

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (ST) NO. 98444 OF 2020**

Arun Mhatre ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation & Ors. ... Respondents

**ALONG WITH**

**WRIT PETITION (ST) NO. 98435 OF 2020**

Bhaskar Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation & Ors. ... Respondents

**WITH**

**WRIT PETITION (ST) NO. 98463 OF 2020**

Ramchandra Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation & Ors. ... Respondents

**WITH**

**WRIT PETITION (ST) NO. 98462 OF 2020**

Ramchandra Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation & Ors. ... Respondents

**WITH**

**WRIT PETITION (ST) NO. 98466 OF 2020**

Balu Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation & Ors. ... Respondents

**WITH**

**WRIT PETITION (ST) NO. 98459 OF 2020**

Sudhakar Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation &amp; Ors. ... Respondents

**WITH****WRIT PETITION (ST) NO. 98440 OF 2020**

Bhaskar Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation &amp; Ors. ... Respondents

**WITH****WRIT PETITION (ST) NO. 98449 OF 2020**

Sudhakar Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation &amp; Ors. ... Respondents

**WITH****WRIT PETITION (ST) NO. 97543 OF 2020**

Balu Walku Bhoir ... Petitioner

Versus

Kalyan Dombivali Municipal Corporation &amp; Ors. ... Respondents

Mr.Sagar A. Joshi for the Petitioners.

Mr.A.S.Rao for Respondent Nos. 1 to 3.

**CORAM : S.J. KATHAWALLA, &  
R.I.CHAGLA, JJ.****RESERVED ON : 5TH JANUARY, 2021****PRONOUNCED ON : 9TH MARCH, 2021**

**JUDGMENT :**

1. This group of Writ Petitions impugn an Order dated 25<sup>th</sup> November, 2020 passed by Respondent No. 3 – The Designated Officer & Ward Officer of Respondent No. 1 Corporation (**impugned Order**) passed under Section 212 (2) of the Maharashtra Municipal Corporation Act, 1949 (**the Act**).

2. The brief facts leading to the filing of these Writ Petitions are as under :

2.1. The Petitioners claim to be owners of certain lands within the limits of Respondent No.1 Corporation. On these lands, the Petitioners' have built structures thereon (**structures**).

2.2. In and around September, 2018, Respondent No.1 Corporation's officers visited the structures and marked a wall with red colour.

2.3. On 29<sup>th</sup> October, 2018, Respondent No. 3 issued a notice to the Petitioners under Section 212 (1) of the Act. In the said notice, it was alleged that the Development Plan of Kalyan Dombivali Municipal Corporation was sanctioned on 3<sup>rd</sup> September, 2005 and in the said Development Plan, Subhash Road, Dombivali West (Hanuman Temple to Hemant General Store) (**the said road**) was shown 18 mtrs wide. The said notice further alleges that Respondent No.1 Corporation after carrying out the survey has drawn the regular line of the street. As per the said regular line of the street, the area admeasuring 56 sq.mtrs. of 5 shops on the right side of the road is coming in the way of road widening of the said street and therefore, it is necessary to demolish the area mentioned in the said notice and compensation by way of T.D.R. /

F.S.I. or cash would be payable in accordance with Section 216 of the Act.

2.4. On 17<sup>th</sup> November, 2018, the Petitioners claim to have visited Respondent No. 3's office and tendered their reply / objections to the notice.

2.5. On 13<sup>th</sup> November, 2018, an Application was made to the Information Officer of Ward No. 7H seeking information inter alia about the action taken in order to prescribe the street line under Section 210 of the Act (RTI Application).

2.6. In response to the RTI Application, the Petitioner in Writ Petition No. 98466 of 2020 was informed on 29<sup>th</sup> November, 2018 that since no action under Section 210 of the Act is taken, the street line is not fixed / decided.

