

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 3350 OF 2022**

VASANT
ANANDRAO
IDHOL

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**1. Steel Plant Private Limited,
A private limited company incorporated
under the Companies Act, 1956 and having
its office at Sona Mohar, Behind Vakola
Municipal Market, Off. Nehru Road, Vakola
Santacruz, Mumbai – 400 055.**

**2. Monil Hemchand Gala,
Age 35 years, Director of Steel Plant
Private Limited, Indian Inhabitant, having
his address at Sona Mohar, Behind Vakola
Municipal Market, Off. Nehru Road, Vakola
Santacruz, Mumbai – 400 055.**

..... Petitioners

VERSUS

**1. The Municipal Corporation of Greater
Mumbai, through its Municipal Commissioner,
Mahapalika Bhavan, Opp. CST Station,
Mumbai – 400 001.**

**2. The Deputy Municipal Commissioner,
(Zone-III), K/East Ward Building,
3rd Floor, Gundavali,
Azad Road, Andheri (E),
Mumbai – 400 069.**

**3. Assistant Deputy Municipal Commissioner,
K/E Ward, K/East Ward Building,
3rd Floor, Gundavali,
Azad Road, Andheri (E),
Mumbai – 400 069.**

4. The Joint Municipal Commissioner,

(VIG), BMC, 3rd Floor Annexe Building.

- 5. The Deputy Chief Engineer, Traffic,
Municipal Engineering Hub, Ground
Floor, Dr.E. Moses Road,
Acharya Atre Chowk,
Worli, Mumbai – 400 018.**

..... Respondents

**ALONGWITH
WRIT PETITION NO. 3351 OF 2022**

- 1. NHB Paper Industries Private Limited
A private limited company incorporated
under the Companies Act, 1956 and having
its office at Sona Mohar, Behind Vakola
Municipal Market, Off. Nehru Road, Vakola
Santacruz, Mumbai – 400 055.**

- 2. Monil Hemchand Gala,
Director of NHB Paper Industries
Private Limited, Indian Inhabitant, having
his address at Sona Mohar, Behind Vakola
Municipal Market, Off. Nehru Road, Vakola
Santacruz, Mumbai – 400 055.**

..... Petitioners

VERSUS

- 1. The Municipal Corporation of Greater
Mumbai, through its Municipal Commissioner,
Mahapalika Bhavan, Opp. CST Station,
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- 2. The Deputy Municipal Commissioner,
(Zone-III), K/East Ward Building,
3rd Floor, Gundavali,
Azad Road, Andheri (E),
Mumbai – 400 069.**
- 3. Assistant Deputy Municipal Commissioner,
K/E Ward, K/East Ward Building,**

**3rd Floor, Gundavali,
Azad Road, Andheri (E),
Mumbai – 400 069.**

**4. The Joint Municipal Commissioner,
(VIG), BMC, HO, 3rd Floor Annexe Building.**

**5. The Deputy Chief Engineer, Traffic,
Municipal Engineering Hub, Ground
Floor, Dr.E. Moses Road,
Acharya Atre Chowk,
Worli, Mumbai – 400 018.**

..... Respondents

Dr. Birendra Saraf, Senior Advocate, a/w. Ms.Apurva Gupte,
Mr.V.A.Joshi, i/b. M/s.Chitnis Vaithy & Co. for the Petitioners in
WP/3350/2022.

Mr.V.A.Joshi, i/b. M/s.Chitnis Vaithy & Co. for the Petitioners in
WP/3351/2022.

Mr.Girish Godbole, a/w. Ms.Madhuri More for the Respondents –
MCGM in both writ petitions.

Mr.Nilesh K.Mestry, Road Engineer, K/E Ward present in Court.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.
RESERVED ON : 11th AUGUST, 2022
PRONOUNCED ON : 7TH SEPTEMBER, 2022**

JUDGMENT (Per R.D.Dhanuka, J.):

Rule. Mr.Godbole, learned counsel for the respondents waives
service. Rule is made returnable forthwith. By consent of parties, both
the writ petitions were heard together and are being disposed off by a

common judgment.

