



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

WRIT PETITION NO. 148 OF 2026

Beaumont HFSI Pre-Primary & Anr. Petitioners
versus
Municipal Corporation of Greater Mumbai & Ors. Respondents

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Mr.Naushad Engineer, Senior Advocate with Mr.Yash Momaya i/b.
Mr.Hussain Dholkawala for the Petitioners.

Dr.Dhruti Kapadia with Ms.Kavita Dhanuka, Ms.Anjali Ghuge for
Respondent Nos. 1 and 2- Municipal Corporation/BMC.

Mr.Rakesh Pathak, AGP for Respondent Nos. 3 to 6, State.

Mr.Santosh Kumar Dhone, Deputy Municipal Commissioner is present.

Mr.Anup Thakur, AE (B & F) 'S' Ward is present.

Mr.Rohit Ghube, JE (B & F) 'S' Ward is present.

Mr.Veer Alankar, AE (Maintenance) 'S' Ward is present.

Mr.Sachin Gaikwad, AE (SWM) and Mr.Madhukar Matsagar, SE (SWM)
are present.

Mr.Pradip Mairale, Assistant Police Commissioner, Sakinaka Division,
Powai is present.

Mr.Rakesh Nalawade, Police Sub Inspector, Powai Police Station, Mumbai
is present.

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**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.**

DATE : FEBRUARY 13, 2026

P.C:

1. A marathon hearing took place on 12.02.2026. We could have dictated a detailed order based on the submissions of the learned Senior Advocate for the Petitioners and the learned Advocate for the Corporation. However, since the learned Advocate for the Municipal Corporation was instructed to take time till today to file an affidavit and as it appeared from the submissions made on instructions that the Municipal Corporation would place a plan before the Court for removal of encroachments on the streets and paths which are the subject matter of this Petition, we posted the matter for today.

2. In the short order dated 12.02.2026, we recorded in paragraphs 2 to 4 as under:

“2. The learned Advocate for the Corporation seeks time till tomorrow to file the Affidavit of the senior-most Deputy Municipal Commissioner concerned with the area which is subject matter of this Petition (Powai Region)

3. The concerned Deputy Municipal Commissioner shall remain present in the Court to tender his Affidavit and make a statement regarding removal of encroachments, tomorrow.

4. The senior-most Police Officer In-charge of the said area (not below the rank of Deputy Commissioner) shall remain present in the Court

tomorrow for rendering assistance for removal of encroachments.”

3. The reason for requesting the senior-most Police Officer in charge, not below the rank of Deputy Commissioner, to remain present in the Court was only to seek his assistance in the removal of encroachment. However, the senior-most Deputy Municipal Commissioner was called upon to remain present in the Court to explain as to why the Corporation was not performing the duty cast upon it by statute.

4. While adjourning the matter yesterday, we made it clear to the learned Advocate for the Corporation that we expected the Corporation to take a firm stand against encroachments and to inform us as to how it proposed to remove the encroachments complained of in this Writ Petition. This is apparent from paragraph 3 reproduced above.

5. Today, the learned Advocate for the Corporation has tendered a detailed affidavit of about six pages, filed through Mr. Santosh Kumar Dhonde, Deputy Municipal Commissioner, BMC, N Ward Building, Ghatkopar (East), Mumbai. It is stated in the affidavit that the same has been filed for the purpose of removal of encroachments on the stretch from Poddar School to the Jogeshwari–Vikhroli Link Road. The contents of the affidavit can be summarized as under:

(a) The portion of land/strip in question, on which the alleged encroachments presently exists, forms a part of a privately owned land and is in the exclusive possession of the developer. The said strip was never acquired by the BMC, nor was it ever handed over to or vested in the BMC.

