any social action group or interest group or pressure group shall be entitled to take inspection of any sanction, granted or plan approved by such local authority in construction of buildings along with the related papers and documents if such individual or social action group or interest group or pressure group wishes to take such inspection, except of course in cases where in the interest of security of such inspection and cannot be permitted."

We have, therefore, no hesitation to hold that the petitioner is entitled to inspection of these documents and for certified copies on payment of requisite charges.

16. In the instant case, respondent Nos. 4 to 6 are claiming to be the lessees of land bearing CTS No. 3331 i.e. City Survey no. 358 and 358/1. It is alleged by the petitioner that there was only a single storeyed structure on the said property: it seems a part of the property on southern side was taken over by the Municipal Council for road widening. Therefore, respondent Nos. 4 to 6 approached the Council for repairs permission. A representation seems to have been made by respondent Nos. 4 to 6 that the existing structure consists of ground plus two. However, no documents is produced before this Court to show the existence of the two upper storeys. Be that as it may, the permission granted to the respondent Nos. 4 to 6 was only to carry out repairs. As per the permissions, the repairs were to be carried out in terms of the said permission and the repair work was to commence within one year. However, it seems that the existing structure was demolished by Respondent Nos. 4 to 6 in 1998 and a new building of ground plus six upper floors was constructed. Thus, at least, prima facie, it is seen that the entire building is unauthorised. The respondent No.1 Council has issued a notice for demolition and a criminal case was also filed. However, no further action was taken and in the mean time respondent Nos. 4 to 6 filed Reg. Civil Suit being suit No. 321 of 1994 on 24th June, 1999 and obtained ad-interim order of status quo. We have gone through the averments made in the plaint filed by respondent Nos. 4 to 6 and we find that it is not even attempted by respondent Nos. 4 to 6 to deny that the construction of the building has been made without obtaining the prior permission from the Municipal Council. It is averred by respondent Nos. 4 to 6 in the plaint that the structure. has been assessed for payment of taxes and, therefore, the Municipal Council is estopped from demolishing the structure. We fail to appreciate as to how mere recovery of taxes in respect of the unauthorised construction would amount to regularisation of such structure. We, however, do not wish to make any further observations on this aspect as the suit filed by respondent Nos. 4 to 6 is pending before the Civil Court.

17. So far as regards the resolution dated 12th October, 1998 passed by the Municipal Council is concerned, the same has not been sanctioned by the State Government. The office translation of the said resolution reads as under:

"In Bhiwandi city unauthorised unlicensed constructions are found on a very large scale. An action against the said unauthorised construction is already in progress. However, on account of large number of unauthorised/ unlicensed constructions, inadequate staff and legal disputes, the number of unauthorised constructions is not found to have been reduced despite the action taken against the same. Similarly, it is also noticed that the people are using/residing in the said unauthorised/ unlicenced construction. And hence, from humanity point of view it is not found proper/practicable to demolish the said constructions only on the ground that the same are unauthorised. Therefore, the matters in respect of the constructions from out of said unauthorised constructions, which are consistent with the Development Scheme Proposal and which are according to the rule regarding F.S.I. should be disposed of with settlement by charging penalty as per the provisions of Section 143 of the Maharashtra Regional and Town Planning Act, 1966. The Chief Officer, Bhiwandi Nizampur Municipal Council is empowered to handle such matters on behalf of the Planning Authority and in this regard he should seek guidance from the Deputy Director, Town Planning, Konkan Division. Konkan Bhavan and should take further necessary action. Resolution passed unanimously."

18. **In our opinion, the aforesaid resolution is wholly unsustainable in law. The Municipal Council has no power to grant such regularisation on a wholesale basis. It is extremely distressing to note that instead of taking a stern action against the person responsible for carrying illegal construction in the city, the municipal authorities have chosen to remain oblivious to the building regulations although there are enormous instances of large scale violation of the building regulations and by-laws in the construction of buildings. It is apparent from the resolution that the Municipal Council has chosen to ignore the violation of building regulations and has now proposed to regularise those structures only with a view to confer benefit on the persons who have raised such unauthorised constructions.** This Court in numerous cases has held that no sympathy should be shown to the builder or any other persons whose construction is unauthorised. Unauthorised construction, if it is illegal, and cannot be compounded has to be demolished. We are of the view that tendency of unauthorised construction and unauthorised encroachments is increasing day by day in the recent times and such activities are required to be dealt with firm hands. In the instant case, the building of ground plus six upper floors has been constructed by respondent Nos. 4 to 6 in utter violation of the building rules. Such constructions should not be allowed to be regularised. In a given case the Municipal Council may consider regularisation of an unauthorised construction if it is permissible to do so, within the parameters of the relevant rules, and regulations. However, it is not permissible for the Municipal Council to propose regularisation of all the unauthorised constructions in the city by throwing all the norms to the wind. Such a course of action would defeat the very purpose of introducing the rules for planned development of the city. Violation of rules has to be dealt with sternly and such constructions should be demolished, if noticed by the local authorities. We would also like to add a word of caution for the Civil Courts. In recent times this Court has come across several cases where unscrupulous builders and developers have misused and abused process of the Court. The usual modus operandi adopted by such person: is to obtain ex parte ad-interim orders which inevitably remain in force for a long time and even during the said period further unauthorised construction is raised by misusing the interim orders granted by the Court. We feel that Courts should restrict grant of ad-interim orders only to a limited time and in the mean time call upon the local authorities to file their reply and then decide the said application by giving priority to such matters. Further it would be desirable in such cases that at the time of granting ad-interim reliefs the Court should appoint a Commissioner to inspect the construction. This would help to curb the practice of misusing the interim order passed by the Courts.

19. In view of foregoing discussion we pass the following order:

(i) The respondent Nos. 1 and 2 are directed to issue certified copies of the documents within four weeks as per the applications filed by the petitioners subject to payment of charges.

(ii) Civil Judge (J.D.) Bhiwandi is directed to decide the application for interim relief filed by respondent Nos. 4 to 6 in Reg. Civil Suit No. 321 of 1999 within a period of eight weeks. The parties shall appear before the Civil Court on 4th September, 2000 and thereafter the Civil Court shall hear the matter on day to day basis without granting any adjournments to either side.

(iii) Appeal filed against the order of the Trial Court, if admitted and ad-interim or interim relief is granted, shall be disposed of within a period of six weeks without insisting for formal paper book.

(iv) In case the Civil Court vacates the interim order the Municipal Council shall demolish the building constructed by respondent Nos. 4 to 6 within a period of four weeks from the date of vacation of interim relief.

(v) The Commissioner of Police, Thane is directed to provide adequate police protection to the municipal staff in carrying out demolition of the building .

(vi) The resolution dated 12th October, 1998 is quashed and set aside. Respondent Nos.1 and 2 are directed to take immediate steps to demolish the unauthorised structures in Bhiwandi in accordance with law.

The petition stands disposed in terms 2 above order.

All parties including the concerned Civil Judge to act on an ordinary copy of this order duly authenticated as true copy by the Court Sheristedar.