2. The petitioners in Writ Petition No. 3350 of 2022 have prayed for writ of certiorari for quashing and setting aside the impugned notice dated 28th February, 2022 issued by the respondent no.2 in respect of the property of the petitioners issued under section 299 of the Mumbai Municipal Corporation Act, 1888 (for short the MMC Act) intending to take possession of the land bearing CTS No. 345/60, Village Marol, Mumbai – 400 059 lying within the proposed regular line of 13.40M wide Gaodevi Road, Village Marol, Andheri (East) of the public street as prescribed and sanctioned by the Commissioner under section 297 (1)(b) of the said MMC Act together with its enclosing wall, hedge fencing, ota or other structure external to a building or any portion of a platform, verandah, step or other such structure which may be found upon the said land.

3. The petitioners have also prayed for writ of certiorari for quashing and setting aside the prescription and sanction of the proposed regular line of the Gaodevi Road between points D to E as prescribed by the Commissioner under section 297 (1)(b) of the MMC

Act as shown on the plan bearing no. E.E.T. & C/WS/RL/219 dated 11th May, 2020. The petitioners have prayed for writ of mandamus directing the respondent no.2 to set aside and cancel the sanction of the proposed regular line of 13.40 M Gaodevi Road between points D to E as prescribed by the Commissioner under section 297 (1)(b) of the said MMC Act and to grant inspection of the plan referred to in the impugned notice dated 28th February, 2022.

4. The petitioners in Writ Petition No. 3351 of 2022 have also prayed for similar reliefs. Some of the relevant facts for the purpose of deciding these two petitions are as under :-

5. The petitioners are the owners of the land bearing CTS No.345/60 of the Revenue Village Marol, at Makwana Road, Marol, Andheri (East), Mumbai – 400 059 (hereinafter referred to as the ‘writ property’). It is the case of the petitioners that the said property is vacant and is in physical possession of the petitioners.

6. As per the Development Plan of the City of Mumbai, 2034, the said property is affected by the reservation of a 13.40 M wide proposed

D.P.Road. The said proposed D.P.Road has not been surrendered/handed over by the petitioners to the respondent Corporation till date.

7. On 7th June, 2022, the Director of the petitioner no.1 was served with the notice dated 28th February, 2022 issued by the respondent no.2. In the said notice, it was alleged that the writ property lies within the regular line of 13.40 M wide Gaodevi Road of the 'Public Street' as prescribed by the Commissioner under section 297(1)(b) of the MMC Act. The respondent nos. 2 and 3 intended to take possession of the said property within seven days from the date of service of the impugned notice. The said notice was served upon the petitioners with a plan enclosed therein showing the said property affected by the notice hatched in red colour. The respondent no.2 offered the petitioners the inspection of the plan of the said land.

8. On 9th June, 2022, the petitioners sent an interim reply and denied the contents of the impugned notice *in toto*. The petitioners requested the respondent nos. 2 and 3 to grant inspection of the plan as offered in the impugned notice and to provide coloured photocopies

thereof and also the certified copy of the C.R.No.512 dated 4th March, 2021. The petitioners called upon the respondent nos. 2 and 3 not to act upon the said impugned notice or to take steps in pursuance thereof until such inspection and certified copies are granted. The respondent nos. 2 and 3 neither offered inspection of the plan of the land referred to in the impugned notice nor furnished the photocopies of the said plan and certified copies of C.R.No.512 dated 4th March, 2021. The petitioners thereafter applied and obtained certain copies of plans, reports etc. from the respondents under the provisions of Right to Information Act, 2005.

