

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5190 OF 2024

Apna Ghar Unit No.4 Co Operative Housing Society & Ors. ...Petitioners
VERSUS
Brihanmumbai Municipal Corporation Joint
Municipal Commissioner (Zone IV) and Anr. ...Respondents

WITH
INTERIM APPLICATION NO. 1518 OF 2025
IN
WRIT PETITION NO.5190 OF 2024

Apna Ghar Unit No.2 Co-operative Housing Society ...Applicant

IN THE MATTER BETWEEN :

Apna Ghar Unit No.4 Co Operative Housing Society & Ors. ...Petitioners
VERSUS
Brihanmumbai Municipal Corporation Joint
Municipal Commissioner (Zone IV) and Anr. ...Respondents

Dr. Milind Sathe, Senior Advocate a/w Mr. Pradeep Mane and Ms. Hita Chandarana i/by Desai and Diwanji for the Petitioners.

Mr. G. S. Godbole, Senior Advocate a/w Ms. Pushpa Yadav for the Respondent No.1 i.e. BMC.

Mr. Naushad Engineer, Senior Advocate a/w Mr. Mutahhar Khan, Mr. Manas Kotak, Mr. Pranav Chandhoke, and Ms. Vidhi Basrani i/by Veritas Legal for Respondent No. 2.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 28th JULY 2025

P.C.

1. The challenge in the present petition is to an order dated 27th September 2024 (“**the impugned order**”) passed by Respondent No. 1 under the provisions of Section 306 of the Mumbai Municipal Corporation Act, 1888 (“**MMC Act**”), declaring “1st Cross Lane, of Lokhandwala abutting to plot bearing CTS No. 1/6 of village Oshiwara” (“**the said street**”) as a ‘public street’ as defined under Section 3(x) of the MMC Act.

2. The Petitioners, being aggrieved by the impugned order, have filed the present writ petition seeking the following substantive reliefs:

"(a) For a declaration from this Hon'ble Court that the Impugned Order dated 27 September 2024 (Exhibit "B" hereto) is unconstitutional, illegal and void and ultra vires of Article 300-A of the Constitution;

(b) To quash and set aside the Impugned Order dated 27 September 2024 (Exhibit "B" hereto);

(c) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court directing Respondent No. 1 to forthwith withdraw and/or cancel the Impugned Order dated 27 September 2024 (Exhibit B hereto);"

3. Heard learned counsel for the parties.

4. Dr. Sathe, learned senior counsel appearing on behalf of the Petitioners, at the outset invited our attention to the notice dated 31st July 2024 issued under Section 306 of the MMC Act, by which Respondent No. 1 had sought to declare the said street as a public street. He then pointed out that Section 306 of the MMC Act specifically provides that no such street shall become a public street if, within one month after such notice has been put up, the owner of such street or of the

greater part thereof shall, by notice in writing to the Commissioner, object thereto. Dr. Sathe submitted that in the present case, the Petitioners, being the co-owners of the said street within one month from receipt of the said notice, objected to the said street being declared a public street vide their letters dated 17th August 2025 and 25th August 2025 respectively. It is submitted that on the basis of this objection alone, Respondent No. 1 could not have proceeded to declare the said street as a public street under Section 306 of the MMC Act. He thus submitted that on this ground alone, the impugned order needs to be set aside.

5. Dr. Sathe would next urge that, given the Petitioner's objection to the said street being declared a public street, the only recourse available to Respondent No. 1 was to resort to the provisions of Section 299¹ of the MMC Act and acquire the said street after following the due procedure as laid down in law.

6. Dr. Sathe, without prejudice to the above, pointed out that the said street has always been a private street which formed part of the internal layout roads of the Shree Swami Samartha Prasanna Nagar, which was approved by the Respondent-Corporation. He further pointed out that the said street, abutting the Petitioners' Societies, leads to a dead end, hence, the said street was never used by the BEST for plying buses. He thus submitted that for all these reasons the said

¹ **299. Acquisition of open land or of land occupied by platforms, etc., within the regular line of a street.**— (1) If any land not vesting in the corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a 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, the Commissioner may, after giving to the owner of the land or building not less than seven clear days written notice of his intention so to do, take possession on behalf of the corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thence forward be deemed a part of the public street:

(2) Provided that, when the land or building is vested in the Government possession shall not be taken as aforesaid without the previous sanction of the Government concerned and, when the land or building is vested in any corporation constituted by Royal Charter or by an Act of Parliament, of the United Kingdom or by an Indian Law, possession shall not be taken as aforesaid without the previous sanction of the State Government.

street was always considered and treated as a private street and could not have been declared as a public street under Section 306 of the MMC Act.

