

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6046 OF 2018

Jaiprakash Vishwanath Jaiswal,
Age: 72 years, Occ: Business,
Residing at Shop No.5, Shree Shankar
Sweet Mart, Shree Govindanand
Shreeram Mandir, Swami Vivekanand
Road, Ram Nagar Station Road,
Dombivali (E), District Thane.

.... Petitioner

- Versus -

1. Municipal Corporation of cities of Kalyan and Dombivali having its office at Shankarrao Chowk, Kalyan (W), District Thane, through its Commissioner.
2. The Designated Officer & Ward Officer, G/Ward, Kalyan Dombivli Municipal Corporation, having his office at G-Ward, Dombivli (E), Taluka Kalyan, District Thane.
3. Parshuram Kumavat,
The Designated Officer & Ward Officer, G/Ward, Kalyan Dombivli Municipal Corporation, having his office at G-Ward, Dombivli (E), Taluka Kalyan, District Thane.
4. Shree Govindanand Shriram Mandir, Dombivali, A Public Trust registered under the provision of the Bombay Public Trust Act, having its office at

Ram Nagar, Station Road,
Dombivali (E), District Thane
Through its Trustees

- 4.1) Mrs. Madhuri Nityanand Ghate
(President), Age: 47 years,
Occ: Service, R/o 102, Samarth
Dham, Nandivali Road, Dombivali,
Taluka Kalyan, District Thane.
- 4.2) Harishchandra Govind Golatkar
(Karyavahak), Adult, Occ: Business,
R/o 1/1, Ujala Building, Highway
Road, Dombivali (E), Tal. Kalyan,
District Thane.
- 4.3) Sandip Suresh Deshpande (Treasurer)
Age: 43 years, Occ: Service,
R/o. 13, Meghdoot, Pallvai CHS Ltd.,
Near Tilak Nagar School, Dombivali (E),
Taluka Kalyan, District Thane.
- 4.4) Kundan Eknath Mayekar (Member)
Age: 46 years, Occ: Service,
R/o. B/11, Bhardwaj, Shirgaon,
Badlapur (E), Taluka Ambernath,
District Thane.
- 4.5) Mrs. Sunaiyna Tukaram Savardekar
(Member), Age: 52 years,
Occ: Housewife, R/o Durga
Darshan, Near Sai Mandir,
Pandurang Wadi, Dombivali (East),
Taluka Kalyan, District Thane.
- 4.6) Mrs. Anuradha Avinash Bendre
(Member), Age: 52 years,
Occ: Housewife, R/o. 1403,

Harismruti, New Ayre Road,
Dombivali (E), Taluka Kalyan,
District Thane.
Through their Constituted Power
of Attorney Holder
Hemant Yashwant Datar,
Age: 51 years, Occ: Business,
R/o. 403, Kusumkunjan Rajendra
Prasad Road, Ram Nagar,
Dombivali (East), Taluka Kalyan,
District Thane.

.... Respondents

AND

WRIT PETITION NO.6047 OF 2018

Soti Lal Barsati Gupta,
Age: 66 years, Occ: Business,
Residing at Shop No.1, Rakesh Grain
Stores, Shree Govindanand Shreeram
Mandir, Swami Vivekanand Road,
Ram Nagar Station Road, Dombivali (E),
District Thane.

.... Petitioner

- Versus -

1. Municipal Corporation of cities of Kalyan and Dombivali having its office at Shankarrao Chowk, Kalyan (W), District Thane, through its Commissioner.
2. The Designated Officer & Ward Officer, G/Ward, Kalyan Dombivli Municipal Corporation, having his office at G-Ward, Dombivli (E), Taluka Kalyan, District Thane.

3. Parshuram Kumavat,
The Designated Officer & Ward
Officer, G/Ward, Kalyan Dombivli
Municipal Corporation, having his
office at G-Ward, Dombivli (E),
Taluka Kalyan, District Thane.
4. Shree Govindanand Shriram Mandir,
Dombivali, A Public Trust registered
under the provision of the Bombay
Public Trust Act, having its office at
Ram Nagar, Station Road,
Dombivali (E), District Thane
Through its Trustees
 - 4.1) Mrs. Madhuri Nityanand Ghate
(President), Age: 47 years,
Occ: Service, R/o 102, Samarth
Dham, Nandivali Road, Dombivali,
Taluka Kalyan, District Thane.
 - 4.2) Harishchandra Govind Golatkar
(Karyavahak), Adult, Occ: Business,
R/o 1/1, Ujala Building, Highway
Road, Dombivali (E), Tal. Kalyan,
District Thane.
 - 4.3) Sandip Suresh Deshpande (Treasurer)
Age: 43 years, Occ: Service,
R/o. 13, Meghdoot, Pallvai CHS Ltd.,
Near Tilak Nagar School, Dombivali (E),
Taluka Kalyan, District Thane.
 - 4.4) Kundan Eknath Mayekar (Member)
Age: 46 years, Occ: Service,
R/o. B/11, Bhardwaj, Shirgaon,
Badlapur (E), Taluka Ambernath,

District Thane.

