

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/LETTERS PATENT APPEAL NO. 1130 of 2025
In R/SPECIAL CIVIL APPLICATION/12923/2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 1130 of 2025****MANCHA MASJID THROUGH TRUSTEE/MUTAWALLI
AMJADKHAN ASLAMKHAN PATHAN****Versus****STATE OF GUJARAT & ORS.****Appearance:****RIZWAN SHAIKH(7146) for the Appellant(s) No. 1****MR G H VIRK, GOVERNMENT PLEADER WITH MS.DHARITRI****PANCHOLI AGP for the Respondent(s) No. 1****MR G H VIRK, ADVOCATE (7392) WITH MR SIMRANJITSINGH H****VIRK, ADVOCATE, (11607) & MR. JUGRAT SHAH, ADVOCATE, for
the Respondent(s) No. 2,3****MR MANISH S SHAH(5859) for the Respondent(s) No. 4****CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR.JUSTICE L. S. PIRZADA****Date : 03/10/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. Since an urgency is cited by the respective learned advocates appearing for the respective parties, the matter has been heard finally and decided today. The facts as narrated by the learned Single Judge are not in dispute, and we are not reiterating the same.
2. The Letters Patent Appeal emanates from the order dated 23.09.2025 passed by the learned Single Judge in the captioned writ petition being Special Civil Application No.12923 of 2025 seeking quashing and setting aside the notice dated 25.07.2025 issued by the respondent-Ahmedabad Municipal Corporation (AMC)



under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949 (in short "GPMC Act"). The prayers are made for restraining the respondent(s) from execution and implementation of the notice dated 25.07.2025.

3. At the outset, both the learned advocates appearing for the respective parties have placed reliance on the map showing the status of the properties before and after the demolition, in view of the widening of the Town Planning (TP) Road leading towards Sabarmati Railway Station, Platform No.12. The property (Mancha Masjid) of the appellant is situated in the corner. It is not in dispute that a portion of the mosque, comprising some open land and platform, is being demolished due to the widening of the road. However, the main structure of the mosque is not being demolished. We have noticed that there are number of properties, including commercial properties, residential properties, as well as a temple, which have also been included for demolition due to road widening.
4. At the outset, learned advocate Mr.M.T.M. Hakim for learned advocate Mr.Rizwan Shaikh appearing for the appellant has submitted that the learned Single Judge has fallen in error in interpreting the provisions of Section 212 of the GPMC Act read with Sections 91 and 51 of the Waqf Act, 1955. It is further submitted that the notice was issued by the Estate Officer on 17.12.2024, and the appellant filed a detailed representation before the Estate Officer on 26.12.2024. However, without



dealing with the aforesaid contentions, the Standing Committee rejected the cases of all persons, including the appellant, who had objected to the demolition as well as the widening of the road. It is further submitted that hearing was required to be extended by the Standing Committee. It is submitted that after the show-cause notice was issued by the Estate Officer, and the reply was given by the appellant, the Standing Committee could not have taken the decision, that too without recording any reasons. In support of his submission, he has placed reliance on the judgment of this Court in the case of Bhavan Sanga Gamara vs. Rajkot Municipal Commissioner, 2022 (4) G.L.R. 2528. Reliance is also placed on the decision of the Supreme Court In re Manoj Tibrewal Akash, 2024 S.C.C. OnLine S.C. 3210. Further reliance is placed on the judgment of the Supreme Court in the case of Kolkata Municipal Corporation & Anr. vs. Bimal Kumar Shah & Ors., (2024) 10 S.C.C. 533, and it is submitted that the respondent-AMC, while widening the T.P. Road, has not observed the legal precedent as enunciated by this Court as well as the Supreme Court.

5. Learned advocate for the appellant further submitted that the appellant - Trust is a Masjid, a registered Waqf, and the property of the Waqf would be acquired for the purpose of road widening, and such acquisition of Waqf property is subject to the proceedings under the Waqf Act, 1955, particularly under Section 91 read with Section 51-(1A) (second proviso) of the Waqf Act, being



the acquisition of Waqf property under “any other law” than the Land Acquisition Act, 1984, as provided therein. As per the second proviso of Section 51-(1A), the same has to be in consultation with the Waqf Board. It is contended that Section 91 read with Section 51 of the Waqf Act mandates prior consultation and hearing of the Waqf Board in the case of acquisition of the Waqf property, which has not been done in the present case. It is submitted that all these aspects have not been properly appreciated by the learned Single Judge and hence, the action of demolition initiated by the respondent-AMC is required to be quashed and set aside.