7. *Per contra*, Mr. Godbole, learned senior counsel appearing on behalf of the Respondent-Corporation, submitted that the present Writ Petition is wholly misconceived. He would first urge that the Petitioners do not have any locus to challenge the declaration of the said street as a public street under Section 306 of the MMC Act since the Petitioners are not the owners of the said street. In such context, he would invite the Court's attention to Sections 3(w)², 3(x)³ and 3(y)⁴ of the MMC Act, which defines 'street', 'private street' and 'public street' respectively to submit that when a 'public street' means any street which has been "*levelled, paved, metalled, channelled, sewerred or repaired by the corporation*" by Respondent No. 1. As in the present case, when it was not in dispute that the said street had been metalled, sewerred and maintained by Respondent No. 1 since three decades, the said street squarely fell within the definition of public street as defined in Section 3(x) of the MMC.

8. Mr. Godbole submits that Respondent No. 1 in its Affidavit in Reply, in paragraphs 13 and 14 has specifically pleaded as follows:

"13. I say that the Petitioner Societies are not the owners of the Subject Street. The same was declared a 'Public Street' and taken over by BMC pursuant to the notice dated 13.05.1998. The Petitioner Societies at the time of the Personal hearing or even in the present petition have failed to place on record any document to prove their ownership of the Subject Street.

² (w) "street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and when there is a footway as well as carriageway in any street, the said term includes, both;

³ (x) "public street" means any street heretofore levelled, paved, metalled, channelled, sewerred or repaired by the corporation and any street which becomes a public street under any of the provisions of this Act [or which vests in the corporation as a public street];

⁴ (y) "private street" means a street which is not a public street;

14. *I say that the Subject Street and the other internal layout roads are being maintained by BMC for nearly three decades at its own cost. Therefore, the Subject Street, even otherwise falls in the definition of a 'Public Street'."*

9. Mr. Godbole took pains to submit that the Petitioners had in the Affidavit in Rejoinder neither disputed nor denied the aforesaid position. He thus, submitted that the Petitioners would have no locus to challenge the impugned order given that the Petitioners have not denied the fact that the Petitioners were not the owners of the said street, and thus the Petition needs to fail on this ground alone.

10. Mr. Godbole would next submit that the Petitioners contention that the said street was a private street and not a public street was now really a moot point since the said street had infact already been declared as a public street as far back as in the year 1998. In support of such contention, he first invited our attention to the notice dated 13th May 1998 issued under Section 306 of the MMC Act issued in respect of the very same street and then to a letter dated 27th November 1998 addressed by the Ward Officer, K-West, to the Municipal Councillor, which specifically recorded as follows:

"I have to inform you that the internal roads of Apna Ghar known as 1st Cross Lane, Swami Samarth Nagar, Lokhandwala Complex, Andheri (West), Mumbai are taken over by the Brihanmumbai Municipal Corporation under Section 306 of the MMC Act".

Basis the above, he submitted that the Petitioners' contention that the said street was a private street was plainly untenable. He would further urge that it was not even the Petitioners' case that the said street was in any manner access controlled or maintained by the Petitioners.

11. Mr. Khan learned counsel appearing on behalf of Respondent No. 2, in addition to adopting the submissions made by Mr. Godbole also pointed out that handing over the internal roads of the Apna Ghar layout to Respondent No. 1 was a part of the conditions of the Apna Ghar layout, which was sanctioned by Respondent No. 1. In support of this contention, he invited our attention to a letter dated 3rd October 2009 addressed by one Mr. Ajit C. Gupte, who was the architect appointed by the original developer to the Executive Engineer, Building Proposal (H&K Wards) of Respondent-Corporation, and more particularly the observation no. 20, which reads as follows:

*“Dear Sir, We are submitting compliance Terms and Conditions for above mentioned layout.
Terms and Conditions of layout approved on 13/06/1980.*

...		
[20]	No building will be allowed to be occupied until roads are asphalted and lighted, storm water, drainage work are completed and trees are planted on the periphery and to the satisfaction of M.C.G.M.	Internal roads are constructed and handed over to M.C.G.M
...		

Basis the above, he submitted that it was evident that all the internal roads in the Apna Ghar layout were to be handed over to Respondent No. 1 and that the same had infact been handed over.