4.5) Mrs. Sunaiyna Tukaram Savardekar
(Member), Age: 52 years,
Occ: Housewife, R/o Durga
Darshan, Near Sai Mandir,
Pandurang Wadi, Dombivali (East),
Taluka Kalyan, District Thane.

4.6) Mrs. Anuradha Avinash Bendre
(Member), Age: 52 years,
Occ: Housewife, R/o. 1403,
Harismruti, New Ayre Road,
Dombivali (E), Taluka Kalyan,
District Thane.
Through their Constituted Power
of Attorney Holder
Hemant Yashwant Datar,
Age: 51 years, Occ: Business,
R/o. 403, Kusumkunj Rajendra
Prasad Road, Ram Nagar,
Dombivali (East), Taluka Kalyan,
District Thane.

.... Respondents

AND

WRIT PETITION NO.6048 OF 2018

Shri Sita Tribhuvan Jaiswal,
Age: 68 years, Occ: Business,
Residing at Shop No.4, V.K. Electricals,
Shree Govindanand Shreeram Mandir,
Swami Vivekanand Road, Ram Nagar
Station Road, Dombivali (E),
District Thane. Through her Power
of Attorney holder Shri Tribhuvan
Prasad Jaiswal

.... Petitioner

- Versus -

1. Municipal Corporation of cities of Kalyan and Dombivali having its office at Shankarrao Chowk, Kalyan (W), District Thane, through its Commissioner.
2. The Designated Officer & Ward Officer, G/Ward, Kalyan Dombivli Municipal Corporation, having his office at G-Ward, Dombivli (E), Taluka Kalyan, District Thane.
3. Parshuram Kumavat,
The Designated Officer & Ward Officer, G/Ward, Kalyan Dombivli Municipal Corporation, having his office at G-Ward, Dombivli (E), Taluka Kalyan, District Thane.
4. Shree Govindanand Shriram Mandir, Dombivali, A Public Trust registered under the provision of the Bombay Public Trust Act, having its office at Ram Nagar, Station Road, Dombivali (E), District Thane Through its Trustees
- 4.1) Mrs. Madhuri Nityanand Ghate
(President), Age: 47 years,
Occ: Service, R/o 102, Samarth Dham, Nandivali Road, Dombivali, Taluka Kalyan, District Thane.
- 4.2) Harishchandra Govind Golatkar
(Karyavahak), Adult, Occ: Business,

R/o 1/1, Ujala Building, Highway
Road, Dombivali (E), Tal. Kalyan,
District Thane.

4.3) Sandip Suresh Deshpande (Treasurer)
Age: 43 years, Occ: Service,
R/o. 13, Meghdoot, Pallvai CHS Ltd.,
Near Tilak Nagar School, Dombivali (E),
Taluka Kalyan, District Thane.

4.4) Kundan Eknath Mayekar (Member)
Age: 46 years, Occ: Service,
R/o. B/11, Bhardwaj, Shirgaon,
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4.5) Mrs. Sunaiyna Tukaram Savardekar
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Darshan, Near Sai Mandir,
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Taluka Kalyan, District Thane.

4.6) Mrs. Anuradha Avinash Bendre
(Member), Age: 52 years,
Occ: Housewife, R/o. 1403,
Harismruti, New Ayre Road,
Dombivali (E), Taluka Kalyan,
District Thane.
Through their Constituted Power
of Attorney Holder
Hemant Yashwant Datar,
Age: 51 years, Occ: Business,
R/o. 403, Kusumkunjan Rajendra
Prasad Road, Ram Nagar,
Dombivali (East), Taluka Kalyan,
District Thane.

.... Respondents

Mr. Y.S. Jahagirdar, Senior Counsel i/by Mr. Suresh M. Sabrad & Mr. Amey Sawant for the Petitioner in WP-6046/2018.

Mr. Narendra V. Walawalkar, Senior Counsel i/by Mr. Suresh M. Sabrad with Mr. Vikram N. Walawalkar for the Petitioner in WP-NOS.6047 & 6048 of 2018.

Mr. A.S. Rao for Respondent Nos.1 to 3 in all petitions.

Mr. Rajesh Datar for Respondent No.4 in all petitions.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JUNE 26, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. These writ petitions involve common questions of law and facts and were heard together. They can be disposed of conveniently by a common Judgment.

2. We issue **rule** in each of these petitions. The respondents have waived service. The contesting respondent is the Kalyan-Dombivli Municipal Corporation whose Designated Officer has filed three affidavits in-reply and each one of them are taken on record. Learned Senior Counsel arguing these

petitions on behalf of the respective petitioners state, on instructions, that the petitioners do not wish to put any rejoinder but would proceed on denials.

