

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

WRIT PETITION NO. 12709 OF 2025

Jagdish Dugdhalay
A Sole Proprietorship
Having its office at Ashok Nagar,
Valudhani, Kalyan (E),
Through its Proprietor
Jitesh Narharibhai Barot
Age: 52 years, Occ: Business,
R/o. House No. 8/23, Godrej Hill,
Barave Road, Khadakpada, Kalyan, ... Petitioner
Dist. Thane 421 301

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
(Copy to be served on Govt. Pleader High Court
of Judicature of Bombay)
2. Kalyan Dombivli Municipal Corporation
Through Assistant Commissioner (Ward 4/J),
Having its office at :
Bhagwati Abhilash Coverture,
Lokgram, Kalyan (E), Dist. Thane 421 306 ... Respondents

...
Mr.Nitin Gaware Patil i/b. Mr.Divyesh K. Jain for the Petitioner.
Mr.Karan S. Thorat, 'B' Panel Counsel for Respondent No.1, State.
Mr.Sandeep D. Shinde for Respondent No.2- Municipal Corporation.
...

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 29th September, 2025

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*)

1. Rule. Rule made returnable forthwith and heard finally with the
consent of the parties.

2. The Petitioner has put forth prayer clauses (B), (C) and (D), as under :

“[B] Issue appropriate writ, order or direction to quash and set aside the impugned notice dated 24.09.2025 issued by the respondent No.2 Corporation thereby directing the petitioner to be evicted by 29.09.2025, being illegal, arbitrary and violative of Article 14, 19(1)(g), 21 & 300-A of the Constitution of India and for that purpose issue necessary orders.

[C] Issue appropriate writ order or directions, directing the respondent No.2 Corporation not to take any coercive action against the petitioner in pursuance to impugned notice dated 24.09.2025, with respect to the writ properties more specifically enlisted in Para No.2 and for that purpose issue necessary orders.

[D] Issue appropriate writ, order or direction to quash and set aside the impugned order dated 18.07.2025 passed by the respondent No.2 Corporation under Section 278 of the Act of 1949, thereby declaring the petitioner's writ properties to be illegally constructed and for that purpose issue necessary orders.”

3. Having considered the submissions of the learned Advocates appearing for the parties and having perused the Petition paper book, as well as the compilation of 11 pages documents tendered by the Municipal Corporation (marked as ‘X’ for identification), we are not required to advert to the entire submissions of the parties. Suffice it to say that the impugned notice dated 24th September, 2025 is quite vague. It does not indicate as to which portion of the Petitioner’s property is to be acquired and as to which portion comprises of unauthorized construction.

4. The Petitioner claims to be the owner and possessor of the Writ property, which his father purchased from the predecessor-in-title, namely Abdul Salam Gulam Mustafa Fareed. This property was purchased by the Petitioner's father from Chikanghar Gram Panchayat, Kalyan which subsequently merged into Respondent No. 2, Municipal Corporation.

5. The Petitioner's father approached the Civil Court in Regular Civil Suit No. 153 of 1993, before the Civil Judge, Junior Division, Kalyan, seeking a declaration and injunction. The Suit was decreed on 13th October 1998, and the Municipal Corporation was permanently restrained from demolishing the construction. The Municipal Corporation then approached the Appellate Court in Civil Appeal No. 173 of 1998. By judgment dated 26th November 2012, the said Suit was partly decreed, and the impugned judgment and decree was partly quashed. The Municipal Corporation was directed to follow the due process of law before demolishing the structure standing on Survey No. 63/A/1, Hissa No. 7 at Mouje Chikanghar, Kalyan. The Petitioner and the legal heirs of the titleholder accepted this judgment of the Appellate Court, and the litigation is said to have attained finality.

6. The learned Advocate for the Municipal Corporation points out that the predecessor-in-title has been allocated the TDR, considering that a public

project involving the construction of a flyover is half complete. Because of the indulgence of the Petitioner, the project work cannot be completed.

7. Since we find that the impugned notice calling upon the Petitioner to clear the area of his cows and buffaloes, which are part of his dairy business operated under the title Jagdish Dugdhalay, Ashok Nagar, Valudhani, Kalyan (E), is quite vague, the Municipal Corporation should have mentioned the specific demarcations and identification marks of the property in order to impress the Petitioner as regards the portion that is required to be cleared and which portion constitutes illegal construction.

8. There is no dispute that the Petitioner has not pointed out any such documents before us which would indicate that the Municipal Corporation had issued appropriate construction permission by accepting his building construction plan. The Petitioner is already subject to a decree delivered by the Appellate Court, under which the portion identified as an illegal structure will have to be demolished.

9. In view of the above, we are issuing the following directions :

(a) As per the consent of the Petitioner and the preparedness of the Municipal Corporation, the Revenue Authorities, accompanied by the Municipal Corporation's officials, would measure the concerned writ land on **1st October, 2025 at 2:00 p.m.;**

(b) The Petitioner, who is present in the Court, instructs the learned Advocate to say that he would not obstruct or resist the measurements and would cooperate wholeheartedly. If the Petitioner indulges in any acts amounting to obstruction or creating impediments during the measurement, the Municipal Corporation would register a criminal case against him at the appropriate police station, and the criminal law will take its own course;

(c) If the measurement is made peacefully, the Petitioner would sign the measurement documents. Any portion found to be unauthorizedly constructed, would be voluntarily demolished by the Petitioner, as per the statement made before us and in view of the judgment and decree of the Appellate Court, within 15 days. Within this same time line, the Petitioner agrees to relocate the cattle, simultaneously.

(d) Thereafter, insofar as the area belonging to the Petitioner that is required to be acquired for the public project is concerned, the Municipal Corporation will identify whether TDR was also granted to the predecessor-in-title. If yes, the said TDR would flow to the Petitioner to the extent of the property purchased by him from the predecessor-in-title;

(e) If any portion of the Petitioner's property, which was not earlier acquired and does not amount to illegal construction or encroachment, is required for the public project, the Municipal Corporation would grant TDR to the Petitioner commensurate with the portion of the land to be acquired;

(f) Removal of the encroachment / demolition would be carried out within seven days from the date of measurement, and further steps regarding the TDR for the other portions would be completed by 30th November 2025.

10. With the above directions, **this Writ Petition is disposed off.**

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)