(b) The strip continues to remain in the private ownership and physical possession of the developer. The erstwhile Development Control Regulations, 1991 (in short, the 1991 DCR), indicate the road as forming a part of the proposed Development Plan (DP) road. It was incumbent upon the developer to hand over the same to the BMC free of all encroachments during the development of the abutting layouts. The landowner failed to hand over the said road to the BMC during the effective period of the Sanctioned Revised Development Plan, 1991 (in short, the SRDP 1991).

(c) The sanctioned Development Control and Promotion Regulations, 2034 (DCPR 2034), indicate that the portion is no longer shown as a proposed DP road, but is instead shown as an existing road, which will remain with the owner.

(d) The subject road in this Petition is not a public street, and the Corporation would not ordinarily be in a position to undertake the removal of encroachments using public revenue and resources.

(e) The powers of the Corporation with respect to the Construction, Maintenance, and Improvement of Public Streets are primarily governed by Chapter XI of the Mumbai Municipal Corporation Act, 1888, (the MMC Act, 1888) which deals with the regulation of streets. This Chapter distinguishes between public streets and private streets and prescribes the obligations of the Corporation and the powers to be exercised predominantly in respect of public streets.

(f) Section 314 of the MMC Act, 1888 empowers the Commissioner to remove, without notice, anything erected, deposited, or hawked in contravention of provisions such as Sections 312 or 313(a), which fall within Chapter XI and, as per prevailing practice, are intended to apply to streets or areas under the Corporation's control and vesting, i.e., public streets.

(g) In line with prevailing policies and practices, the Corporation exercises these powers, including deployment of public revenue and resources for removal of encroachments, only in respect of public streets/roads vested in or under the direct control of the Corporation. Extending such powers and resources to encroachments on private strips/roads, which remain in private ownership and possession, would effectively facilitate private landowners/developers in avoiding their own responsibility to maintain their roads/strips free of encroachments, thereby shifting the burden of private property maintenance onto public funds, which is neither permissible nor aligned with the statutory intent and fiscal prudence of the Corporation.

(h) The BMC had removed unauthorized encroachments or hutments existing on private land, specifically on plots bearing CTS Nos. 6A and 6A/1 of Village Powai and CTS Nos. 20 and 22 of Village Tirandaz, which are owned by private owners. After the demolition of these illegal hutments, the hutment dwellers erected temporary shanties abutting two sides of the plot, namely, Central Avenue Road and East Avenue Road.

(i) The encroachments on Central Avenue Road were removed by the BMC on 21 August 2025, at the cost of public revenue and resources, as it is a public road. The removal of encroachments along East Avenue Road has not been undertaken, as it is a privately owned existing road. The owner of the plots bearing CTS Nos. 6A and 6A/1 of Village Powai, and CTS Nos. 20 and 22 of Village Tirandaz, as well as the existing road portion known as East Avenue Road (referred to as the 90-ft. road in the Petition), is the same.

(j) After getting this plot vacated by BMC, the owner of the plot has promptly protected the land bearing CTS Nos. 6A, 6A/1 of Village Powai and CTS Nos. 20, 22 of Village Tirandaz with the help of private security and constructed a temporary compound with GI sheets at his own expenses.

(k) The same owner ignored the responsibility of keeping the 90-ft. wide road free from encroachments, as it is a non-buildable portion of the road, and allowed encroachments to take place.

(l) The owner of the land has ignored his responsibility to protect the portion of land falling under the road, which is highly objectionable. This act of the owner appears to be collusive in nature and must be viewed seriously.

(m) No water connection would be provided by the BMC to the hutment dwellers on the private existing road, and it would be ensured that no supply of water by tankers is provided.

(n) The portable toilet blocks (which is indicated as **फिरते शौचालय** in the Petition) will be removed by taking police protection.

