

Indradas Kacharu Gaikar Vs Kalyan Dombivali Municipal Corporation

Court: Bombay High Court

Date of Decision: Feb. 4, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Maharashtra Municipal Corporation Act, 1949 " Section 260, 267(1), 478, 483(2)

Maharashtra Regional and Town Planning Act, 1966 " Section 18

Hon'ble Judges: A. S. Gadkari, J; Kamal Khata, J

Bench: Division Bench

Advocate: T.D. Deshmukh, H.D. Chavan, Sandeep D. Shinde, M.P. Thakur

Final Decision: Dismissed

Judgement

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 aforesaid 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 NOCs 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 chooses 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.