2.7. Apprehending demolition, the Petitioners filed the Writ Petitions before this Court. At the hearing of the Writ Petitions on 29<sup>th</sup> November, 2018, the following Order came to be passed :

*“Heard Mr.Oak, learned counsel for the petitioners and Mr.Rao, learned counsel for the Corporation.*

*2. By these petitions, the petitioners are challenging the notice issued under Section 212 (1) of the Maharashtra Municipal Corporation Act.*

*3. Mr.Rao, learned counsel for the Corporation, at the outset, submitted that the petitions are premature inasmuch as the proposal to acquire the land if it falls within regular line of public street will have to be approved by the standing committee. He submitted that once the proposal is approved, then again 15 days fresh notice would be issued to the petitioners under Section 212 (2) of the Maharashtra Municipal Corporation Act and, in the*

*event, the petitioners are aggrieved by such notice, they can approach this Court afresh. The statement is accepted.*

*4. In the light of the statement made by Mr.Rao, learned counsel for the Corporation, Mr. Oak, learned counsel for the petitioners, sought leave to withdraw the petitions with liberty to approach this Court, in the event, the respondent – Corporation issues notice under Section 212 (2) of the Maharashtra Municipal Corporation Act. Leave as sought, is granted. The writ petitions are dismissed as withdrawn.”*

2.8. On 21<sup>st</sup> February, 2019, Respondent No. 3 passed an Order directing the Petitioners to remove the structures. Being aggrieved by this Order, the Petitioners filed Writ Petitions.

2.9. At the hearing of the Writ Petitions held on 11<sup>th</sup> February, 2020, the following order came to be passed :

*“1. The learned advocate for Respondent Nos. 1 to 3, on instructions, seeks to withdraw the notice dated 29<sup>th</sup> October, 2018 and the impugned Order dated 21<sup>st</sup> February, 2019. In view thereof, the learned Advocate for the Petitioner, on instructions, seeks to withdraw the above Petition. The Petition is disposed off as withdrawn.”*

2.10. On 3<sup>rd</sup> July, 2020, Respondent No. 3 issued another notice under Section 212 (1) of the Act inter alia contending that the said structures fall within the regular line of the street.

2.11 On 5<sup>th</sup> October, 2020, Respondent No.3 issued another notice and withdrew the earlier notice dated 3<sup>rd</sup> July, 2020.

2.12. In response to the notice dated 5<sup>th</sup> October, 2020, the Petitioners filed their reply and requested for a personal hearing.

2.13. On 25<sup>th</sup> November, 2020, Respondent No. 3 passed the impugned Order. The impugned Order directed the Petitioners to demolish the structures within a period of 07 days and handover the land beneath the structures so demolished to the Respondents.

2.14. Being aggrieved by the impugned Order, the Petitioners preferred the present Writ Petitions.

2.15. On 18<sup>th</sup> December, 2020, this Court passed an Order restraining Respondent No.1 Corporation from taking any coercive action in the matter.

3. The aforesaid are the brief facts.

4. Appearing for the Petitioner, Advocate Sagar Joshi submitted that in the present case, there has been a breach of natural justice as no personal hearing was granted to the Petitioner despite a request for one. Further, that in order to issue a notice under Section 212 (1) of the Act, the basis has to be “regular line of the public street” as drawn under Section 210 of the Act. The information received in response to the RTI Application demonstrates that no action under Section 210 of the Act has been taken and therefore the regular line of the street has not been prescribed. On this count, the impugned Order ought to be set aside. Further, that Respondent No. 3 has

no power and authority to issue the impugned Order.

5. Appearing for the Respondent No.1 Corporation, Mr.Rao submitted that there has been no violation of natural justice. That in any event, the Petitioners are entitled to compensation under Section 216 of the Act. The Petitioners' personal interest cannot override larger public interest. Despite the regular street line being published in local newspapers i.e. Dainik Maharashtra Times, Janmat and Thane Vaibhav as early as on 18<sup>th</sup> February, 2016, where the present road is shown at Serial No.122, none of the Petitioners' lodged any objection. That the Petitioners had approached the incorrect department i.e. the Assistant Engineer, Dombivali Division, Kalyan Dombivali Municipal Corporation instead of the Town Planning Department with its RTI query and therefore no cognizance can be taken qua the reply / report dated 29<sup>th</sup> November, 2018. That a Commissioner's power under Section 212 of the Act can be delegated with the approval of the Standing Committee.

6. At the outset, we propose to first deal with the Petitioners' argument that in the present case, there has been a breach of natural justice as no personal hearing was granted to the Petitioners prior to issuance of the impugned Order. In order to deal with this contention, it would be necessary to reproduce Section 212 of the Act, which reads as under :

***“212. Additional power to Commissioner to order setting back of buildings to regular line of street. - (1) If any building or any part thereof is within the regular line of a public street***

*and if, in the opinion of the Commissioner, it is necessary to set back the building to the regular line of the street, he may, if the provisions of section 211 do not apply, by written notice -*

*(a) require the owner of such building to show cause within such period as is specified in such notice by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, why such building or any part thereof, which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner; or*