3. The facts and circumstances in which we pass our ultimate order and direction would demonstrate as to how Public bodies have conducted themselves and in the recent past the tendencies on their part to defy the orders and directions of this Court have come to light even in these matters. In these matters we expected, and after a detailed hearing, the Kalyan-Dombivli Municipal Corporation (“KDMC” for short) to take a reasonable stand and in the event there is an error and glaring in their orders and directions, they would be fair enough to state before the Court that such orders need not be upheld. They would take all the consequences of such orders being set aside but the powers be reserved unto them so as to proceed against the structures of the petitioners which stand demolished. To our utter shock and dismay, we find that far from accepting such glaring errors, the KDMC has instructed its Counsel to justify the actions and argue that there are absolutely no errors and no

defiance in the least at all of the Order and Judgment of this Court.

4. Before we proceed further, we would invite the attention of all concerned to a Judgment of a Division Bench of this Court which has been rendered in the case of **Sopan Maruti Thopte and another vs. Pune Municipal Corporation and another**, reported in AIR 1996 Bom. 304, and decades back. In that Judgment and Order, this Court had an occasion to decide a group of petitions. The group of petitions dealt with the scheme of the provisions of Section 351 of the Bombay Municipal Corporation Act, 1888. The question referred for opinion and answer of the Division Bench was, whether it is obligatory on the Deputy Municipal Commissioner to give a personal or oral hearing to the parties after notice under Clause (a) of sub-section (1) of Section 351 is issued? Upon a common reference of such an issue, the Division Bench referred to the *pari materia* provisions in the then Bombay Provincial Municipal Corporation Act, 1949. Section 260 of the same and Section 351 of the Bombay Municipal Corporation Act are identical. This Court,

firstly, negated an argument on behalf of the petitioners in those petitions that in all eventualities a personal hearing would have to be given and there is no discretion in the Commissioner either to call for a written cause or to give personal hearing. After analysing the scheme of the Act and particularly the legal provisions, the Division Bench proceeded to hold that the principle of *audi alteram partem* is part and parcel of the principles of natural justice and the doctrine of hearing is not extended in every case. Requirement of natural justice cannot be an uniform mode and cannot be laid down on any strait-jacket formula. It is, therefore, apparent that what principles of natural justice have to be followed is entirely to be decided from the scheme of the law and the peculiarity of the facts and circumstances. Therefore, no general rule can be laid down. In such circumstances, from the Judgment and Order of the Division Bench it is apparent that the Municipal Corporations in Maharashtra would follow this Judgment, and particularly the directions in paras 19, 20 and 21 thereof. Paras 19, 20 and 21 read as under:-

“19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations constituted under the B.P.M.C. Act would follow the following procedure before taking action under Section 351 of the B.M.C. Act or under section 260 of the B.P.M.C. Act.

- (i) In every case where a notice under section 351 of the B.M.C. Act/under section 260 of B.P.M.C. Act is issued to a party 15 days' time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.*
- (ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/Deputy Municipal Commissioner is communicated to the affected person.*
- (iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.*
- (iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the*

Corporation to demolish the same by giving a short notice of 24 hours.

- (v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days' time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.*
- (vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall provide for 7 days' time to show cause in such a case.*

20. In case the notice is issued under Sec. 478 of the B.P.M.C. Act, 1949 and if the person has not complied with the requisitions of the Commissioner, then it would be open to the Commissioner to demolish the unauthorised structure after expiry of 30 days of the period specified in the notice for removal of such construction.

21. The Municipal Corporations in the State of Maharashtra would follow the above directions so as to avoid unnecessary litigation.”

5. The essential argument before us in all these petitions is that these directions of the Division Bench are totally by-passed and have been ignored in proceeding to demolish the constructions at the site.

6. To appreciate this argument, we would refer to the facts. We would take Writ Petition No.6046 of 2018 as the lead matter and refer to the facts therein. The petitioner in this petition is a senior citizen. He has impleaded as party-respondents to this petition the Municipal Corporation of Kalyan-Dombivli, the Designated Officer & Ward Officer of “G” Ward and personally, so also a Public Charitable Trust as respondent No.4 together with the Trustees thereof.

