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

WRIT PETITION NO. 14266 OF 2018

GANGUBAI KUNDALIK GAIKAR & ANR. ..PETITIONERS
VS.
KALYAN DOMBIVALI MAHANAGARPALIKA
KALYAN ..RESPONDENT

Mr. Sanket Mungale for petitioners.
Mr. Prashant Kamble i/b. Mr. A.S. Rao for respondent.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 2, 2022.

P.C. :

1. Heard learned counsel for the petitioners and learned counsel for the respondent.
2. The challenge in this writ petition filed under Article 227 of the Constitution of India is to an order dated October 12, 2018 passed by the Ward Officer, 9/I Ward, Kalyan Dombivali Municipal Corporation, Kalyan, under Section 213 of the Maharashtra Municipal Corporations Act, 1949 (hereafter 'the said Act' for short).
3. It is the contention of the petitioners that they are the owners of the agriculture field which lies, according to the Corporation, within the regular line of the public street which the Corporation wants to take possession under Section 213 of the said Act. It is the contention of learned counsel for the petitioners that there is no public street in

existence in the land belonging to the petitioners. It is the submission of learned counsel for the petitioners that as there is no defined regular line of the public street which passes from the land of the petitioners, the impugned notice issued under Section 213 of the said Act is illegal and bad in law.

4. Learned counsel for the Corporation, on the other hand, submits that there is ample documentary evidence on record to indicate the existence of a road which passes through the suit land belonging to the petitioners. Learned counsel further submits that there is no requirement for obtaining previous approval of the Standing Committee as contemplated by sub-section (1)(b) of Section 210 of the said Act as a regular line has already been prescribed and that a road is passing through the suit land of the petitioners.

5. In response to the show cause notice dated October 4, 2018 issued under Section 213 of the said Act, the petitioners filed a reply dated October 10, 2018. In the reply, apart from other contentions raised, it is specifically stated that no road exists between Shil Road to Davadi Village and therefore the question of road widening does not arise.

6. With the assistance of learned counsel I have gone through the impugned order. The impugned order is a cryptic order and does not deal with the contention of the

petitioners that there is no road in existence which passes through the agriculture land of the petitioners. It is, further, noticed that the impugned order does not disclose whether the land which is sought to be acquired lies within the regular line of a public street. Learned counsel for the Corporation made an attempt to justify the impugned order that the land which is to be acquired belonging to the petitioners lies within the regular line of the public street on the basis of the documents which have been produced along with the affidavit-in-reply. If at all it is the contention of the Corporation that the land sought to be acquired lies within the regular line of a public street as is the requirement of Section 213 of the said Act, this aspect should have been reflected in the impugned order in view of the specific contention raised by the petitioners that no public street passes through the land belonging to the petitioners.

7. After I expressed that the impugned order needs to be set aside and the matter needs to be reconsidered by the Corporation, learned counsel for the respondent – Corporation has taken instructions and submits that considering the urgent need for acquiring the land for the purpose of the widening the public street, the notice dated October 4, 2018 issued by the Corporation needs to be taken to its logical conclusion at the earliest.

8. Needless to mention that the petitioners have to co-operate with the Corporation in the expeditious disposal of the proceedings initiated vide issuance of notice dated

October 4, 2018. Accordingly, the impugned order dated October 12, 2018 is set aside.

9. The petitioners to appear before the Ward Officer, 9/I Ward, Kalyan Dombivali Municipal Corporation, Kalyan, on August 18, 2022 with any further documentary evidence in support of their case.

10. Upon hearing the petitioners, the Ward Officer, 9/I Ward, Kalyan Dombivali Municipal Corporation, Kalyan, to pass a fresh order on the notice dated October 4, 2018 within a period of four (4) weeks from August 18, 2022.

11. All contentions are kept open.

12. The writ petition is disposed of accordingly. No costs.

(M.S.KARNIK, J.)