6. Per contra, learned advocate Mr.Virk appearing for the respondent-AMC has opposed the present appeal and submitted that the judgment and order passed by the learned Single Judge is not required to be quashed and set aside, as the same is appropriate. Thus, he has reiterated the submissions which were made before the learned Single Judge, while referring to the show-cause notice and the provisions of Sections 210 to 216 of the GPMC Act. It is submitted that all procedures have been followed by the AMC and all issues raised by the appellant at a belated stage were placed before the Standing Committee, and it is not required that the Standing Committee must hear each and every person whose property is acquired for the road widening. In support of his submissions, learned advocate Mr.Virk has placed reliance on the common judgment dated



25.02.2013 passed in Special Civil Application No.2575 of 2012 and cognate writ petitions by the learned Single Judge, which was subsequently confirmed by the Division Bench vide common order dated 26.04.2013 passed in Letters Patent Appeal No.249 of 2013 and connected appeals. It is submitted that the aforesaid judgment was also confirmed by the Apex Court vide order dated 03.05.2013 passed in Special Leave to Appeal (Civil) No.17147 of 2013. Reliance is also placed on the common order dated 26.04.2013 passed by the Division Bench in Letters Patent Appeal No.249 of 2013 and connected appeals. It is submitted that the appellant-original writ petitioner, who was supposed to take objection at the initial stage when the public notice was issued, has belatedly taken the objection, which was considered by the Standing Committee of the AMC. In this regard, he has placed reliance on the Proviso to sub-section (2) of Section 212 of the GPMC Act. Learned advocate Mr.Virk has also pointed out that the provisions of Section 60, more particularly sub-section (2) of the Act, with the approval of the Standing Committee, empower the Municipal Officer to exercise or discharge any such power, duty or function under the control of the Commissioner, and accordingly, the Estate Officer was empowered to issue the show-cause notice. However, he submitted that the ultimate decision has to be taken by the Standing Committee, which has been done in the case of the appellant. Further, it is submitted by learned advocate Mr.Virk that in the present case,



the land is required to be acquired for the purpose of road widening in the public interest. So far as Section 51-(1A) and Section 91 of the Waqf Act are concerned, it is contended that at the time of acquiring the Waqf property, the acquiring authority is not required to consult the Gujarat State Waqf Board, but at the time of determination of compensation, if it arises, the Waqf Board would be consulted. It is submitted that the GPMC Act is a special legislation, and the property of the Waqf can also be acquired for the purpose of road widening. Further, in support of his argument, learned advocate Mr.Virk has placed reliance on the decision of the Gujarat High Court dated 17.06.2005 rendered in Special Civil Application Nos.3551 to 3553 of 2003. He has further submitted that the said aspect has been considered by the learned Single Judge of this Court and the same was carried by the original petitioner by preferring Letters Patent Appeal No.833 of 2005 and allied matters, and in the appeals also, the Division Bench confirmed the judgment of the Single Bench. Thus, it is prayed that the present appeal may not be entertained.

7. We have heard the learned advocates appearing for the respective parties at length.
8. At the outset, we have noticed that, in fact, the learned Single Judge has not committed any illegality or infirmity. The provisions of Sections 212 and 213 of the GPMC Act, under which the respondent-AMC is

undertaking the exercise of road widening, are as under:

“SECTION 212 : Additional power of Commissioner to order setting back of buildings to regular line of street:

(1) If any building or any part thereof is within the regular line of a public street and if, in the opinion of the Commissioner, it is necessary to set back the building to the regular line of street he may, if the provisions of section 211 do not apply, by written notice-

(a) require the owner of such building to show cause within such period as is specified in such notice by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner; or

(b) require the said owner on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf and show cause why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner.

(2) If such owner fails to show sufficient cause to the satisfaction of the Commissioner why such building or any part thereof, which is within the regular line of the street shall not be pulled down and the land within the said line acquired as aforesaid the Commissioner may, with the approval of Standing Committee, require the owner by a written notice to pull down the building or the part thereof which is within the regular line of the street ¹⁶⁸ [and where a part of building is required to be pulled down, to also enclose the remaining part by putting up a protecting frontage wall] within such period as is prescribed in the notice.