6. The learned Senior Advocate for the Petitioners has drawn our attention to the Regulations below Section 3, in particular to the definitions under sub-clauses (w), (x), and (y), defining a street, a public street, and a private street, respectively. These definitions read as under :

“(w) "street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and when there is a footway as well as carriageway in any street, the said term includes, both;

(x)" public street" means any street heretofore levelled, paved, metalled, channelled, sewered or repaired by the corporation and any street which becomes a public street under any of the provisions of this Act; [or which vests in the corporation as a public street];

(y) "private street" means a street which is not a public street;'

7. We would first refer to Section 3(y), which defines a "private street" to mean a street that is not a public street. A "public street" means any street heretofore levelled, paved, metalled, channelled, sewered, or repaired by the Corporation, and any street which becomes a public street under any of the provisions of this Act (or which vests in the Corporation as a public street).

8. A street, as defined under Section 3(w), includes any highway, and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, over which the public have a right of passage or access, or have passed and had access uninterruptedly for a period of twenty years; and where there is a footway as well as a carriageway in any street, the term includes both.

9. The learned Senior Advocate has then drawn our attention to Chapter III of the MMC Act, 1888- Duties and Powers of the Municipal

Authorities, Obligatory and Discretionary Duties of the Corporation. He specifically points out Section 61(m), (n) and (o) which read as under :

“61. Matters to be provided for by the corporation.—

It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely:—

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(m) the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like [and also other measures for ensuing the safe and orderly passage of vehicular and pedestrian traffic on streets];

(n) the lighting, watering and cleansing of public streets;

(o) the removal of obstructions and projections in or upon streets, bridges and other public places;

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..... ”

10. He submits that the removal of obstructions and projections in or upon streets, bridges, and other public roads, would include any road over which there is a regular thoroughfare for the public at large. He refers to the definition of a public street and submits that whenever any street becomes a public street under any of the provisions of the Act, the

Corporation will have jurisdiction. While referring to the definition of a street, he submits that a street includes a path, whether it has a thoroughfare or not, over which the public have a right of passage or access, or have passed and had access uninterruptedly for a period of twenty years.

11. The learned Senior Advocate further submits that this area in Powai has developed over several decades and is not a new road on a newly laid path. This road was also included in the 1991 DP Plan, and localites in that area have been using the road and enjoying passage and access on it, uninterruptedly for decades. This would therefore be a public street for all purposes.

12. The learned Advocate for the Corporation has drawn our attention to Section 306 of the MMC Act, 1888 which reads thus:

“306. Power to declare private streets when sewered, etc., public streets (1) When any private street has been levelled, metalled or paved, sewered, drained, channelled and made good to the satisfaction of the Commissioner, he may and, upon the request of the owner or of any of the owners of such street, shall, if lamps, lamp posts and other apparatus necessary for lighting such street have been provided to his satisfaction [and if all land revenue payable to the “[State] Government] in respect of the land comprised in such street has been paid] by notice in writing put

up in any part of such street, declare the same to be public street, and thereupon the same shall become a public street:

(2) Provided that no such street shall become a public street if, within one month after such notice has been put up, the owner of such street or of the greater part thereof shall, by notice in writing to the Commissioner, object thereto.

(3) Nothing in this section shall be deemed to affect the provisions of sections 37 and 38 of the Bombay Port Trust Act, 1879.”

13. She submits that it is not for the Commissioner to be satisfied as to whether the private street has been levelled or put in a condition as defined under Sub-Section (1). Thereafter, the Commissioner may, upon the request of the owner or any of the owners of such street, declare the same as a public street if lamps, lamp posts, and other apparatus necessary for lighting the street have been provided to his satisfaction, and if all land revenue payable to the State Government in respect of the land comprised in such street has been paid.

