

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10054 OF 2022

Kalyan Phool Market Vyapari Sanghatana,

Kalyan & Ors.

.. Petitioners

Vs.

The Commissioner,

Kalyan Dombivali Municipal Corporation & Ors.

.. Respondents

ALONG WITH

INTERIM APPLICATION NO.19325 OF 2022

IN

WRIT PETITION NO.10054 OF 2022

Shri. Sudhir Dattatray Pandit & Anr.

.. Applicants

IN THE MATTER BETWEEN

Kalyan Phool Market Vyapari Sanghatana

Kalyan & Ors.

.. Petitioners

Vs.

The Commissioner, Kalyan Dombivali

Municipal Corporation & Ors.

.. Respondents

ALONG WITH

INTERIM APPLICATION NO.19321 OF 2022

IN

WRIT PETITION (STAMP) NO.18162 OF 2022

Shri. Nilesh Hari Shelavale & Ors.

.. Applicants

IN THE MATTER BETWEEN

Kalyan Phool Market Vyapari Sanghatana

Kalyan & Ors.

.. Petitioners

Vs.

The Commissioner,

Kalyan Dombivali Municipal Corporation & Ors.

.. Respondents

**ALONG WITH
WRIT PETITION NO.12608 OF 2022**

Kalyan Agriculture Produce

Market Committee, Kalyan

.. Petitioner

Vs.

Kalyan Dombivali Municipal Corporation & Ors.

.. Respondents

**ALONG WITH
INTERIM APPLICATION (ST) NO.18026 OF 2023
IN**

WRIT PETITION NO.12608 OF 2022

Mr. Chetan Waman Lohar & Ors.

.. Applicants

IN THE MATTER BETWEEN

Kalyan Agriculture Produce Market Committee

.. Petitioner

Vs.

Kalyan Dombivli Municipal Corporation & Ors.

.. Respondents

**ALONG WITH
INTERIM APPLICATION NO.13258 OF 2023
IN**

WRIT PETITION NO.12608 OF 2022

Kalyan Dombivli Municipal Corporation & Anr.

.. Applicants

IN THE MATTER BETWEEN

Kalyan Agriculture Produce Market Committee

.. Petitioner

Vs.

Kalyan Dombivli Municipal Corporation & Ors.

.. Respondents

**ALONG WITH
WRIT PETITION NO.12627 OF 2022**

Kalyan Phool Market Vyapari Sanghatana & Ors.

.. Petitioners

Vs.

The Commissioner,

Kalyan Dombivali Municipal Corporation & Ors.

.. Respondents

**ALONG WITH
WRIT PETITION NO.2890 OF 2020**

Shri. Sudhir Dattatray Pandit & Anr. .. Petitioners

Vs.

Kalyan Dombivali Municipal Corporation & Ors. .. Respondents

- Mr. Sanjit Sawant i/b. Mr. Samir M. Suryawanshi & Mr. Malhar Bageshwar, for Petitioner in WP/10054/2022 & WP/12627/2022 & for Respondent No.3 in WP/12608/2022.
- Mr. Sanjeev Gorwadkar, Sr.Adv. a/w. Mr. Kirit Hakani, Mr. Rahul Hakani & Ms. Niyati Mankad, for Petitioner-APMC in WP/12608/2022, for Respondent No.3 in WP/10054/2022, WP/12627/2022 & for Respondent Nos.5 to 7 in WP/2890/2020.
- Mr. A.S. Rao a/w. Mr. Prashant Kamble for Respondent Nos.1 & 2-KDMC in WP/10054/2022, WP/12627/2022 & WP/12608/2022.
- Mr. Rushikesh Mohite i/b. Mr. Rushikesh Kale a/w. Mr. Suraj Gadkari, for Applicant/Intervener in IAST/18026/2023 in WP/12608/2022.
- Ms. M.P. Thakur, AGP for State.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ**

DATE : 10th JULY, 2023.

ORAL JUDGMENT (PER. SUNIL B. SHUKRE, J.)

IN WRIT PETITION NO.10054 OF 2022, WRIT PETITION NO.12608 OF 2022 & WRIT PETITION NO.12627 OF 2022

1. Heard. Rule. Rule made returnable forthwith, by consent of learned counsel for the respective parties.

2. By these petitions, the petitioners are basically challenging the legality and correctness of the impugned show-cause notice dated 07.10.2022; whereby the petitioners were called upon to show-cause as to why the development permission granted to the petitioners on 07.04.2017 for carrying out redevelopment for accommodating the flower vendors, who are members of the petitioner union on terms and conditions mentioned in the development permission dated 07.04.2017, which itself is based upon the development agreement called as Indenture or Memorandum of Understanding dated 07.04.2017 executed between the petitioners on the one hand and Kalyan Phool Market Vyapari Sanghatana on the other, should not be cancelled and are also seeking consequential reliefs.