*(b) require the said owner on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf and show cause why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner.”*

7. In our view, the contention as canvassed by the Petitioners cannot be accepted. This would be in violation of the language used by the legislature in sub-clauses (a) and (b) reproduced above. If the legislature did in fact intend to provide that in all cases personal hearings were necessary, there was no necessity of providing two separate clauses (a) and (b). The legislature could have in clause (a) itself provided that a personal hearing should be given by adding the word “and” at the end of clause (a) instead of “or”. This language intentionally used by the legislature clearly gives discretion to either call for a written response or to offer a personal hearing. In

any event, the principle of natural justice would not stand violated merely because the affected person is provided an opportunity to make a written representation and not follow that up with a personal hearing. It is in the discretion of the Commissioner to issue a notice under clause (b) of sub-section (1) which contemplates an oral or personal hearing. In our considered opinion, the interpretation of the word “or” at the end of clause (a) cannot be interpreted as “and”. The clear intention of the Statute does not require such a reading.

8. The Petitioners’ placed reliance on this Court’s decision in *Amodkumar Gangwar vs. Kalyan Dombivali Municipal Corporation*<sup>1</sup> in order to argue that “or” shall be read as “and” in between Section 212 (1) (a) and (b). We do not agree with the submissions. Firstly, it is apparent that in the said decision, this Court was only dealing with the delegation of powers from the Standing Committee to the Commissioner and not the question which has arisen in this matter. The observation of this Court which the Petitioners rely upon is a general observation and is not to be construed in the manner contended by the Petitioners. This Court had not ruled that “or” shall be read as “and” in between Section 212 (1) (a) and (b).

9. With regard to the principles of natural justice, it has been repeatedly held that personal hearings are not to be extended in every case. The requirement of natural justice cannot be a straight – jacket formula. In the context of Section 212, the Commissioner may either call for statement in writing showing cause or offer a

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<sup>1</sup> 2017 (6) Mh. L.J. 374

personal hearing to show cause. Furthermore, it is always open to the Commissioner, after considering the written statement, to give personal hearing, if at all he requires it. This is the plain and literal interpretation of the said section. This would be sufficient compliance with the principles of natural justice and also provisions of Section 212 of the Act. We cannot read words into the Section as the Petitioners' intend for us to do.

10. In view of the aforesaid discussion, we reject the Petitioners' argument as to violation of natural justice.

11. The Petitioners' next contention is with respect to the response received by them to the RTI Application. In this respect, it is pertinent to note that the Respondent has pointed out that the Petitioner had approached the wrong department and therefore the response given cannot be relied upon. In fact, the Respondent No. 1 Corporation in its Affidavit in Reply, has pointed out that the Commissioner prescribed the regular line of the street and on 18<sup>th</sup> February, 2016, published the same in the local newspapers i.e. Dainik Maharashtra Times, Janmat and Thane Vaibhav where the present road is shown at Serial No. 122. Pertinently, the Petitioners did not respond and / or object to the said publication. Coloured photocopies of the publication in the local newspapers 'Janmat' dated 16<sup>th</sup> February, 2016 and 'Thane Vaibhav' dated 20<sup>th</sup> February, 2016 are subsequently tendered in Court. In any event, the said publication (not coloured) was already annexed as Annexure 'B' to the Affidavit in Reply dated 20<sup>th</sup> December, 2020.

12. The Petitioners have further contended that the Respondents have not

brought on record the date on which the publication of the regular line of the street was placed before the Standing Committee, and the date on which the Standing Committee discussed the same and accorded sanction about prescribing such street line. This argument overlooks Section 210 of the Act. Unequivocally, Section 210 (1) (a) empowers the Commissioner to prescribe a street line for the first time without the prior approval of the Standing Committee (as has been done in the present case). It is only under Section 210 (1) (b) of the Act, where the Commissioner prescribes a fresh line in substitution of the street line prescribed for the first time under Section 210 (1) (a) of the Act that the approval of the Standing Committee is required.

13. Post issuance of the Show Cause Notice, once the written reply of the Petitioners was received, the same was placed before the Standing Committee who vide Resolution No. 188 passed on 5<sup>th</sup> November, 2020 accorded its approval to issue the impugned Order. This being so, we see no illegality in the manner in which the impugned Order came to be issued.