14. She then refers to Section 302, which reads thus :

“302. Notice to be given to Commissioner of intention to lay out lands for building and for private streets

(1) Every person who intends-

(a) to sell or let on lease any land subject to a covenant or agreement on the part of a purchaser or lessee to erect buildings thereon, or

- (b) to divide land into building plots, or
- (c) to use any land or permit the same to be used for building purposes, or
- (d) to make or lay out a private street, whether it is intended to allow the public a right of passage or access over such street or not, shall give written notice of his intention to the Commissioner, and shall, along with such notice, submit plans and sections, showing the situation and boundaries of such building land and the site of the private street (if any) and also the situation and boundaries of all other land of such person of which such building land or site forms a part, and the intended development, laying out and plotting of such building land, and also the intended level, direction, and width the means of drainage of such private street and the height and means of drainage and ventilation of the building or buildings proposed to be erected on the land, and, if any building when erected will not abut on a street then already existing or then intended to be made as aforesaid, the means of access from and to such building.

(2) Nothing in this section or in sections 302A, 302B, 303 or 304 shall be deemed to affect or to dispense with any of the requirements of Chapter XII.]”

15. She then refers to Section 308(2), which mentions the power of the Commissioner to issue a written notice and require the owner or occupier of any premises to remove any structure or fixture that has been erected, set up, or placed against, or in front of, the said premises in contravention of this section, Section 196 of the Bombay Municipal Act, 1872, or any other provision of law in force.

16. We find from Sub-Section (3) of Section 308 of the MMC Act 1888 that if the occupier of the said premises removes or alters any structure or fixture in accordance with such notice, he shall be entitled, unless the structure or fixture was erected, set up, or placed by himself, to claim credit in account from the owner of the premises for all reasonable expenses incurred by him in complying with the said notice

17. On instructions, she submits that all the street lights on the said street have been erected by the Corporation after the owner deposited the necessary charges with the Corporation, in accordance with the provisions of Section 306. On instructions, she clarifies that there are no street lights on the said road.

18. The photographs placed on record by the Petitioners indicate that the street at issue is extremely busy, in the light of the high frequency of vehicular traffic and the movement of localites. The learned Advocate for the Corporation submits, on instructions, that the road at issue appears busy with heavy vehicular traffic because metro work is ongoing in the close vicinity, and this road has become a passage for those commuting through the area.

19. We have to record one aspect regarding the reluctance of the Corporation, which has surprised us in the light of the judgment of the Hon'ble Supreme Court (three Judges Bench) in the matter of ***The Municipal Corporation for Greater Bombay and Another*** (the Municipal Corporation before us today) ***Versus The Advance Builders (India) Private Ltd. and Others, 1971 (3) SCC 381.*** The Hon'ble Supreme Court has referred to the provisions of the Bombay Town Planning Act, 1954, and the Maharashtra Regional and Town Planning Act, 1966, and has recorded, in paragraphs 6, 9, and 12, as under:

“6. The point of substance in this appeal is whether the Municipal Corporation, as the local authority under the Act, owed a duty to remove the unauthorised structures, even though those structures were on private-final plots of the respondents. That the respondents could, by having recourse of law, eject the slum-dwellers and remove the huts and structures would not be a relevant consideration if, under the Act and the Scheme, the duty was imposed on the local authority. The Scheme had been framed with a view to clear the area of slums. In fact, Note 11 attached to the Redistribution Statement under the Scheme directs that "all huts, sheds, stables and such other temporary structures including those which do not conform to the regulations of the Scheme, shall be removed within one year from the date the Final Scheme comes into force. Persons thus dishoused will be given a preference in the allotment of land or accommodation in Final Plot No. 16". We will have occasion to consider this Note No. 11 at a later stage; but what is to be noted now is that the slums were to be cleared and the dishoused persons were to be accommodated in Final Plot No. 16 which was specifically allotted to the Corporation.

9. Against this background, we have to determine the question in issue before us. The important provisions, bearing upon the controversy, are Sections 53 and 54 and 55 of the Act. Section 53 provides:

"On the day on which the final scheme comes into force,-

(a) all lands required by the local authority shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer."