7. He says that as a citizen of India and resident of the Ward which is within the governing limits of the KDMC, the petitioner has been inducted in the premises which are subject-matter of this petition, as a tenant of this Trust. He is running a sweetmeat shop and the details of the location and the address are set out in para 3 of the petition. It is claimed by the petitioner that he has been running this business with his family members since 1966. He claims to be very regular in paying the monthly rent but which fact is stoutly denied by respondent No.4. We are not concerned in this case with the disputes

between the landlord and the tenant for a Competent Court is seized of the same. We say nothing on the merits of that dispute and leave it entirely to that Court what order should be passed in the pending proceedings and particularly instituted by respondent No.4. We would proceed on the footing that respondent No.4 also moved the KDMC and made complaint with regard to this construction but we give that much credit to respondent No.4 for it is aware that if it has to get rid of a tenant or a person holding over the premises after the tenancy is determined, it has to move the Competent Court and cannot with the aid of the KDMC get rid of either the construction or the tenancy. However, the approach of respondent No.4, as is evident from this case, has led the authorities to act in terms of its powers under the Maharashtra Municipal Corporations Act, 1949. The writ petition narrates as to how the petitioner has been carrying on the business after obtaining the requisite licence and particularly under the Bombay Shops and Establishments Act, 1948, which stands renewed from time to time. He also relies upon a repair permission granted by the

KDMC. He also says that in the year 1994 the KDMC acquired some portion of the land for road widening and thereafter the road has been widened. He also relies upon the fact that a non-agricultural assessment tax has been levied and then alleges that the fourth respondent has been trying to dispossess the petitioner and since there was a threat of such forcible eviction and dispossession, a Civil Suit was filed being Regular Civil Suit No.163 of 2003. This Suit was dismissed in default and thereafter an application for restoration was filed being Miscellaneous Application No.18 of 2013. That was also dismissed for want of prosecution. To set aside that order of dismissal, another Miscellaneous Application No.224 of 2016 is moved and that is pending.

8. Then he relies upon the fact that in the year 2013, the KDMC sent a notice intending to widen the road and therefore the petitioner was called upon to co-operate, and the petitioner says that he did not come in the way of that road widening, though some portion of his shop was affected by the widening.

9. However, he alleges that taking advantage of this scheme of road widening, the fourth respondent brought a Civil Suit being Regular Civil Suit No.565 of 2013 in the Court of Civil Judge, Junior Division, Kalyan seeking a decree of possession. Then it is alleged that there is a Constituted Attorney of the fourth respondent who is a Builder and Developer by profession. He brought about a situation where during the pendency of the Suit, a notice was issued under Section 260 of the Maharashtra Municipal Corporations Act to the petitioner. That notice was received on 3-12-2013 and it was replied on 9-12-2013. The petitioner was then informed that he would not be issued any further notice and he should follow up the matter. Once again, during his personal visit to the office of respondent No.2, the Constituted Attorney of the fourth respondent was also present and thereafter the petitioner was informed that his structure would be demolished. However, that was on the footing that the fourth respondent, through its Power of Attorney holder, gave consent for demolition of the premises.

10. Then, on 28-1-2014, a notice under Section 478 of this very Act, declaring the said premises as illegal and unauthorised and directing the petitioner to demolish them within fifteen days, was issued. The petitioner also came to know that there was a development permission sought by the fourth respondent and which also came to be granted. That has led to filing of a Suit by the petitioner being Regular Civil Suit No.91 of 2014 seeking a declaration that the order of demolition, dated 28-1-2014, issued by the KDMC is illegal and a permanent injunction restraining the KDMC from demolishing the suit premises was also sought. On 7-2-2014, the learned Joint Civil Judge, Junior Division, Kalyan heard all parties and directed that *status quo* be maintained. Thereafter, the Suit was resisted by the contesting defendants by filing Written Statements. The Trial Court vacated the order of *status quo* on 30-9-2015 but on that day the petitioner moved an application seeking extension of that order of *status quo* and that came to be extended till the appeal period was over. Thereafter, Civil Appeal No.106 of 2015 was filed before the District Judge,

Thane in which also a stay application was moved. However, an order was passed on 3-8-2016 dismissing the appeal and which, according to the petitioner, is primarily based on the fact that the Civil Court lacks jurisdiction insofar as the decision on the issue of legality and validity of such a notice and referable to Section 478 of the Maharashtra Municipal Corporations Act. Exhibit "L" to the petition is a copy of this order and aggrieved thereby, a writ petition was filed in this Court being Civil Writ Petition No.10983 of 2016, which was heard on 1-9-2016 and this Court restrained the Municipal Corporation (KDMC) from demolishing the shop till 3-10-2016.

11. Thereafter, we are not concerned with the proceedings under the Maharashtra Public Trust Act, 1950, for what is material for us is that the above writ petition was finally heard by this Court on 5-12-2016. It was disposed of on the statement made by the KDMC that the notices issued under Section 260 r/w Section 478 of the Act stand withdrawn. Thereafter, reserving liberty to the KDMC to proceed against the structures after taking an inspection thereof, nothing survived

in those proceedings before this Court. It is apparent from the record that another notice, dated 2-1-2018, copy of which is at Exhibit “Q” to the petition, was issued and a detailed reply was given to it on 12-1-2018 by the petitioner.

12. A Civil Suit was also filed to challenge the above notice, but in view of the subsequent events, the petitioner says that it is rendered infructuous. Apart therefrom, what is alleged is that on this notice under Section 260, the petitioner furnished two replies in writing – one on 12-1-2018 and another on 5-2-2018.