14. Whilst adjudicating upon the Petitioners' grievances, one cannot lose sight of the purpose, intent and objective of the sections. Owing to the constant and enormous increase in population and traffic in congested parts of a City, Municipal Corporations such as the Respondent No. 1 Corporation are constantly under pressure to widen streets. One of the several methods to do so is contained in Section 212 of the Act. The regular line of the street as prescribed under Section 210 of the Act may pass through properties of owners abutting on the streets. As a result, it is impossible

to widen the streets unless parts of land belonging to the owners are acquired. Sometimes a building or a structure or part of it stands on such land (such as in the present case) and unless that portion of the building which falls within the line is removed, widening would be impossible. Therefore, in the first instance, Section 212 requires that the Commissioner shall issue a Show Cause Notice calling upon the owner to respond as to why the building or a part of the building which falls within the line of street should not be pulled down. After considering such reply, if the Commissioner is of the opinion that the building or part thereof should be pulled down, he must obtain the approval of the Standing Committee and then serve a notice on the owners to pull down the offending building or part of building within a certain time. Should the owner cooperate, he will himself remove the offending structure and release the land underneath it. Should the owner not cooperate, the Commissioner is empowered to pull down the offending structure at the cost of the owner. Sub-section (4) of Section 212 of the Act provides that the Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line (line of the public street) therefore occupied by the said building, and such land shall thereafter be deemed a part of the public street and shall vest as such in the Corporation.

15. In our opinion, all of the above stipulations have been duly followed in the present matter and therefore, we refrain from interfering with the action taken by the Corporation.

16. It is the Petitioners' next argument that Respondent No. 3 has no authority to issue the impugned Order. The authority to issue an Order under Section 212 of the Act undoubtedly vests with the Commissioner. This is the plain language of Section 212. However, under Section 69 of the Act, Municipal Officers such as Respondent No.3 may be empowered to exercise the powers conferred on a Commissioner under the Act. This delegation is subject to approval of the Standing Committee. Section 69 reads as under :

*“69. Municipal officers may be empowered to exercise certain of the powers, etc. of the Commissioner or the Transport Manager. - (1) Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner or the Transport Manager; as the case may be, and subject to his revision and to such conditions and limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or Rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specially empowers by order in writing in this behalf; and to the extent to which any municipal officer is so empowered the word "Commissioner" and the words "Transport Manager" occurring in any provision in this Act, shall be deemed to include such officer.*

*(2) The Commissioner shall not, except with the prior approval of the Standing Committee, make an order under sub-section (1) affecting his powers, duties or functions under any of the following sections, sub-sections and clauses, namely:-*

*10(1)(h), 12(1), 18(1), 26(2), 43(2), 43(2), 43(2), 43(5), 51(2), 67(3)(b), 67(3)(c), 67(3)(d), 71(2), 73, 77, 78(1), 85, 86, 87, 90, 92(2), 94, 95, 121, 122, 125, 126, 130(1)(b), 131(1), 134, 137, 144, 152, 154, 160, 174, 176, 177, 188, 195, 196, 197, 201, 205, 207, 208, 209, 210, 212, 213, 214, 216, 220, 224, 232, 243, 268, 269, 270, 272(2), 273, 274, 275, 275(1), 277, 278, 281, 298, 300, 301, 303, 305, 310, 317, 386(2), 439(3), 439(4), 441, 442, 445, 466, 481 except clause (a) of sub-section (1).*

*(emphasis supplied)*

17. Accordingly, the Commissioner sought for the approval of the Standing Committee for such delegation and approval was granted on 22<sup>nd</sup> February, 2016 vide Resolution No. 208. In view thereof, we also reject this argument canvassed by the Petitioners.

18. Whilst passing this Order, we have also taken into account the public interest involved in the matter as opposed to the private interest of the Petitioners. The Respondent No.1 Corporation has contended before us that the existing roads have not been widened for the last 50 years. The Respondent No.1 Corporation has specifically pleaded that as a result of influx of population, there is a constant increase in traffic at Dombivali and the existing roads and infrastructure are unable to bear the

brunt of this increased quantum of population and traffic. In any event, considering that the Petitioners will be compensated under Section 216 of the Act, we fail to see how the Petitioners stand prejudiced by the impugned actions of the Corporation. Having said so, we would expect the Respondent No. 1 Corporation to take into consideration the applicable Scheme for compensation and adequately compensate the Petitioners in accordance with law. Should the Petitioners be aggrieved by the computation of compensation being awarded to them, they can always initiate action in accordance with law.

19. The Writ Petitions are accordingly dismissed.

**(R.I.CHAGLA, J. )**

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