It will be seen that all lands in the area which is subject to the Scheme, to whomsoever they might have originally belonged, would absolutely vest in the local authority if, under the Scheme, the same are allotted to the local authority. As a necessary corollary to this, all rights in the original plots of the private owners would determine and if, in the Scheme, reconstituted or final plots are allotted to them, the same shall become subject to the rights settled by the Town Planning Officer in the Final Scheme. The original plots of one owner might completely disappear, being allotted to the local authority for a public purpose. Such a private owner may be paid compensation or a reconstituted plot in some other place may be allotted to him. This reconstituted plot may be also made subject to certain other rights in favour of others as determined by the Town Planning Officer. In other cases, the original plot of the owner may be substantially cut down and he may be compensated elsewhere by being allotted a smaller or a bigger piece of land in a reconstituted plot. The learned Attorney-General pointed out that, so far as the present case is concerned, the final plots coincide with

the original plots of the private owners. That may be so, but that consideration is irrelevant for a proper construction of the statute. It is inherent in every town planning scheme that titles are liable to be displaced and an owner may get a reconstituted plot which belonged, prior to the Final Scheme, to some other owner. In such a case, if the original plot belonging to 'A' was not encumbered by any unauthorised huts and 'A' is allotted in the Scheme a reconstituted plot of another, encumbered or littered over with unauthorised sheds and huts, would it be just to say that 'A', who is to be put into possession, under the Scheme, of the reconstituted plot, should take legal action for the ejection of the hutment-dwellers? For aught we know he may be non-suited on the ground of limitation or adverse possession. In any case, the Scheme will, on the one hand, put an innocent owner to undeserved trouble and, on the other, not achieve the object of removing the hutment-dwellers as speedily as possible, thus frustrating the every object of town planning. It is not as if such a situation was not visualised by the Legislature, because the every next section, viz., Section 54 gives ample powers to the local authority to do the needful. That section says:

"On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the local authority."

All that the local authority has to see for the purpose of Section 54 is whether any person is occupying any land in disregard of the rights determined under the final scheme and, if he does so, he is to be summarily evicted by the local authority. Section 55 is more explicit on the question. Sub-section (1) is as follows:

"(1) On and after the day on which the final scheme comes into force the local authority

may after giving the prescribed notice and in accordance with the provisions of the scheme-

- (a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with;*
- (b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the local authority that delay in the execution of the work would prejudice the efficient operation of the scheme."*

Sub-clause (a) of the sub-section gives the local authority power to remove, pull down or alter any building or other work in the whole of the area included in the scheme if such building or work contravenes the scheme, or if, in the erection or carrying out of the building or work, the provision of the scheme has not been complied with. In short, every building or work, which is in contravention of the Town Planning Scheme, wherever it may be in the whole of the area under the Scheme, could be removed, pulled down or altered by the local authority which alone is named as the authority for that purpose. For example, the Scheme in this case, by its Note 11, requires that all huts, sheds, stables and such other temporary structures, which do not conform with the Scheme, are liable to be removed within one year of the Scheme which is regarded under Section 51(3) as part of the Act. If the owner or occupant of the temporary structure does not remove the structure within one year, the local authority is empowered to do that. Sub-clause (b) takes care of any work which, under the Scheme, any private person is liable to execute in a certain time. If there is delay in the execution of the work, the local authority

is given the power to execute the work. The question then would arise: at whose cost this work is to be executed? For that, provision is made in sub-section (2) which is as follows:

"(2) Any expenses incurred by the local authority under this section may be recovered from the persons in default or from the owner of the plot in the manner provided for the recovery of sums due to the local authority under the provisions of this Act."

The expenses incurred by the local authority in this connection are recoverable from the person in default, viz., the person indicated in the Scheme and who has defaulted in executing the work. To make sure that the expenses are recovered, sub-section (2) makes them recoverable not merely from the person in default, but also from the owner of the plot. Disputes are likely to arise whether any building or work contravenes a Town Planning Scheme and, so, provision is made for the same in sub-section (3) which is as follows:

"(3) If any question arises as to whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, it shall be referred to the State Government or any officer authorised by the State Government in this behalf and the decision of the State Government or of the officer, as the case may be, shall be final and conclusive and binding on all persons."

