

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

WRIT PETITION NO.11629 OF 2022

Mr. Mubaraz Musafir Khan

.. Petitioner

v/s.

Kalyan Dombivali Municipal Corporation

Thr. Commissioner and Ors.

.. Respondents

Mr. A. Y. Sakhare, Senior Advocate i/by Mr. Hemant Ghadigaonkar, Mr. Kasim Y. Sheikh, for the petitioner.

Mr. A. S. Rao, for the respondent Nos.1 and 2- KDMC.

Mr. Rajesh Kachare i/by Mr. Sameer Mhatre, for respondent No.3.

Mr. Kishor Patil i/by Prateek Rahade, for respondent No.4.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

DATED : 4TH OCTOBER, 2022.

P.C. :

1. Rule. Mr. Rao, learned counsel for respondent No.1 waive service.

Learned counsel for respondent Nos.3 and 4 also waive service.

Rule is made returnable forthwith.

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2. By this petition filed under Article 226 of the Constitution of India petitioner seeks writ of mandamus for quashing and setting aside the order dated 26th February 2016 passed by respondent Nos.1 and 2 directing the petitioner to demolish the offending structure.
3. It is the case of the petitioner that neither any notice nor any order passed on 26th February, 2016 was served upon the petitioner. The petitioner was also not served with the order in the writ petition No.5436 of 2016 filed by respondent No.4 in this Court inter alia praying for enforcement of said order dated 26th February 2016.
4. The said order dated 15th June 2016, passed by a division bench of this Court directed the Municipal Corporation to take appropriate steps for removal of unauthorized construction in furtherance of the order dated 26th February 2016 in case if there is no legal impediment as expeditiously as possible. It is the common ground that since 15th June 2016 respondent No.1 and 2 did not implement the said order dated 26th February 2016 against the petitioner.
5. Mr. Rao, learned counsel for respondent No.1 and 2 states that his clients have no objection to issue fresh notice upon the petitioner under Section 260(1) of the Maharashtra Municipal Corporation

Act and to pass a fresh order after granting personal hearing to the petitioner as well as respondent Nos.3 and 4. Statement is accepted.

6. Learned counsel for respondent Nos.3 and 4 also have no objection if a fresh notice is issued to the petitioners under Section 260(1) of the Maharashtra Municipal Corporation Act and if a fresh order is passed by the Municipal Corporation after hearing not only the petitioner but their clients. Statement is accepted.

7. We are accordingly pass following order:

ORDER

(a) The Municipal Corporation is at liberty to issue notice under Section 260(1) of the Maharashtra Municipal Corporation Act to the petitioner if proposing to demolish any offending structure which was the subject matter of the earlier notice. Copy of such notice also shall be forwarded to the respondent Nos.3 and 4 for information. Petitioner as well as respondent Nos.3 and 4 are at liberty to file their respective say to the notice that would be issued by respondent No.1 and 2 within two weeks from the date of effecting service of the notice. Copy of the say that would be filed by the petitioner as well as by respondent

Nos.3 and 4 shall serve copy upon respondent No.1

- (b) Respondent No.2 shall grant personal hearing to petitioner as well as to respondent Nos.3 and 4 and shall pass appropriate order in accordance with law without being influenced by the earlier notice issued by respondent Nos.1 and 2 and also by order dated 26th February 2016. Respondent Nos.1 and 2 shall decide the issue afresh.
- (c) Respondent Nos.1 and 2 shall make an endeavour to dispose off the said complaint within eight weeks from the date of the personal hearing that would be granted to the petitioner and respondent Nos.3 and 4. The order that would be passed shall be communicated to the petitioner as well as to respondent No.3 and 4 within one week from the date of passing the order. If the order is adverse against the petitioner, same shall not be implemented for a period of three weeks from the date of communication of such adverse order order, if any.
- (d) If the order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings permissible in law. It is made clear that since respondent Nos.1 and 2 have proposed to issue fresh notice under

Section 260(1) of Maharashtra Municipal Corporation Act, the respondent Nos.1 and 2 shall not take any coercive steps against the petitioner in respect of the offending structure based on the earlier notice and the order dated 26th February 2016.

- (f) Writ petition is allowed in aforesaid terms. Rule is made absolute. Parties to act upon the authenticated copy of this order.
- (g) Parties are directed to remain present before respondent No.2 as and when called for personal hearing and shall co-operate each other and with respondent No.2 while disposing of the complaint within the time prescribed. No order as to costs.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)