13. However, unmindful of the contents thereof, the impugned order of 11-5-2018 was passed. Pertinently, that did not give any breather to the petitioner. On 14-5-2018, which was a Monday and when the petitioner was present in his shop premises along with his staff, the third respondent came with a demolition squad and police force. The demolition squad was accompanied by allegedly the Power of Attorney holder of the fourth respondent. Though the petitioner pleaded that the order

of 11-5-2018 granted fifteen days' time to comply with the same, the KDMC maintained that it was giving the petitioner only 24-hours to remove the structure from the site and since the time had lapsed, the KDMC says that it was justified in coming at the site with the demolition squad and later on in demolishing the structure. It is thereafter that the petitioner claims that the entire belongings were thrown away and in an inhuman manner the order of demolition was implemented. Thus, this order of demolition violates not only the Division Bench Judgment of this Court but the Rule of Law itself.

14. These allegations, with some difference in dates and other particulars, are common to all the petitions. The impugned order, copy of which is also annexed to the petition, follows the outcome of the proceedings before this Court.

15. At Exhibit "P", page 236, is a copy of the order passed by this Court in three writ petitions {*Civil Writ Petition Nos.10983, 10984 & Stamp No.23962 of 2016*}. This order reads as under:-

“Heard Mr. Walawalkar, learned Senior Counsel for petitioners, Mr. Rao, learned Counsel for respondents No.1(a) and 1(b) and Mr. Datar, learned Counsel for respondent No.2 in all the Petitions.

2. On 01.12.2016, matter was adjourned to 05.12.2016 for passing orders. Mr. Rao, upon taking instructions from Municipal Commissioner of respondent No.1, states that in all the Petitions, respondent No.1 had issued notices under Sections 260 read with Section 478 of the Maharashtra Municipal Corporations Act. Respondent No.1 withdraws these notices. He submits that as the notices stand withdrawn, petitioners Suits do not survive and the same may also be disposed of. He further states that respondent No.1 will carry out inspection of the suit premises in accordance with law and take further steps, if so advised.

3. Statement made by Mr. Rao, on instructions, is accepted. As the notices impugned in the Suits stand withdrawn, these Petitions do not survive and are disposed of as such. At the same time, petitioners shall file purshis in the trial Court for withdrawal of the Suits. If such purshis is filed, the learned trial Judge shall pass order of withdrawal of the Suits. Liberty is reserved to the respondent No.1 to carry out inspection of the suit premises in accordance with law. All contentions of the parties on merits, in future, are kept open. Order accordingly.”

Then follows at Exhibit “Q” a copy of the notice dated 2-1-2018.

The subject of this notice is that, despite the removal of the portion of the structure in the year 2013-14 for road widening, there is a construction made thereon and which construction does not satisfy the requirements and conditions prescribed by

law. To justify this act of putting up the structure or construction, the petitioner was called upon to remain present with the records such as the ownership, certified copy of the measurements and maps, copy of the non-agricultural assessment and copies of the permissions granted by the Municipal Corporation, if any. At the foot of this notice, the offending portion was depicted by drawing up a rough sketch.

16. Pertinently, the petitioners stated in the reply that similar notice was issued in the past and which were replied and all of which were the subject-matter of the writ petitions disposed of by this Court. The petitioner pointed out that the Trustees of respondent No.4 had, firstly, some internal disputes, but apart therefrom neither the Trustees nor the Trust dispute that the petitioner was inducted as a tenant in respect of Shop No.5 and carries on business as M/s. Shree Shankar Sweet Mart. This business is being conducted since 1967. Thereafter, all the events which are afore-narrated are pointed out and then specific allegation is made that this notice is liable to be withdrawn since it is dispatched on the basis of the report

submitted by an official but at the instance of one of the Trustees Shri Hemant Yashwant Datar, who is also a Power of Attorney holder of the other Trustees and a Builder and Developer by profession. The Trustees are building/constructing a new building on the plot behind the shop-line of the shop and now they want to get this structure/shop premises demolished so as to obtain the benefit of the FSI of the entire area/land. Thus, the area beneath the shop would therefore be taken into consideration to compute the admissible FSI. Even if the landlords or owners are permitted to undertake such a course, that could not be at the cost of the tenants and they should be rehabilitated. However, the landlords have a dishonest plan and design and that is how after obtaining permission for a new construction, they are after these tenements and are trying to get rid of the same. In the reply of 5-2-2018, there is a reference made to all the Maps, Property Register Card and relevant documents.

17. It is, therefore, clear that this notice was contested and when an order was required to be passed thereon, the

KDMC could not have ignored the long standing dispute and the pending legal proceedings. Yet, the notice has been adjudicated upon as if the concerned Designated Officer is but a Court of law. He draws up the issues and which make an interesting reading. He says that the issues framed for determination pertain to, whether the petitioner has obtained permission for construction of the shop? whether the construction of the shop is legal and authorised and whether the shop is liable to be demolished?

