

## Illegal constructions

# HC irked over owners' ploys to get stay orders

Citing urgency, occupants of unauthorised constructions move the city civil courts to get a stay order without giving the municipal corporation a chance to present its case

Sunil.Baghel  
@timesgroup.com

TWEETS @baghelsMIRROR

Irked over the growing number of cases of unauthorised construction before the lower courts in the city, the high court has directed that the cases where a stay has been granted to the owner/occupant without hearing the BMC's plea should be disposed of "at the earliest." The number of such cases is estimated to be a few thousand.

Terming it as a "modus operandi" by owners/occupants of illegal constructions, the division bench of Justices SJ Kathawalla and BP Colabawalla, in an order passed last Friday, observed that the practice needed to be stopped.

The court observed that in most cases, "as soon as the Municipal Corporation issues a notice to a party to remove the unauthorised structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation; then moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the Advocate for the Corporation, who is served with the papers at the last minute, is left with no alternative but to seek time to take instructions." This observation also took into account BMC's lawyer Ashwin Sakolkar submissions about the

problem.

The court was hearing a petition filed by one Indu Sarathi Developer (ISD) for a property it owned at Kandivali. ISD has alleged that one of its tenants, a marble trader, had unauthorisedly added about 800 sqft to his original construction. The developer then approached the BMC to get the unauthorised part removed and, later, approached the HC.

In June 2017, a different bench of the high court directed the BMC to visit the property to check if unauthorised construction was undertaken and to initiate steps for demolition as per law if it spots violations.

The BMC found the relevant part, as pointed out by ISD, to be unauthorised and immediately issued a demolition notice to the owner. The owner approached the City Civil Court at Dindoshi, which issued a stay order in his favour on July 13, 2017.

The HC bench observed that the city civil court has granted injunction against the corporation without going into the merits of the case and that even after two years the Notice of Motion has not been taken up for hearing.

It then asked the lower court to decide the case within two weeks and directed the Principal Judge of the city civil and sessions court to ensure that all such cases are disposed of at the earliest.



Gulistan Apartments in Pydhonie is one of the many illegal buildings

Dik / Nitin

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

**WRIT PETITION NO. 100 OF 2017**

Indu Sarathi Developers ...Petitioner.  
vs  
The Municipal Corp. of Gr. Mumbai & Ors. ...Respondents

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Mr. A.R.Shaikh for the Petitioner  
Mr. Ashwin Sakolkar a/w Ms. Rupali Adhate & Ms. Yamuna Parekh for the  
Respondent/ M.C.G.M.  
Mr. Tanaji Rupnar, AE ( B & F) R/S Ward from M.C.G.M. present.

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**CORAM : S. J. KATHAWALLA &  
B. P. COLABAWALLA, JJ.  
DATED 05 DECEMBER, 2019.**

**P.C. :**

1. The Petitioner seeks the following relief in the above Writ Petition :

“(a) *to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent Nos.1 and 2 to forthwith to demolish the unauthorized construction of structure with brick masonry wall, with G.I. Sheet/ A.C. Sheet roof admeasuring 20’x40’ with the support of M.S.Angles on my property being Survey No. 65, Hissa No.7, corresponding to C.T.S. No. 561, admeasuring 2624.60 sq.mtrs of Kandivali Village, Taluka Borivali, Mumbai Sub-urban district.”*

2. On 6<sup>th</sup> June, 2017 the Division Bench of this Court (Coram : A.S.Oka and Smt. Vibha Kankanwadi, JJ.) passed the following order.

“1. *Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 and 2. Issue notice to the respondent No.3 returnable on 25<sup>th</sup> July, 2017.*

2. *We direct the respondent No.2 to immediately visit the subject property for ascertaining whether illegal construction as alleged by the petitioner has been carried out. If the respondent No.2 finds that illegal construction has been carried out, he shall forthwith take steps for demolition of the illegal construction in accordance with law.*
3. *We make it clear that action of demolition shall not be taken without notice to the respondent No.3.”*

3 Pursuant to the above order, the Municipal Corporation after confirming that the structures put up by Respondent No.3 were illegal, issued notice to Respondent No.3. Respondent No.3 immediately moved the City Civil Court, Dindoshi and obtained an ad-interim order dated 13<sup>th</sup> July, 2017 restraining the Corporation from taking action on the notice, which Order is reproduced hereunder :

*“Advocate N.B.Shukla for plaintiff present. Advocate Botlawar for defendant / MMC present. Mrs.Komal Bhoi, Junior Engineer attached to R/South Ward present. FRSR the following order is passed :*

**ORDER**

*The structure bearing census No. RXC 37-1/1 to the extent of 55 x 65 ft. approximately and mezzanine floor admeasuring 55 x 65 ft. by excluding the developed area which is covered under road is protected i.e. defendant is directed not to demolish the same till next date. Adjourned for N/M reply to 31/8/2017.”*

4. It is clear from the above Order that the City Civil Court has granted

injunction against the Corporation without going into the merits of the case. Since more than two years, the injunction order, which is not passed on merits, has continued against the Corporation and the Notice of Motion has not been taken up for hearing.

5. We have in most of the matters before us noted that , as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions. Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any action because of the ad-interim order passed by the City Civil Court. This *modus operandi* cannot continue. A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue for an indefinite period but the matters pertaining to unauthorized constructions where such exparte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest.

6. The learned Judge of the City Civil Court, Dindoshi to whom the above Notice of Motion taken out in L.C. Suit No. 1979 of 2017 is assigned, should hear the Notice of Motion within a period of two weeks from today and pass appropriate orders. Both the parties shall appear before the Principal Judge, City Civil Court, Dindoshi on 9<sup>th</sup> December, 2019 at 11.00 a.m., produce this order and seek necessary directions.

7. All parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

8. Stand over to 19<sup>th</sup> December, 2019 “**High on Board**”.

9. A copy of this Order shall be forwarded to the Guardian Judges of the City Civil Court, Mumbai by the Prothonotary and Senior Master of this Court.

**(B. P. COLABAWALLA, J.)**

**( S. J. KATHAWALLA, J. )**