

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9216 OF 2024

Indradas Kacharu Gaikar	]	
Age: 55 years, Occ.: Business,	]	
Having address at Golvali,	]	
Taluka Kalyan, Dist. Thane.	]	... Petitioner.

V/s.

- | | | | |
|----|---|---|-----------------|
| 1. | Kalyan Dombivali Municipal Corporation, |] | |
| | Through, its Commissioner, |] | |
| | Shivaji Chowk, |] | |
| | Tal. Kalyan, Dist. Thane. |] | |
| 2. | Designated Officers & Asst. Commissioner, |] | |
| | ("9/I" Regional office) |] | |
| | Kalyan Dombivali Municipal Corporation, |] | |
| | Mangeshi Sanskar Building, |] | |
| | Near Vidyanchal School, |] | |
| | Kadegolivali, |] | |
| | Kalyan East, Tal. Kalyan, |] | |
| | Dist. Thane 421406. |] | |
| 3. | State of Maharashtra |] | |
| | (Copy to be served upon |] | |
| | Addl. Government Pleader, |] | |
| | Appellate Side, High Court, |] | |
| | Bombay) |] | ...Respondents. |

Mr. T.D. Deshmukh a/w. Adv. H.D. Chavan for the Petitioner.
 Mr. Sandeep D. Shinde for Respondent Nos.1 & 2.
 Ms. M.P. Thakur,AGP, for Respondent No.3-State.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 21st January, 2025.
PRONOUNCED ON : 4th February, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) The Petitioner, a resident of Kalyan, has filed the present Petition under Article 226 of the Constitution of India, seeking to challenge and set aside the Notice dated 14th June, 2024, issued by Kalyan Dombivali Municipal Corporation (“KDMC”) under Section 260, 267(1) and Section 478 of the Maharashtra Municipal Corporation Act, 1949 (“impugned Notice”) calling upon the Petitioner to demolish the said structure within 7 days of the notice and notifying the consequences on failure to demolish.

Brief facts leading to the Petition :

2) The Petitioner claims to be the owner of the land, bearing survey No.263/10k located at Village Golivli, Taluka Kalyan (“the said property”). He seeks to protect his structure based on a 7/12 extract, and on permissions obtained by him from various authorities which are as under:

- (i) Permission for construction on the Suit property dated 9th May, 2007 and Commencement Certificate dated 29th May, 2007 from the Grampanchayat Golivli, Taluka Kalyan, for construction;
- (ii) No Objection Certificate (“NOC”) dated 24th May 2007 from the Fire Brigade Department of KDMC for conducting a

business of restaurant for Beer Bar and Restaurant, as well as for lodging and boarding;

- (iii) Liquor license and electricity connection dated December 2008;
- (iv) NOC dated 20th May 2008 from the Executive Officer, Public Works Department, Thane;
- (v) Food and License Department NOC dated 24th June, 2022;
- (vi) Fire Infra NOC dated 23rd January 2024; and
- (vii) Fire Brigade Department NOC dated 22nd February, 2024 after renaming his hotel as “Tanishka Restaurant & Bar”

2.1) In addition to the aforestated permissions, the Petitioner claims to have paid, taxes to the Grampanchayat Golivli until 2008 and thereafter paid taxes and water supply charges to the KDMC from time to time till date.

3) Mr. Tejas Deshmukh, representing the Petitioner asserts that, the Petitioner having obtained all licenses, has been running the business for more than 17 years. Despite all these authorizations and licenses, the Respondent No.2-KDMC issued a Notice dated 30th May, 2024 under Section 260(1) upon the Petitioner alleging that, the construction of ‘Hotel Sairaj’ (Tanishka Bar) is unauthorized and to produce all relevant documents by 6th June, 2024.

3.1) Mr. Deshmukh argues that, even without giving a personal hearing to the Petitioner, the KDMC passed an Order on 14th June, 2024, declaring the structure illegal and directed its demolition within a period of seven days. He urges that, since the structure is regularizable under the prevailing DCPR 2034, the effect, implementation and operation of the impugned Order of the KDMC dated 14th June, 2024 be stayed.

4) Mr. Sandeep Shinde representing Respondent Nos.1 and 2 KDMC argues that, the Petitioner has failed to take permissions from the competent Authorities under the Bombay Metropolitan Region Development Authority Act, 1974, as per the Government Resolution (GR) dated 8th April 1976. He contends that the Petitioner failed to obtain permission and get their building plan sanctioned from the Revenue Department as per condition 3 and 6 of the “No objection” (NOC) relied upon by the Petitioner before starting construction.

