IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6403 OF 2016

Shri Amodkumar Gangwar .. Petitioner
Vs
State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO.6026 OF 2016

Shri Nilesh R. Ghadge .. Petitioner
Vs
State of Maharashtra & Ors. .. Respondents

...

Mr. Rahul Shivaji Kadam for the Petitioner in both the petitions.
Mr. A. S. Rao for the Kalyan Dombivli Municipal Corporation in both the petitions.
Mr. Manish M. Pabale, AGP for the State of Maharashtra in both the petitions.

CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.

DATE : 25th July 2017

ORAL JUDGMENT (PER: A.S.OKA, J)

1] On the earlier date, the parties were put to notice that these petitions will be taken up for final disposal. Accordingly, we issue Rule. The learned AGP waives service for the State of Maharashtra and the learned counsel appearing for the Kalyan Dombivali Municipal Corporation waives service for the 2nd to 4th Respondents.

2] The challenge in these petitions under Article 226 of the

Constitution of India is to the notices issued under Sub-section 1 of Section 212 of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act") and the orders passed by the designated officer under sub-section 2 of Section 212 of the said Act.

3] Various submissions have been made in support of these two petitions. The first submission is that the condition precedent for invoking Sub-section 1 of Section 212 is that a street line has to be prescribed in accordance with Section 210 of the said Act. The submission is that the street line is not prescribed in accordance with Section 210 and therefore, the power under Sub-section 1 of Section 212 and consequently under Sub-section 2 of Section 212 could not have been invoked. Though the claim of the Kalyan Dombivali Municipal Corporation (for short "the said Corporation") is that a street line has been fixed in accordance with Section 210, various contentions have been canvased across the bar as to how the purported exercise of power under Section 210 is not legal. Another submission canvased is that though under Sub-section 2 of Section 212, the Municipal Commissioner is empowered to pass an order requiring the owner by a written notice to pull down the building or a part thereof which is within the regular line of street, the said power can be exercised only with the approval of the standing committee. It is submitted that in the present case when the impugned orders were passed by the designated officer under Sub-section 2 of Section 212, there was no approval of the Standing Committee. It is pointed out that though by a resolution dated 1st October 2016, the Standing Committee of the said Corporation purported to delegate its powers under Sub-section 2 of Section 212 to the Commissioner, the Additional Commissioner, Zonal Deputy Commissioner etc., the Standing Committee has no such statutory power

to delegate. It is submitted that even assuming that there is such a delegation made subsequent to the impugned order passed under Section 2 of Section 212, the earlier orders passed under Sub-section 2 of Section 212 cannot ratified by a subsequent resolution. It is further submitted that even assuming that the designated officer exercised the delegated powers, the impugned order is illegal on the ground that the Standing Committee had no authority to delegate its power under sub-section 2 of Section 212 to an officer of the Municipal Corporation.

4] The learned counsel appearing for the Kalyan Dombivali Municipal Corporation submitted that the power of the Standing Committee under Sub-section 2 of Section 212 is purely an administrative power and therefore, the Standing Committee can always delegate such power. He relied upon sub-section 3 of Section 67 and submitted that the Standing Committee could always delegate its administrative powers in favour of the designated officer. He also pointed out that the powers of the Commissioner under Section 212 have been delegated with the approval of the Standing Committee to the designated officers. He placed reliance on the decision of Court of Appeal in the case of ***Barnard & Ors Vs. National Dock Labour Board***[1] He also relied upon a decision of the Apex Court in the case of ***Haryana Urban Development Authority & Ors. V/s. Orchid Infrastructure Developers Pvt. Ltd.***[2] He relied upon a decision of the Apex Court in the case of ***Rasid Javed & Ors. V/s. State of Uttar Pradesh & Anr***[3]. He also relied upon the decision of the Apex Court in the case of ***High Court of Judicature for Rajasthan Vs. P. P. Singh & Anr***[4] . He invited

1 [1953]All England Law Reports 1113
2 AIR 2017 Supreme Court 882
3 (2010) 7 SCC 781
4 (2003) 4 SCC 239

our attention to the affidavit filed on record pointing out that after following due procedure under Section 210, the road line has been determined. He submits that considering the fact that the work of widening of the major roads is in public interest, in Writ jurisdiction, no interference is called for.

5] We have given careful consideration to the submissions. Section 212 read thus :-

> ***212. Additional power to Commissioner to order setting back of buildings to regular line of street.***
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> *(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.*
>
> *2) If such owner fails to show sufficient cause to the satisfaction of 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 as aforesaid, the Commissioner may, with the approval of the Standing Committee, require the owner by a written notice to pull down the building or part thereof which is within the regular line of the street within such period as is*

prescribed in the notice.

3) If within such period the owner of such building fails to pull down such building or any part thereof coming within the said line, the Commissioner may pull down the same and all the expenses incurred in so doing shall be paid by the owner.

4) The Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest as such in the Corporation.

5) Nothing in this section shall be deemed to apply to buildings vesting in the [Government].