12. Dr. Sathe, in rejoinder, submitted that the contention of the Respondents that the said street was a public street was plainly incorrect. He then invited our attention to Section 289⁵ of the MMC Act to point out that had the

⁵ 289. (1) All streets within Brihan Mumbai being or which at any time become public streets, and the pavements, stones and other materials thereof shall vest in the Corporation and be under the control of the Commissioner: Provided that no public street which on the day immediately preceding the date of the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, or the day immediately preceding the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956, vested in Government shall, unless the State Government so directs, vest in the Corporation by virtue of this sub-section.

said street been a public street, the same would have vested in Respondent No. 1 in terms of Section 289 of the MMC Act. He pointed out that Respondent No. 1 had in the present case not produced any document to show that the said street stood vested in the name of Respondent No. 1, and thus the said street was clearly not a public street. Dr. Sathe then additionally pointed out that if the said street was infact a public street, there would not have been any need for Respondent No. 1 to issue the notice dated 31st July, 2024. He submitted that it was therefore clear from the conduct of Respondent No. 1 that the said street was not a public street and that the only option available to Respondent No. 1 was to acquire the said street by taking recourse to the provisions of Section 299 of the MMC Act.

13. Dr. Sathe further submitted that the contention of the Respondents that the conveyance in favour of the Petitioner societies did not include the internal layout roads was also not correct. He pointed out that while the land below Petitioners No. 1 and 2, had been conveyed to them under separate deeds of conveyance, the said street formed part of a larger layout of the Shri Swami Samarth Nagar, which was conveyed to the registered association of 15 societies, i.e., Petitioner No. 3, which included Petitioner Nos. 1 and 2 as also Respondent No. 2. He submitted that on this basis, Petitioner Nos. 1 and 2 continued to be co-owners of the subject street.

14. After having heard learned counsel for the parties and having perused the record and the relevant provisions of the MMC Act, we find that the Petition is entirely lacking in merit and deserves to be dismissed for the following reasons:

A. *First* and crucially, Respondent No. 1 in paragraphs 13 and 14 of the Affidavit in Reply, specifically (i) denied that the Petitioners are the owners of the said street and (ii) asserted that the said street had been maintained by Respondent No. 1 for the last three decades and even otherwise fell within the definition of a public street, neither of which was denied by the Petitioners. Thus, on this ground alone, the Petition deserves to be dismissed.

B. *Second*, the entire premise of the Petitioners' challenge proceeds on the footing that the Petitioners are the co-owners of the said street and are, therefore, entitled to object to its declaration as a public street. The Petitioners have, however, not produced a single document in support of their contention that the Petitioners are co-owners of the said street. Admittedly, Petitioner Nos. 1 and 2 have been granted a conveyance of only the land beneath the buildings of Petitioner Nos. 1 and 2, which does not include the said street. Though it has been contended that Petitioner No. 3, a federation of societies, was granted conveyance of the said street as part of the conveyance of the larger layout land, no such document is placed on record to support this contention. Thus, the basis on which the Petitioners claim co-ownership of the said street is entirely unclear and certainly not an admitted position.

C. *Third*, the Respondents have placed on record overwhelming material in support of the contention that the said street had already been declared as a public street as far back as 1998. This is plainly evident *inter alia*, from (i) the notice dated 13th May 1998, issued by Respondent No. 1 under Section 306 of the MMC Act

in respect of the very same street; (ii) the communication dated 27th November 1998, addressed by the Ward Officer, K-West Ward, to the Municipal Councillor, confirming that the internal roads of Apna Ghar (which includes the said street) had been taken over by Respondent No. 1 under Section 306 of the MMC Act; and (iii) the letter dated 3rd October 2009, addressed by the architect appointed by the original developer to the Executive Engineer, Building Proposal (H&K Wards) of Respondent No. 1 – Corporation.

D. *Fourth*, the definition of “public street” under Section 3(x) of the MMC Act specifically includes any street that has been “*levelled, paved, metalled, channelled, sewerer or repaired*” by Respondent No. 1. It is not in dispute that the said street has been “metalled and sewerer” and maintained by Respondent No. 1 for over the last three decades. Thus, the said street plainly falls within the definition of public street as defined in Section 3(x) of the MMC Act. Crucially, it is not even the Petitioners’ case that the said street is access controlled by the Petitioners or that the same is not open to use for the public at large. Merely because the BEST buses do not ply on the said street would not change its character to a private street.

E. *Fifth*, the fact that it is not disputed that the said street has been metalled, sewerer and maintained by Respondent No. 1 for the last several decades, coupled with the correspondence referred to in C above is more than adequate material to show that the said street had already vested in Respondent No. 1. Thus, merely because Respondent No. 1 had issued the notice dated 31st July 2024 would not

by itself make implicit that the said street was not a public street or that the said street had not already vested in Respondent No. 1.

15. Hence, for the aforesaid reasons, we pass the following order:

- i) The Writ Petition stands dismissed.
- ii) All rights and contentions of the Petitioner qua ownership/title to the said street are kept open to be agitated in appropriate proceedings.
- iii) No Costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)