(3) If within such period the owner of such building fails to pull down such building or any part thereof coming within the said line, the Commissioner may



pull down the same ¹⁶⁹[and where a part of a building is pulled down may also enclose, the remaining part by putting up a protecting frontage wall] and all the expenses incurred in so doing shall be paid by the owner.

(4) The Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest as such in the Corporation.

(5) Nothing in this section shall be deemed to apply to buildings vesting in the ¹⁷⁰[Government].

SECTION 213 : Acquisition of open land or of land occupied by platforms, etc. within regular line of street.

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, compound wall, hedge or fence or some other structure external to a building, abutting on a public street or a portion of a platform, verandah, step, compound wall, hedge or fence or other such structure, is within the regular line of such street, Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention to do so, 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, verandha, 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 thenceforward be deemed a part of the public street :

Provided that when the land or building is vested in the ¹⁷¹[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 any law for the time being in force, possession shall not be taken as aforesaid, without the previous sanction of the ¹⁷¹[State] Government."



9. The aforesaid provisions empower the Commissioner, with the approval of the Standing Committee, to take appropriate action regarding pulling down of any building or part thereof or platform, which is in the regular line of the street. It is not in dispute that there are numerous properties, including residential areas, commercial areas, and religious properties, which are included for demolition in the road widening. It is also not in dispute that initially, public notices were published on 27.12.2023, and Resolution No.528 dated 19.09.2024 was passed by the Standing Committee of the respondent authorizing the Municipal Commissioner to take appropriate steps under Section 210(1)(a) of the GPMC Act. Thereafter, vide order dated 17.10.2024, the Municipal Commissioner of Ahmedabad, exercising powers under Section 210(1)(a), prescribed a fresh road line. In compliance with the order dated 17.10.2024 and exercising powers under Sections 212 and 213 of the GPMC Act, the Deputy Estate Officer, North Zone, issued two separate notices under Sections 212 and 213 to the petitioner. The trustees / mutawalli of the petitioner-Trust were thereafter called for a personal hearing on 30.01.2025. It is not denied by the appellant that all the objections raised by the appellant were placed before the Standing Committee. Accordingly, the Standing Committee approved the road widening process vide Resolution No.499 dated 18.06.2025 by rejecting all the objections raised. Thereafter, the Deputy Estate Officer, after receiving approval of the



Standing Committee, issued the notice dated 25.07.2025 giving 35 days' sufficient period to the appellant to hand over possession of the subject premises to the Corporation.

10. Sub-section (2) of Section 68 of the GPMC Act, empowers the Commissioner to delegate his power to any Municipal Officer to exercise, perform or discharge any such power, duty or function with the approval of the Standing Committee. Thus, the Estate Officer is authorized to undertake necessary exercise under the provisions of Sections 212 and 213 of the GPMC Act. It is not in dispute that the appellant did not respond to the public notice, and the representation has been filed before the Estate Officer, and he was also heard. All the objections were placed before the Standing Committee, which ultimately rejected the objections. Once the objections are noted by the Estate Officer, and are placed before the Standing Committee, it was not necessary for the Standing Committee to again hear the appellant. It was a collective decision of the members of the Standing Committee, and the decision of individual members is not necessitated, and the decision as a whole is required to be recorded in writing. The decision of the Standing Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved *mala fides* or extraneous consideration. Merely because the decision of the Standing Committee does not contain the reason,



that does not mean that there has been no proper consideration of the objections raised by the appellant and all other persons whose properties have been encompassed in the road widening. The Standing Committee is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require the Standing Committee to record reasons dealing with each and every objection taken against the road widening exercise under the statute, in the absence of any statutory requirement mandating the Standing Committee to record reasons. Thus, we do find that an illegality is committed in passing the impugned decision. The judgments in the cases of **Re Manoj Tibrewal Akash (supra)** and **Bimal Kumar Shah (supra)**, cannot come to the rescue of the appellant in view of the specific statutory provisions of the GPMC Act. In the case of **Bhavan Sanga Gamara (supra)**, the facts exposit that though the notice was issued by the Commissioner of the AMC and personal hearing was extended by the Commissioner, the decision has been taken by the Town Planning Officer (TPO), hence the ratio of the said decision will not apply to the facts of the present case. We find that in the instant case, there is sufficient compliance with the principles of natural justice and the Rules, hence we are not inclined to scuttle the exercise of widening the road, which is of immense public interest.