6] Sub-section 1 provides that if any building and any part thereof is within regular line of a public street and the Commissioner is of the opinion that it is necessary to set back a building to the regular line of the street, he is empowered to issue a show cause notice as required by Sub-section 1 of Section 212 to the owner of the building calling upon him to show cause as to why any part which is within the regular line of the street should not be pulled down and the land within the road line should not be acquired. Clause (b) of Sub-section 1 of Section 212 shows that the Municipal Commissioner is under an obligation to give personal hearing by fixing a date for hearing. After considering the reply to the show cause notice and after giving hearing to the owner, the Commissioner is required to record a satisfaction whether the owner has shown sufficient cause. Further part of sub-section 2 provides that if the Commissioner is satisfied that the owner has failed to show sufficient cause, the Commissioner may with the approval of the Standing Committee require the owner by a written notice to pull down the building or a part thereof which is within the

regular line of the street. Thus, Sub-section 2 makes it very clear that in the event Commissioner is satisfied that the owner has failed to show sufficient cause, before issuing a written notice to the owner to pull down the building or a part thereof, it is necessary for the Commissioner to obtain approval of the Standing Committee. The approval of the Standing Committee must precede the action of the Commissioner of issuing a written notice to the owner to pull down the building or a part thereof.

7] There is a long line of decisions of the Privy Council and Apex Court, namely, ***Nazir Ahmed V/s. King Emperor*** [5]***, Chettiam Veeettil Ammad V/s. Taluka Land Board***[6]***, A. R. Antulay V/s. Ramdas Sriniwas Nayak & Ors***[7] *and* ***Dipak Babaria & Anr. V/s. State of Gujarat & Ors***[8] holding that where a statute requires to do a particular thing in a certain way, the thing must be done in that manner and in no other manner whatsoever. The view taken by the Privy Council in the case of Nazir Ahmed is based what is held in the case of ***Taylor V/s. Taylor***[9]**.** In the present case, approval is not granted by the standing committee before the date on which the order/notice under Sub-section 2 of Section 212 which is impugned in these petitions was issued. The notice under sub-section 2 of Section 212 cannot be issued unless approval is granted by the Standing Committee.

8] There is one more factual aspect which needs to be considered. In the meeting of the Standing Committee held on 1st October 2016, a note prepared by the Municipal Commissioner on 2nd July 2016 was placed for consideration of the Standing Committee. The Note contained a proposal for delegating the powers of the Standing

5 AIR 1936 PC 253
6 (1980) 1 SCC 499
7 (1984) 2 SCC 500
8 (2014) 3 SCC 502
9 (1876) 1 Ch D 426

Committee under sub-section 2 of Section 212 to designated officers of each ward and also for ratification of the decisions taken from 22nd February 2016 . We have perused the resolution dated 1st October 2016. It refers to a resolution passed by the Standing Committee on 22nd February 2016 exercising power under Sub-section 2 of Section 69 of the said Act by which the powers of the Commissioner under Section 212 were delegated to the designated officers. The resolution dated 1st October 2016 purports to delegate powers of the Standing Committee under Sub-section 2 of Section 212 to the Commissioner, Additional Commissioner, Deputy Commissioner and the Controller of unauthorized constructions.

9] In the two cases in hand, the imugned orders dated 20th May 2016 have been made under Sub-Section (2) of Section 212 of the said Act without approval of the Standing Committee. There could not have been *post facto* approval granted by the Standing Committee in terms of Sub-section 2 of Section 212. In any event, the resolution dated 1st October 2016 does not purport to grant such *post facto* approval. On this ground that there is no approval granted by the Standing Committee, the impugned orders purportedly passed under Sub-section 2 of Section 212 by the designated officer are bad in law.

10] Now, the other question is whether the Standing Committee can delegate its powers under Sub-section 2 of Section 212 to any of the officers named in the resolution dated 1st October 2016. Before we examine the issue of validity of the delegation, we may note here that the power to grant approval under sub-section 2 of Section 212 is not an empty formality. The Standing Committee is required to examine each and every case on facts. The Standing Committee is not expected to act like a post office by mechanically putting or affixing a rubber stamp on

the decision of the Commissioner. The power is to grant approval to the decision of the Commissioner to pull down a building or a part thereof. Naturally, the Standing Committee before granting approval will have to look into the reply submitted by the owner to the show cause notice issued under Sub-section (1) of Section 212.