9. Dr.Birendra Saraf, learned senior counsel for the petitioners invited our attention to sections 291, 297, 299 and the definition of the public street defined under section 2(x) of the said MMC Act. It is submitted by the learned senior counsel that the affected land out of the said property owned by the petitioners is situated from points D to E. The said plan clearly evinces that there is no existing road from points D to E and the existing road stops at Point D. There is also no public street between points D to E as per the definition of 'public street' under section 2(x) of the said MMC Act. The land between 'D to E'

vest completely in the hands of the petitioners and not with the Municipal Corporation. It is neither levelled, paved, metalled, channelled, sewerred, repaired nor maintained by the Municipal Corporation and has no public access.

10. It is submitted that the land between D to E does not fall within the definition of a 'public street' under section 2(x) of the MMC Act. The plan relied upon by the Corporation does not show that the land between D to E is a public street. It is submitted that though as per the plan relied upon by the respondents and the impugned notice, a regular line has been proposed from D to E under section 297(1)(b) of the MMC Act, the said provisions however are not applicable in the present facts.

11. It is submitted that the said provision of section 297(1)(b) can only be initiated to substitute 'any line so prescribed or for any part thereof'. He submits that an 'existing prescribed line' is a pre-condition for applying section 297(1)(b) which pre-condition is neither met nor complied with by the Corporation in this case. Learned senior counsel placed reliance on the remark of the Assistant Engineer,

Building Proposal (Survey) and submitted submit that even the said remark clearly recorded that ‘with reference to above, this is to inform you that there is no sanctioned or proposed R.L. of this department for the road portion marked A-B-C-D-E’.

12. It is submitted that the circular dated 5th April, 2019 issued by the respondent no.1 also clearly indicates that the new public streets cannot be fixed or prescribed by the respondent no.1 under section 297 of the MMC Act. It is submitted that since section 297(1)(b) is not applicable to the land between the Point ‘D to E’, even on the basis of circular dated 5th April, 2019, the impugned notice itself is without jurisdiction and deserves to be quashed and set aside on that ground itself.

13. The report providing the remarks of the Assistant Engineer, Building Proposal (Survey) clearly records that there is no sanctioned or proposed regular line of this department for the road under reference. Further as per D.P. 2034, the stretch marked A-B is shown as existing road to be widened to 13.40 mtrs width and stretch B-C-D-E is shown as 13.40 mtrs proposed D.P. road. It is submitted that there

are various fundamental errors and mis-statements in the said report at page C/35. The said report does not bear out any remarks of Assistant Engineer (Maint). K/East Ward.

14. Mr. Godbole, learned counsel for the Municipal Corporation on the other hand submits that section 291 can be invoked by the Commissioner. He submits that it is not even necessary to follow section 291 and the Commissioner can directly invoke section 297. He submits that the Corporation is willing to fix compensation under section 301 of the MMC Act and the petitioner would have a right to claim enhancement if he so desires. He further submitted that the Municipal Corporation is willing to consider grant of 2 FSI to the petitioners in lieu of the said acquisition. The Municipal Corporation is not willing to withdraw the said notice under section 299 of the MMC Act. He lastly submits that if this petition is allowed by this Court, the right of the Municipal Corporation to follow the requisite procedure under the provisions of the MMC Act should be kept open.

15. Learned senior counsel for the petitioners in rejoinder, submits that section 297 cannot be applied in the present circumstances where

there is no Public street. He submits that, without prejudice to the rights and contentions of the petitioners, the Municipal Corporation has not offered any compensation ; and that compensation under the provisions of the MRTP Act would be far greater amount than the compensation that would be offered by the Municipal Corporation under section 301 of the MMC Act.

REASONS AND CONCLUSION

16. The ownership and the physical possession of the petitioners and that the said property is lying vacant is not disputed by the respondents. As per the D.P. 2034, the writ property is affected by the reservation of 13.40 M wide proposed D.P.Road. It is not the case of the Corporation that the petitioners have surrendered or handed over the said writ property to the Municipal Corporation till date.

17. It is not in dispute that the Municipal Corporation has served copy of the notice dated 28th February, 2022 upon the Director of the petitioners on 7th June, 2022 under section 299 of the MMC Act. The said notice was responded by the petitioners on 9th June, 2022.