11. Further, as the argument has been advanced by the learned advocate Mr. M.T.M. Hakim pursuant to Section



51 and Section 91 of the Waqf Act is concerned, and the argument advanced is that the appellant is a Trust having a property registered under the Waqf Act, therefore, by issuing notice under the GPMC Act, notice is also required to be given to the Waqf Board, but in the present case, no notice has been issued to the Waqf Board. While dealing with this argument, as the learned advocate for the respondent has relied upon the judgment of this Court in Special Civil Application Nos.3551 to 3553 of 2003, decision dated 17.06.2005, it was held as under:

"23. It is pertinent to note that as per the provisions of Section 91 of the Wakf Act, in the event of any property of the Waqf being acquired by the Government under the provisions of the Land Acquisition Act, the Board is required to be heard so as to ensure that the Waqf gets proper compensation. The provisions of Section 91 of the Waqf Act also do not prevent any authority from acquiring land belonging to the Waqf. Thus, the land belonging to the Waqf can be acquired, but to ensure that the Waqf is adequately compensated, the Board is required to be heard in the matter of determination of compensation. Had the intention of the Legislature been to ensure that the property of the Waqf could not be transferred to anybody, including the Government, Section 91 would not have been incorporated or it would have been stated in the said Section that even the Government has no power to acquire the property belonging to the Waqf.

24. It is thus clear that there is no embargo on the power of the Government with regard to the acquisition of land belonging to the Waqf. Similarly, the plea of the petitioners that the lands belonging to the Waqf cannot be made subject to the provisions of the Town Planning Act so as to make any change in the size or shape of the land to the detriment of the Waqf



cannot be accepted. The only provision incorporated in the Act is with regard to giving a hearing to the Board in the event of acquisition of land belonging to the Waqf. Thus, it cannot be said that land belonging to the Waqf cannot be acquired at all or cannot be transferred.”

12. The same was carried before the Division Bench by preferring Letters Patent Appeal No.833 of 2005 and allied appeals. The Division Bench of this Court, vide a common order dated 24.10.2005, held as under:

“From a bare reading of the above reproduced provision, it is amply clear that Section 51 regulates the administration and management of Waqf property by mutawalli inter se. Alienation of Waqf property by way of gift, sale, exchange or mortgage is declared void unless prior sanction of the Board is obtained. There is nothing in the language of Section 51 of the Waqf Act from which it can be inferred that the same affects the operation of any other Central or State legislation, such as the 1976 Act, which relates to the compulsory acquisition of property for a public purpose including development of urban areas. It is also to be noted that the section preceding Section 51, i.e., Section 50 of the Waqf Act, 1995, prescribes duties of the mutawalli, and Section 52 pertains to recovery of Waqf property transferred in contravention of Section 51. In sub-sections (1), (2), (3), and (5) of Section 51 of the Waqf Act, the Legislature has provided a mechanism to deal with immovable properties of the Waqf. The proviso to sub-section (1) of Section 51 of the Waqf Act makes it clear that no Mosque, Dargah or Khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force. Under Section 50 also, the mutawalli has to exercise his discretionary powers diligently and in the interest of Waqf properties, since he is the Manager and Custodian of Waqf properties



and has to discharge his duties as provided in the said section according to the terms or directions enumerated in the Waqf deed. Therefore, the contention of Shri N.V. Anjaria that the provisions of Section 51 of the Waqf Act, 1995 impose an embargo on the exercise of power under the Act is not well founded, and is liable to be rejected as misconceived.”

13. Considering the above dictum, it is crystal clear that the acquiring authority has to consult the Waqf Board at the time of determining the compensation, but not at the time of acquiring the land. Therefore, the arguments of the learned advocate for the appellant are not found to have any force.
14. Thus, on an overall appreciation of the judgment and order passed by the learned Single Judge and the provisions of the GPMC Act as well as the Waqf Act, and for the reasons adopted by the learned Single Judge in rejecting the writ petition, the present Letters Patent Appeal fails and the same is dismissed.

(A. S. SUPEHIA, J)

(L. S. PIRZADA, J)

Jaimin Prajapati/1