11] We have carefully examined the sceme of the said Act. As far as the power of the Standing Committee to delegate its powers and functions is concerned, there is only one express statutory provision in the form of Section 24 of the said Act which reads thus:-

> ***"24. Standing Committee may delegate powers to Special Committee or Sub-committee.***
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> *1) The Standing Committee may, from time to time, by a resolution carried by the vote of at least two-thirds of its members present at the meeting,* ***delegate to any Special Committee appointed under section 30 any of its powers and duties in respect of any matter with which such Special Committee is competent to deal, or refer to any such Committee any such matter for disposal or report, and every such Special Committee shall conform to any instructions that may from time to time be given to it by the Standing Committee in this behalf*** *:*
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> *Provided that, every such resolution shall be reported by the Standing Committee to the Corporation as soon as possible, and the Corporation may at any time cancel such resolution.*
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> *2)* ***The Standing Committee may, subject to the rules, by a specific resolution in this behalf delegate any of its powers and duties to sub-committees consisting of such members of the Standing Committee not less in number than three as the Standing Committee thinks fit*** *and every such sub-committee shall conform to any instructions that may from time to time be given to it by the Standing Committee."*
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> (emphasis added)

The aforesaid Section confers a power on the Standing Committee to delegate its powers to a Special Committee constituted under Section 30 of the said Act. A Special Committee is required to be constituted by the General Body of a Municipal Corporation as provided in sub-section 1 of Section 30. Under sub-section 2 of Section 24, subject to the provisions of the Rules, the Standing Committee is empowered to delegate its powers and duties to Sub-committees consisting of its own members. There is no express or implied statutory power conferred on the Standing Committee by the said Act to delegate its powers and functions to any municipal officers. Though an attempt is made by the learned counsel appearing for the Municipal Corporation to rely upon sub-section 3 of Section 67, we find that all that the sub-section provides is that

> "*(3) Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or the Standing Committee and subject also to all other restrictions, limitations and conditions imposed by this Act or by any other law for the time being in force, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which imposes any duty or confers any powers on the Corporations vests in the Commissioner...*"

By no stretch of imagination, this part of Section 67 confers powers on the Standing Committee to delegate its own functions and statutory powers to the individual Municipal Officers. Even the power of the Municipal Commissioner or Transport Commissioner to delegate their own powers is restricted by Section 69. As noted earlier, the power of the Commissioner under certain specified Sections including 210 and 212 can be delegated by the Commissioner only with the prior approval of the Standing Committee. Perhaps, there is one more reason why the power of the Standing Committee to delegate is confined to the delegation to a Special Committee or its own Sub-committee. The

proceedings of the Standing Committee are governed by Section 43 of Chapter II of the said Act and the Rules framed which are part of the Schedule "D" to the said Act. The Standing Committee is required to take decisions in its meeting by majority or by a special majority as the provisions of the statute may provide. Such powers which are required to exercised by majority cannot be delegated to an individual officer.

12] Thus, in our view, the resolution dated 1st October 2016 is completely illegal in as much as there is no power vesting in the Standing Committee to delegate its powers and duties under Sub-section 2 of Section 212 of the said Act to any individual officer named in the said resolution. At highest, the Standing Committee could have delegated said power to a Special Committee or a Sub-committee as the case may be. Therefore, assuming that the designated officer exercised powers to grant approval under sub-section 2 of the Section 212 in his capacity as the delegate of the Standing Committee, as the delegation itself is bad in law, the designated officer had no power to grant approval under Sub-section 2 of Section 212. None of the officers specified in the resolution dated 1st October 2016 could have exercised the powers of the Standing Committee of granting approval under Sub-section 2 of Section 212.

13] Therefore, the impugned orders/notices issued in terms of Sub-section 2 of Section 212 of the said Act are completely vitiated as the same have been issued without prior approval of the Standing Committee as mandated by Sub-section 2 of Section 212. Hence, it follows that on the basis of the impugned orders, the power to remove the building in question or a part thereof, cannot be exercised. The Commissioner or the designated officer to whom powers of the Commissioner under Section 212 have been delegated can exercise the

said power only after obtaining approval of the Standing Committee in accordance with law.

14] Therefore, it is not necessary for us to go into the issue of the legality and validity of the alleged action taken under Section 210 of the said Act, if any, or any other issue raised in these petitions.

15] Accordingly, we dispose of these two petitions by passing the following order:-

O R D E R

a) In view of the finding recorded that the resolution dated 1st October 2016 bearing number 133 passed by the Standing Committee of the Kalyan Dombivli Municipal Corporation is illegal, the orders impugned under sub-section 2 of Section 212 of the said Act are hereby quashed and set aside;

b) We make it clear that we have made no adjudication on the issue of legality and validity of the action, if any, under Section 210 of the said Act. The said issue will remain open which can be agitated by the Petitioners at appropriate stage in the event there is a fresh order or notice issued against them under Sub-section 2 of Section 212;

c) All contentions of the Petitioners and the Municipal Corporation on the merits of the notices issued under Sub-section 1 of Section 212 of the said Act are kept open;

d) This order will not preclude the Municipal Commissioner or his lawful delegate from passing

fresh orders or issuing a notice under Sub-section 2 of Section 212 on the basis of the same show cause notices provided there is an approval granted by the Standing Committee as required by Sub-section 2 of Section 212;

e) In the event, a notice or order as contemplated by Sub-section 2 of Section 212 is issued to the Petitioners, we direct that the same shall not be implemented for a period of three weeks from the date on which the notice or order is served upon the Petitioners;

f) Rules is made partly absolute on above terms with no orders as to costs;

g) All concerned to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.) (A. S. OKA, J.)