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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 6811 OF 2023**  
**WITH**  
**INTERIM APPLICATION NO. 12662 OF 2023**

Talha Tariq Qazi ...Petitioner  
*Versus*  
Kalyan Dombivali Municipal Corporation & Anr ...Respondents

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**Mr AY Sakhare, Senior Counsel, with RS Mirpur, for the**  
*Petitioner.*

**Mr Kedar Dighe, Addl GP, for the Respondent-State.**

**Mr AS Rao, for Respondent No. 1-KDMC.**

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**CORAM    G.S. Patel &**  
**Kamal Khata, JJ.**  
**DATED:    25th October 2023**

**PC:-**

1. Interim Application No 12662 of 2023 is for an amendment to challenge a subsequent order. The IA is allowed. The amendment is to be carried out without need of reverification by Friday 27th October 2023. A copy of the amended Petition is to be served by 30th October 2023.

2. **Rule.**

3. The short question in this Petition is whether the Kalyan Dombivali Municipal Corporation (“KDMC”) Respondent No 1 is entitled to proceed under Section 212 of the Maharashtra Municipal Corporation Act, 1949 (“MMC Act”) against the Petitioner’s property and the construction on it. This property is between Sheel Road and Fortis Hospital at Valipeer Road, Kalyan. It is said to be affected by road widening. The property is described in paragraph 2 of the Petition as CS No 3421 admeasuring about 151.3 sq mts on which there stands a single-storied house. This structure is in the records known as Municipal No 40, House No 130 (Old House No 40) and has an area of about 25 ft x 18 ft plinth. There is no dispute that the Petitioner was assessed to municipal taxes. There is an agreement of sale in the Petitioner’s favour. Evidence is adduced, *inter alia* at page 70 showing the payment of property taxes by the Petitioner in his name to the KDMC in regard to a property under No C03001291000. We are told that this identifies the house and the Property in question.

4. Notice was given only to one of the Petitioner’s relatives, one Usama Najmuddin Kazi at Amin Palace, Ghas Bazar, Kalyan. He replied on 23rd November 2022 stating in terms that he was not the owner of this property in question affected by the Section 212 proceedings. He said that one of his family members, viz., the Petitioner herein, had his own property at the site referred to in the notice under reply where road widening was proposed. Therefore, the Petitioner’s relative Usama demanded that the notice be withdrawn and, if appropriate be issued afresh to the Petitioner. That has never been done.

5. Section 212 of the MMC Act confers additional power on a Commissioner to order a set back of buildings to the regular line of the street. It reads as follows:

**“212. Additional power of Commissioner to order setting back of buildings to regular line of street.**

(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 the 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.”

*(Emphasis added)*

6. As Section 212(1)(a) and (b) clearly show, there is a statutory requirement that the Municipal Corporation must give the “owner” a show cause notice and a personal hearing. It is only if the “owner” fails to show sufficient cause under sub-section (2) that further steps may be taken. Then, Section 212 (3) says that if the “owner” fails to pull down such a building the Commissioner may require it to be done.

7. As the foregoing facts show, there is absolutely no evidence of any notice having been given to the registered owner i.e., the Petitioner. It is in the Petitioner’s name that the documents of title stand. It is from the Petitioner that, as Mr Sakhare correctly points

out, the KDMC year on year received and collected the property tax.

8. In addition, pages 68 to 76 show the issuance of various municipal bills in the name of the Petitioner in regard to the property in question. One look at Exhibit “B” at page 68 should be sufficient for our purposes at this stage. It is the holder of the property shown as the Petitioner. The reference number is the same number C03001291000 which is also shown in the property tax receipt. Thus, there is no mistake in the KDMC records about the identity of the property or the fact that it is the property of the Petitioner.

9. Mr Sakhare confirms that although some damage has been caused to the structure possession has not been taken. We accept that statement.

10. For these brief reasons, there will not only have to be Rule, but, in addition ad-interim reliefs in terms of prayer clauses (c) and (d) which read thus:

c) That pending the hearing and final disposal of the present Writ Petition, this Hon’ble Court be pleased to restrain the Respondent No. 1 and its officers from taking any action in pursuance of the Impugned Notice dated 16/11/2022 issued by the Deputy Commissioner, Zone-1 of the Kalyan Dombivali Municipal Corporation;

d) That pending hearing and final disposal of the present Writ Petition, this Hon’ble Court be pleased to restrain the Respondent No. 1 and its officers from taking any coercive action in respect of the land and structure of

the Petitioner i.e. land bearing Survey No. 276/B having corresponding City Survey No. 3421 admeasuring about 151.3 sq. mts. along with a single storied house thereon bearing Municipal No. 40, House No. 130 (Old House No. 40), constructed on the said land in an area admeasuring about 25 ft x 18 ft situated adjacent to the D.P. Road, Off. Valipeer Road, Kalyan West, Dist. Thane abutting the subject road, i.e. the road from Sheel Road to Fortis Hospital up to Vallipeer Road, Kalyan (W) is shown having width of 15 mts and 18 mts without following the due process of law;

**11. Respondent Nos 1 and 2 waive service.**

**12. Having regard to the fact that the issue is one of road widening, we will not delay the final disposal of the Petition. We will set it down for final disposal at the earliest possible date.**

**13. An Affidavit in Reply to the amended Petition is to be filed and served by 4th December 2023. A Rejoinder is permitted by 11th December 2023. The Petition will be listed peremptorily for hearing and final disposal at 2.30 pm on 12th December 2023.**

**(Kamal Khata, J)**

**(G. S. Patel, J)**