18. We presume that the KDMC is aware of the fact that the construction was carried out by the Trust/landlords at its own costs, charges and expenses. It is a pre-existing construction in which the petitioner was inducted as a tenant and is carrying on his business. It is not the petitioner who has carried out any construction, at least initially. The petitioner is proceeded against for having, firstly, allowed the KDMC to demolish a portion of the structure so as to implement its road widening scheme but post-implementation of that scheme, once again the petitioner made a construction and which possibly reduces the

width of the road. Such was the *lis*, if at all, between the parties. There was no dispute about the initial construction activity and which dates back to the sixties. It is, therefore, very apparent that records of decades were called for not in order to satisfy whether the measurement of the construction, carried out initially and before the implementation of the scheme and later on, indicates a sizeable difference. What we can see from the order is that the KDMC proceeds on the footing that the shop is in the nature of a temporary shed, made of tin-sheets and repair permission was granted subject to condition that no RCC construction would be made, the repairs would be made as per the approved plan and the height of the shed should not be more than 10 feet, etc.. This repair permission is dating back to 1984 is not an issue. The notice pertains not to any of these acts but the act of extending or trying to erect a structure on a portion of the area which was handed over for the purposes of road widening. It is, therefore, apparent that the obligation of the person like the petitioner allegedly is to handover the area of shop to the extent it is affected by road widening and after it is

handed over, nothing should be done which would affect the width of the road and cause inconvenience to the movement of pedestrians and vehicles. The finding in the order is that, contrary to the repair permission, presently the shop is made up of bricks, cement and masonry work and in the nature of permanent construction and it is not in the nature of temporary shed of tin sheets. Thus, the petitioner has violated the terms and conditions of the repair permission by making construction of the shop with bricks, cement and masonry work. Therefore, the finding is that the construction is clearly illegal, unauthorised and in contravention of the repair permission granted to Shri Jaiprakash Jaiswal, the petitioner.

19. This is how the issues are answered and when such is the sweep of the finding and conclusion, all that we expected from the KDMC was some adherence or regard or respect at least for what this Court has directed in the afore-mentioned Judgment. The operative order, however, makes a very interesting reading. That reads as under:-

“ORDER

- . *Shri Jaiprakash Jaiswal has failed to produce any documentary evidence to establish that the construction of shop occupied by him as a tenant, which is known as Shankar Sweet Mart, situated at Swami Vivekanand Road, Dombivli (E), Dist. Thane, admeasuring 16 x 8 sq.ft. on plot of land bearing Plot No.1/3, Survey No.67A(Part) and Survey No.24(part) of Village Patarli, Taluka Kalyan, is made by obtaining prior construction permission from the KDMC as envisaged U/sec.253 / 254 of the MMC Act.*
- . *It is held that the construction of shop occupied by him as a tenant, which is known as Shankar Sweet Mart, situated at Swami Vivekanand Road, Dombivli (E), Dist. Thane, admeasuring 16 x 8 sq.ft. on plot of land bearing Plot No.1/3, Survey No.67A(Part) and Survey No.24(part) of Village Patarli, Taluka Kalyan, is illegal and unauthorized.*
- . *Shri Jaiprakash Jaiswal is directed to remove the construction of shop occupied by him as a tenant, which is known as Shankar Sweet Mart, situated at Swami Vivekanand Road, Dombivli (E), Dist. Thane, admeasuring 16 x 8 sq.ft. on plot of land bearing Plot No.1/3, Survey No.67A(Part) and Survey No.24(part) of Village Patarli, Taluka Kalyan, as contemplated U/sec. 260(2) of the MMC Act, within 15 days of this order at his own costs.*
- . *In the event Shri Jaiprakash Jaiswal fails to remove the construction of shop occupied by him as a tenant, which is known as Shankar Sweet Mart, situated at Swami Vivekanand Road, Dombivli (E), Dist. Thane, admeasuring 16 x 8 sq.ft. on plot of land bearing Plot No.1/3, Survey No.67A(Part) and Survey No.24(part) of Village Patarli, Taluka Kalyan within 24 Hrs., the KDMC shall demolish the said shop and recover the costs from Shri Jaiprakash Jaiswal as*

envisaged U/sec. 260(2) of the MMC Act.

*Sd/-
Designated Officer & Ward Officer
G/Ward
Kalyan Dombivli Municipal Corporation”*

The first part of it says that the petitioner has failed to produce any documentary evidence to establish that the construction of the shop occupied by him as a tenant is made by obtaining prior construction permission from the KDMC, as envisaged under Section 253/254 of the Maharashtra Municipal Corporations Act, 1949. Surprisingly, the petitioner says that he carries on business of dealing in sweetmeats from this shop under license from 1966-67. In that year at least and it is undisputed before us that there was no Municipal Corporation like the KDMC. How it is that the KDMC now expects the petitioner to obtain permission from it for carrying out the initial construction which also does not belong to him but in which he has been inducted as a tenant, has not been clarified at all. The second finding is that, the construction of the shop occupied by him as a tenant is illegal and unauthorised. If the first finding is that it is done without obtaining prior construction permission, then it is but

natural that it is illegal and unauthorised, but it is not clarified much less concluded in the entire order as to whether the petitioner made this construction or it was made by the owner/respondent No.4.