3. According to the learned Senior Advocate for the petitioners in Writ Petition No.12608 of 2022, the contention of the Kalyan Dombivali Municipal Corporation that Condition Nos.37, 38 and 39 of the Development Permission dated 07.04.2017 have been breached by the petitioners, is incorrect. He submits that the time for implementing Condition No.37 which is about handing over of the platforms of the same carpet area to the flower vendors, which they were occupying earlier, is yet to arrive, and therefore, the Corporation could not have submitted that this condition has been violated by the petitioners. He further submits that Condition, No.38, which is of providing of alternate accommodation to the existing flower vendors, has already been fulfilled by the petitioners. He also submits that Condition No.39 requires that the Corporation shall comply with all the conditions as contained in the Development Agreement or Memorandum of Understanding or Indenture dated 07.04.2017 executed between the

petitioners and the Corporation; but the petitioners have already complied with all the conditions stipulated therein, except for handing over the platform of the same area, which shall be done by the petitioners after the construction is completed. He further submits that it is also wrongly stated by the Corporation that the Development Agreement or Memorandum of Understanding or Indenture dated 07.04.2017 was required to be registered by the parties. According to him, there is no agreement reached between the parties in this regard in as much as provisions of Registration Act would not require its registration. He also submits that this stand of the petitioners has been elaborately explained in the reply given by the petitioners to the impugned show-cause notice; but unfortunately it has not been considered properly by the Corporation.

4. On going through the rival contentions of the parties, we find that although a detailed explanation on the lines submitted by the learned Senior Advocate has been provided to the Corporation when the petitioners filed their reply to the impugned show-cause notice on 11.10.2022, the same has not been considered in any manner by the Corporation. We also find that even though by the impugned show-cause notice, it has been indicated by the Corporation that, upon failure of the petitioners to submit their reply to the show-cause notice, the Corporation would take its ex-parte decision in the matter; the Corporation so far has not taken any decision whatsoever in respect of the impugned show-cause notice. We find that till date, there is no order passed by the Corporation in the matter. There was a stop work order passed earlier by it, but that order was quashed and set aside by the Coordinate Bench of this Court in the earlier round of litigation.

We also find that till date, the Corporation has not cancelled the development permission. These facts would also indicate that, there would have been no impediment for the petitioners in carrying out construction in terms of the Development Permission dated 07.04.2017, till occurrence of the subsequent developments in the nature of directions issued by the Supreme Court in the SLP.

5. Such being the fact situation of the present case, we are of the view that it would be proper for the Corporation to take appropriate decision in respect of the impugned show-cause notice dated 11.10.2022 after taking into consideration the reply filed by the petitioners and also granting opportunity of hearing to the petitioners, in accordance with law at the earliest and in any case within a period of two weeks from the date of appearance of the petitioners before the Corporation i.e. Respondent Nos.1 and 2. The petitioners are directed to appear before the Corporation on **17.07.2023 at 11.00 a.m.** The parties shall maintain status-quo till decision in respect of the impugned show-cause notice is taken by the Corporation in terms of the directions given hereinabove. In case, any adverse order is passed by Respondent Nos.1 and 2, the same shall not take effect for a period of two weeks from the date of passing of such an order.

6. Rule is made absolute in the above terms.

7. Petitions are disposed of accordingly.

8. Interim Applications are also disposed in terms of final order passed in the Petition.

IN WRIT PETITION NO.2890 OF 2020

1. In this petition, the grievance of the petitioners is that the alternate accommodations provided to several flower vendors are unauthorized, and therefore, they are required to be demolished.

2. According to the learned counsel for the petitioners, these alternate accommodations are unauthorized because they have been constructed temporarily without seeking permission of the Corporation.

3. We must say that the petitioners, two in numbers, have to speak for themselves and they have no right in law to speak for the remaining flower vendors, who have not raised any such grievance before this Court, and therefore, to this extent, this petition would not be maintainable. Even otherwise, if there is an issue about grant of permission for erection of temporary sheds by way of alternate accommodations be provided to the flower vendors, the same would have to be sorted out by the Corporation by granting necessary permission to the Agricultural Produce Market Committee (APMC) as after all one of its conditions imposed in the development permission granted by the Corporation itself mandates that APMC should provide alternate accommodations to these flower vendors. We may add that KDMC cannot say that on one hand it would not grant permission and on the other hand, it would allege that the petitioners have committed breach of the condition regarding providing of alternate accommodations imposed in the development permission.

4. With these observations, we find that the grievance raised by the petitioners, speaking for themselves, can also be considered by the

Corporation and if any permission is required to be granted, the same shall be granted by the Corporation to the temporary sheds erected by the APMC for the purpose of providing alternate accommodations to the petitioners, in accordance with law. If the petitioners have any other grievance, the liberty is granted to make appropriate representation before Respondent Nos.1 and 2 within a period of one week. If any such representation is filed, the same shall be decided by Respondent Nos.1 and 2 within a period of two weeks from the date of receipt of such representation.

5. The petition is disposed of accordingly.

[RAJESH S. PATIL, J.]

[SUNIL B. SHUKRE, J.]