It will, thus, be seen that Section 55 provides a self-contained code by which buildings and works situated in the whole of the area under the Scheme are liable to be removed or pulled down by the local authority if those buildings or works contravene the

Town Planning Scheme. A proper implementation of the Scheme would undoubtedly entail considerable cost, but provision for the same is made in Chapter VIII of the Act, Section 66 of which provides for the recovery of what are commonly known as betterment charges. The costs of the scheme are to be met wholly or in part by a contribution to be levied by the local authority for each plot included in the Final Scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. The whole scheme of the Act, therefore, and especially Sections 53 to 55 leave no doubt that it is the primary duty of the local authority to remove all such buildings and works in the whole of the area which contravene the Town Planning Scheme.

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12. *It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme and, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act. It has been long held that, where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute requires to be done. (See Halsbury's Laws of England, Third Edition, Vol II, p. 90)."*

20. We would have appreciated, if the Corporation had at least ventured to state that, being a civic body, it has a duty to ensure that

residences falling within the jurisdiction of the Corporation are provided with civic amenities, and that, if they are facing serious problems of encroachment on a street, which has assumed the character of a public street, due to heavy use of the path for decades, the Corporation would attempt to remove the encroachments.

21. The learned Senior Advocate for the Petitioners pointed out that not a single statement is made in the affidavit in reply to indicate that the Corporation would endeavor to facilitate the comforts of the people living in that area, being a civic body. We, therefore, called upon the learned Advocate for the Corporation to explain why no statement was made in the affidavit, when we had ordered yesterday that the Corporation must place before us a plan for the removal of the encroachments.

22. The learned Advocate for the Corporation sought a pass over, and when the matter was called out after 30 minutes, she was instructed to state that the Additional Commissioner of the Municipal Corporation, in consultation with the Municipal Commissioner, would make a statement that the Corporation will not go beyond what is stated in the affidavit.

23. In paragraphs 3 and 4 of the affidavit, the Corporation admits

that the road at issue was shown as a proposed DP road in the DCR 1991.

In the DCPR 2034, the said portion is no longer shown as a proposed DP road; instead, it is indicated as an ‘existing road’ that remains with the owner, and the encroachments are on this road. In paragraph 5, it is stated that the subject road is not a public street.

24. Considering the provisions of law adverted to herein above, the said street, which has been used by the residents for several decades, was included in the 1991 DCR, and is also recognized by the Corporation as an existing road in the DCPR 2034. We are circumspect as to how the Corporation can take a stand before the High Court that it will not deal with anything on that road.

25. This stance of the Corporation is astounding. Can it be said that the Corporation desires to abdicate its powers to clear the said street when the people are raising complaints about the encroachments, which has prompted the Petitioners to file this Petition? Can the Corporation turn a Nelson’s eye to this grave problem suffered by the citizens who have been using the said road? The road is neither barricaded nor fenced, much less protected by any compound wall. The owner of the property, however, has secured his parcels of land with fencing. This entire street clearly

appears to be a minimum of a three-lane concrete road, which is now reduced to the width of a passage suitable only for a single car, an autorickshaw, and two-wheelers.

26. The view taken by the Hon'ble Supreme Court with this very Municipal Corporation (supra), indicates that where a statute imposes a duty on the Corporation, to perform or non-perform, which is not a matter of discretion, a mandate could be issued to do something which the statute expects the Corporation to do. The Corporation, being a civic body, is under an obligation to discharge its functions in such a manner that it does not appear to be at the mercy of encroachers, and that precedence within the limits of the Corporation is not given to extending civic amenities to the people.