18. The question that arises for consideration of this Court is that, if

there is neither ‘existing road’ from points D to E nor is there a public street between points D to E within the meaning of the ‘public street’ under section 2(x) of the MMC Act, whether Municipal Corporation could invoke section 297(1)(b) or not ?

19. Learned counsel for the Municipal Corporation could not dispute that the portion of the land situated from points D to E is not the public street within the meaning of section 2(x) of the MMC Act. There is no dispute that the land of the petitioners is neither levelled, paved, metalled, channelled, sewerred nor repaired or maintained by the Municipal Corporation. Under section 297(1)(a) of the MMC Act, the Municipal Commissioner is empowered to prescribe the line on each side of the public street however subject to the compliance of the conditions prescribed therein. In our view, under the said provision, the Municipal Commissioner is empowered to invoke the said provision to prescribe a fresh line or substitute any line so prescribed or any part thereof. However an existing prescribed line is a pre-condition for applying section 297(1)(b).

20. In this case, there is no existing prescribed line from the Points

D to E for it to be substituted. The plan relied upon by the Municipal Corporation does not show any existing prescribed line from land 'D' to 'E'. On the contrary the remarks of Assistant Engineer, Building Proposal (Survey) clearly records that there is no sanctioned or proposed regular line of the department for the road portion marked A-B-C-D-E. In our view, since there is no existing prescribed or regular line from D to E which could have been substituted section 297(1)(b) of the MMC Act, the said provision could not have been invoked by the Municipal Corporation at all. The entire action on the part of the Municipal Corporation is thus without jurisdiction.

21. The Corporation could not have invoked the said provision under section 297(1)(b) also on the ground that there is no existing road from Points D to E for public use or there being no public street as defined under section 2(x) of the MMC Act. It is admittedly a private, exclusive easementary right, which cannot and ought not to be construed as applying to any and all persons and in any case the public at large. It is not the case of the respondents that the said right of way is either levelled, paved, metalled, channelled, sewerred or repaired or maintained by the Municipal Corporation.

22. A perusal of the report at page C/35 indicates that there are incorrect statements made in the said report. The impugned notice issued under section 299 is also without jurisdiction. The writ property of the petitioners does not vest in the Corporation and does not lie within the regular line of the public street.

23. Under section 299 of the MMC Act, the Municipal Commissioner is empowered to take possession on behalf of the Corporation only if the land lies within the regular line of a public street and is not occupied by a building, or if the platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure is within the regular line of such street and not otherwise. This mandatory condition has to be satisfied for invoking powers under section 299 of the MMC Act. In our view, since the pre-conditions for invoking powers under section 299 which are mandatory are not satisfied in this case, the impugned notice issued under section 299 of the MMC Act dated 28th February, 2022 served upon the Director of the petitioners on 7th June, 2022 is also without jurisdiction.

24. The petitioners have thus made out a case for reliefs as sought in the petition. We accordingly pass the following order :-

- (a) Impugned notice dated 28th February, 2022 in both the writ petitions are quashed and set aside.
- (b) Writ petitions are made absolute in terms of prayers (i) to (iii).
- (c) Rule is made absolute accordingly. No order as to costs.
- (d) It is made clear that the Corporation will have liberty to follow the requisite procedure under the provisions of the Mumbai Municipal Corporation Act, 1888.
- (e) The parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]

25. At this stage, Mr.Godbole, the learned counsel for the Municipal Corporation, seeks stay of the operation of this order. The learned counsel for the petition vehemently opposes the

application for stay. By this order, this Court has only set aside the impugned notice dated 28th February, 2022 issued by the Municipal Corporation with a liberty to the Municipal Corporation to follow the guidelines under the provisions of Mumbai Municipal Corporation Act, 1888. We are thus not inclined to grant stay to the operation of this order. Application for stay is rejected.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]