20. Pertinently, the petitioner has been directed to remove the entire construction and which is a shop occupied by him as a tenant known as Shankar Sweet Mart, situated at Swami Vivekanand Road, Dombivli (East), District Thane, admeasuring 16 x 8 sq.ft.. This is on a plot of land bearing No.1/3, Survey No.67A(Part) and Survey No.24(Part) of Village Patarli, Taluka Kalyan, within 15-days of the order at his own costs.

21. Then what follows is that this shop should be demolished within 24-hours.

22. It is only this part which we find very difficult to reconcile with the earlier direction and which Mr. Jahagirdar and Mr. Walawalkar, learned Senior Counsel appearing for the petitioners would submit is precisely the tendency on the part of

the Municipal Corporations which was deprecated by the Division Bench and it was compelled to issue the directions to all of them. It would make virtually impossible for anybody who is served with an order of demolition to challenge it in a Court of law or adopt appropriate legal proceedings so as to resist the demolition, if he is served with a copy of such an order and expected to demolish the construction forthwith on receipt of the same or within 24-hours of the receipt of the same. That is why the Division Bench orders that the Municipal Corporations must give a minimal of 15-days period before the drastic step of demolition is carried out so as to enable the aggrieved person to approach a Court of law and seek a protective relief. That is completely belied and rather the Division Bench order defied totally in this case. We find much substance in the contentions of the learned Senior Counsel. We also find enough substance in their other argument that the impugned order travels much beyond the subject Show Cause Notice in that the Show Cause Notice alleges that the petitioner has reconstructed or rather again made a construction on the portion which was

surrendered for road widening by the KDMC. However, the impugned order holds that the entire construction (dating back to the sixties) is illegal and unauthorised as it transgresses a repair permission issued in the year 1984. *Prima facie*, this is what the landlord desires the KDMC to hold and it has obliged him/it.

23. In the affidavit in-reply filed in this petition, we find that a curious stand is adopted. It is stated in this affidavit very solemnly and with seriousness that the deponent intended to pass an order directing demolition of the structure within 24-hours of the receipt of the order and in case the petitioner fails to comply, the KDMC would cause removal of the same at the costs of the petitioner and recover the same from him, but mistakenly a wrong order has been served on the petitioner wherein the time of 15-days is given to the petitioner to remove the suit structure and on his failure the same will be removed by the respondents. At Annexure "A" to this affidavit is a copy of what the KDMC and the deponent terms is a correct order and which does not grant any such time, as is now culled out by the

petitioner from a copy of the same order annexed to the petition. With the assistance of Mr. Rao, we have perused this order, copy of which is at Annexure "A". The deponent of this affidavit heavily relies on this order and pertinently not on all the operative directions contained in it. Clauses (a), (b) & (c) of the same are identical to the copies of the impugned order annexed to the writ petition and served on the petitioner. The Clause (d) of this order, annexed as Annexure "A" to the affidavit in reply, however, only says that 24-hours' time is given and that is, according to the deponent, the correct order. However, the entire affidavit does not state that what the petitioner has annexed, as a copy of the impugned order to the writ petition, is not the one served on him. The correct order (Annexure "A" to this affidavit) is not stated to be served and yet suppressed by the petitioner from this Court. We would have understood that the file and the original record contains a copy of the order, annexed as Annexure "A" to this affidavit in reply, duly served on the petitioner and proof of such service is produced. There is no statement in the affidavit in reply that the

order passed and the copy of which is served on the petitioner and annexed by the petitioner as the impugned order, is not served on him but there is and in the records and files of the KDMC not only a correct order but a copy of the correct order duly served on the petitioner. There is proof of service as well.

24. It is, therefore, strange that a responsible statutory authority like the KDMC goes to this extent and to depose in an affidavit filed in this Court contrary to its record. If the affidavit is indeed based on perusal of original records and files, then, from a reading thereof, we do not see how a statement of the nature referred by us hereinabove, can be made so boldly and, brazenly. Thus, the deponent of this affidavit, who is in his personal capacity a party-respondent to this writ petition, has made a totally false and misleading statement. The stand of the KDMC, as reflected in this affidavit, needs to be strongly deprecated. If the concerned Public Officials, who are Public Servants and the statutory or Public body as a whole is of the opinion that final and binding orders and directions of this Court can be so easily defied and with no consequences being visited

on them, then, they are sadly mistaken. The law comes down on such acts and visits everybody responsible for them with severe consequences. This Court ensures that the rod of justice falls equally and evenly. We only remind all concerned and in the words of the Hon'ble Supreme Court in the case of **Bigyan Kumar and others v. Union of India and others**, reported in AIR 1988 SC 1025. The Hon'ble Supreme Court held as under:-

“7. We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the Courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in-mechanism of the Constitution to administer justice in accordance with law. For discharging that duty, the Court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnecessarily get into a confrontation.”