27. If a street with a concrete road wide enough to accommodate three lanes of vehicles, between properties that have effective compound walls on either side, which has been used for decades as a regular thoroughfare, and the photographs indicate the high frequency of vehicular traffic, the stand of the Corporation virtually amounts to abandoning the area by stating that it is a private road and that the Corporation has nothing to do with it. Several applications have been made to the Corporation, and

Sub-Section (2) of Section 308 of the MMC Act, 1888 permits the Commissioner to exercise his powers to remove encroachments on such a street, that has assumed the character of a public street. The Corporation cannot justify contending that it would not even venture to make a statement before the Court regarding the serious inconvenience and difficulties faced by hundreds of localites, like the Petitioners, in order to ensure the smooth flow of traffic and avoid congestion.

28. Probably, the Corporation desires not to make any statement and to let the Court direct it to remove the encroachments. Pointing to a provision in the statute book to claim that, technically, the street is not a public street, is a weak excuse put forth by the Corporation. It probably lacks the will, desire, courage, and means to deal with the problem brought before the Court.

29. An encroachment anywhere is a challenge that should concern the civic authorities. We do not find that there would be any disagreement among the residents of Mumbai City that encroachment has assumed the character of a disease. The Corporation, however, desires to indicate that it would act only in respect of areas that are public streets, notwithstanding that some of the streets have been utilized for decades for continuous thoroughfares and have effectively assumed the character of public streets.

30. The learned Senior Advocate for the Petitioners points out Sections 312 and 314 of the MMC Act, 1888 in support of his contention that the Corporation has to prohibit any structure on any street which causes obstructions in the streets. Sections 312 and 314 read as under :

“312. Prohibition of structures or fixtures which cause obstruction in streets

(1) No person shall, except with the permission of the Commissioner under section 310 or 317, erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy, any portion of such street, channel, drain, well or tank.

(2) Nothing in this section shall be deemed to apply to any erection or thing to which clause (c) of section 322 applies.”

314. [Power to remove without notice anything erected, deposited or hawked in contravention of section 312, 313 or 313A]

The Commissioner may, without notice, cause to be removed-

(a) any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or upon any street, or upon or over any open channel, drain, well or tank contrary to the provisions of sub-section (1) of section 312, after the same comes into force [in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal (Extension of Limits)

Act, 1950 [or in the extended suburbs after the date of the coming into force of the Bombay Municipal (Further Extension of Limits and Schedule BBA (Amendment)) Act, 1956]:]

(b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, projected, attached, or suspended in, upon, from or to any place in contravention of sub-section (1) of section 313;

[(c) any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of section 313A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale.]

(d) any person, unauthorisedly occupying or wrongfully in possession of any public land, from such land together with all the things and material unauthorisedly placed, projected or deposited on such land by such person:

Provided that, the Commissioner shall, while executing such removal, allow such person to take away his personal belongings and household articles, such as cooking vessels, bed and beddings of the family, etc.]

31. We find that the language in the above provisions refers to “any street” and consistently uses these words without distinguishing between a public street and a private street. Even when it comes to hawkers, any activity in any public place or on any public street is prohibited. With regard to erections, the statute does not use the word “public street” and instead uses the word “any street.”

32. In view of the above, we direct the Commissioner of the Mumbai Municipal Corporation to go through this order and, within ten days, place before this Court a plan for the removal of encroachments on the street in question. The plan should not be merely an eyewash, but must indicate a definite course of action to be executed within a period of 60 days.

33. We also direct the Municipal Corporation to ensure that the mobile toilets and water tankers are removed within 48 hours, and the manner of execution would depend on how the Corporation desires to seek the assistance of the police authorities to ensure compliance. The Assistant Commissioner of Police, Mr. Pradip Mairale is present to render assistance. The learned AGP submits that whatever police protection the Corporation requires, will be provided.

34. List this Petition on **27.02.2026 at 3.00 pm.**

(ABHAY J.MANTRI, J.)

(RAVINDRA V. GHUGE, J.)