4.1) Moreover, the NOC’s and licenses issued by authorities do not ‘authorize the construction’ but merely grant their ‘No objections’. Thus, the Petitioner had no document to prove the structure to be ‘authorized’. Mere payment of taxes did not authorise an illegal structure. Therefore, the Petition is liable to be dismissed.

5) We have heard both counsel and perused the record.

6) We agree with Mr. Shinde and reject the contentions of the Petitioner. It is well settled that the Grampanchayat has no authority to

grant construction permissions or approvals. It can only grant its “No Objection” by a certificate which it did. The Petitioner appears to have assumed the ‘NOC’ of Gram Panchayat as ‘authorization or approval to construct’ to serve his own interest. The documents annexed at Exhibit “B” to the Petition are a plan and “NOC” granted for construction and not permission for construction and Commencement Certificate as averred in paragraph No. 5 of the Petition. This is emerging as a common feature – misinterpreting provisions of relevant laws to sub-serve one’s interest.

7) In the case of *Yash Raj Multimedia Pvt Ltd. (supra)* this court in paragraphs 8 and 9 have observed as under:

“8. In such cases, we find that Gram Panchayats, without any authority of law, have been granting permissions to put up hoardings. With full knowledge that Panchayats have no authority to grant such permissions, parties are putting up the hoardings based upon such permissions. Most of the time, the relevant planning authorities fail to take any action for reasons best known to them.

9. Accordingly, it is high time that the State Government took serious cognisance of Gram Panchayats granting such permission despite full knowledge that they have no powers to do so. The State Government, through its secretary (Panchayats), must consider issuing circulars to the concerned Panchayats to stop indulging in such misadventures. If it is found that the Panchayats persist in such misadventures, the State Government must also consider initiating appropriate

action against such Panchayats in terms of the law.”

8) This Court has ordered several such demolitions since decades. We wonder whether obtaining building permissions is so difficult that one choses to construct first and regularize if called upon to demolish.

9) We are deeply dismayed with the conduct of the Authorities too. We wonder how did the Food and License Department, Fire Brigade Department and PWD grant any licenses / permissions / NOC to the Petitioner for a completely unauthorised structure. Was it not their responsibility, as a part of the administration, to refuse licenses/ permission/NOC to the Petitioner and intimate the concerned Authority about the illegal structure? Are the Departments of the Corporations not supposed to be interlinked to control and administer their assigned areas? Are the various departments oblivious to the law? There are several persons employed by the Corporations for conducting numerous activities on the field – can they not be tasked with the duty to inform the corporation about the illegalities sighted by them?

10) We also wonder why the Police Authorities, who are an arm of the administration, have not taken cognizance of this illegality. Under section 483 (2) of the Maharashtra Municipal Corporations Act, 1949 it is the duty of every police officer in the city to communicate, without delay, to the proper municipal Officer any information which he receives of a design to

commit or of the commission of any offence against this Act or against any rule, regulation or bye-law and to assist the Commissioner or any municipal Officer or servant reasonably demanding his aid for the lawful exercise of any power vesting in the commissioner or in such municipal Officer or servant under this Act. Every Authority is responsible for an illegality persisting. They certainly cannot shrug off their responsibilities and permit continuance of these illegalities.

Evidently, in this case, each authority has failed in its duty. Unauthorised construction has continued for over 17 years.

11) In this case, there is no documentary evidence to show that the Petitioner had obtained permissions from the relevant Authority i.e. the Collector or Tahsildar under Section 18 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

12) In our view, the Collector or the Tahsildar responsible for Golivli, Kalyan ought to have initiated action as provided under the MRTP Act.

13) The KDMC too as a successor was duty bound to initiate action against the unauthorised structure within a reasonable period – at least in a couple of years. Inaction for more than a decade is unpardonable.

14) The KDMC to execute its notice dated 14th June 2024 within a period of two weeks from today.

15) In light of the above, the Petition is dismissed.

16) At this stage, learned Advocate for the Petitioner submitted that the ad-interim relief granted by Order dated 2nd July, 2024 be continued for a period of four weeks from today to enable the Petitioner to test the correctness of the present Order before the Hon'ble Supreme Court. For the reasons recorded in the present Order, we are not inclined to grant any further protection to the Petitioner for the illegal structure erected by the Petitioner.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)