25. We are doing nothing but following this verdict and, therefore, each of these petitions are allowed. Rule is made absolute by quashing the impugned orders. Mr. Rao's reliance on the Division Bench Judgment of this Court in **Shriram Ramphal Patel vs. Municipal Corporation for Greater Bombay & Others**, reported in 2006 (2) Bombay Cases Reporter Page 631 is entirely misplaced. There on facts as narrated in paras 5 & 6 that the findings in paras 14 & 15 are rendered. They are not to be seen *de hors* the peculiar facts in **Shriram's** case.

26. Despite request made by Mr. Rao not to pass drastic orders, we do not think that what we are doing is extreme much less illegal. We are doing nothing but following the rule of law. We, therefore, direct that, at the costs, charges and expenses of the KDMC the structures/constructions at the site should be reconstructed and restored to the same position as they were prior to their demolition and within a period of six weeks from today. Mr. Parshuram Kumawat, Designated Officer, "G" Ward, shall be personally liable to reimburse the KDMC with such costs, charges and expenses and must also face disciplinary

proceedings, if any, to be launched against him.

27. We would be failing in our duty if we do not chart this course for the concerned official not only defied and disobeyed the final and binding Judgment of this Court in **Sopan Maruti Thopte** (supra) but compounded this act by filing an affidavit of the KDMC, a Public body, signing and affirming it despite it containing a patently false statement. He did not withdraw that affidavit nor any statement therein despite an opportunity being given by this Court. He did not remain present to tender any oral nor ensured filing of a written apology to this Court. He instructed his counsel to press for dismissal of this petition knowing fully well that the original files and records of the KDMC do not support his/KDMC's stand adopted in these proceedings. To then pardon such an official, who is experienced and senior enough to be aware of the consequences, would be a mockery of the law. If we let go Public Servants even if they openly and knowingly contravene the law, then, a common litigant will be emboldened and tempted to follow them in their wrongful and illegal acts. A Court of law

will never be respected and its authority systematically undermined if the State, Public bodies and their officials, parties and litigants act in the above manner. We derive no pleasure, much less enjoyment in condemning litigants in this manner but it is our duty as Judges to prevent such occurrences and events because we are obliged to zealously safeguard and protect the Constitution and its product – the institution of Judiciary. In **State of Bihar and others vs. Subhash Singh**, reported in AIR 1997 SC 1390, the Hon'ble Supreme Court held as under:-

“3. The Constitution of India is the supreme law of the land, having flown from "We, the people of India, i.e., Bharat, having solemnly resolved to constitute India into a sovereign, socialist, secular democratic Republic. The sovereign power is distributed among the Legislature, the Executive and the Judiciary with checks and balances but not in water-tight rigid mould. In our democracy governed by the rule of law, the Judiciary has expressly been entrusted with the power of judicial reviews as sentinel in qui vive. Basically judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to etat de droit, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands

widely touching the individuals, the more is the scope of judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law. The judicial control on administrative action, thus, affords the Courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review. The Constitution has devised permanent bureaucracy as part of the political executive. By operation of Art.53 read with Arts.73 and 74 as well as Art.154 read with Arts.163 and 166, the business of the State is carried on in accordance with the rules of business issued by the President/the Governor, as the case may be, or the rules made for the subordinate officers in that behalf. The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of "full faith and credit" applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law.

4. The constitutional Courts exercise their power of judicial review with constraint to ensure that the authorities on whom the power is entrusted under the rule of law or confided, is discharged truly,

objectively, expeditiously for the purpose for which substantive acts/results are intended. The petitioner being a member of the permanent executive, is enjoined to comply with the orders of the Court passed in exercise of the judicial review.”

28. We grant liberty to the petitioners to file appropriate legal proceedings - civil or criminal - against the KDMC and against this gentleman and such proceedings be decided by the Competent Court in accordance with law. Equally, we clarify that our direction would not come in the way of respondent No.4 in pursuing legal remedies so as to seek the eviction of the petitioners from their premises and such proceedings of respondent No.4 shall be decided on their merits and in accordance with law. The writ petitions are allowed in these terms.

29. If this order and direction is not complied with, it would be open for each of the petitioners to carry out the reconstruction of the premises and restore the same to the position prior to its demolition at the costs, charges and expenses and which shall be reimbursed by the KDMC, after relevant records in relation thereto being produced. The said

reimbursement shall be made within a period of eight weeks from the date the materials are produced before the KDMC by each of the petitioners.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)