



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

WRIT PETITION NO.2207 OF 2025

Raghavendra Construction
Company Pvt. Ltd.

...Petitioner

V/s.

Municipal Commissioner and Ors.

...Respondents

Mr. Aspi Chinoy, Senior Advocate and Mr. Ashish Kamat, Senior Advocate with Mr. Bhushan Deshmukh and Mr. Shailendra Singh i/b. Mr. Rahul Pandey and Mr. Ismail Shiakh for the Petitioner.

Dr. Milind Sathe, Senior Advocate with Mr. Gaurav Mehta, Ms. Shamima Taly & Sehyr Taly i/b. S. Mahomedbhai & Co. for Respondent No.4.

Mr. Mayur Khandeparkar with Mr. Aditya miskita i/b. Mr. Aziz Mohd., for Respondent No.5.

Ms. Oorja Dhond i/b. Ms. Komal Punjabi for Respondent Nos.1 to 3-MCGM .

Ms. Ravleen Sabharwal with Mr. Prakhar Tandon, Ms. Aarushi Yadav and Mr. Mandar B. Waidande for Respondent No.6.

CORAM: ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

Dated: 2 JULY 2025.

Judgment (Per: Sandeep V. Marne, J.)

1. Petitioner is aggrieved by the decision of the Municipal Corporation of Greater Mumbai (MCGM) taken in

consultation with the Slum Rehabilitation Authority (**SRA**) sanctioning new Road Line (**RL**) of 13.40 meters width in the land being developed by the Petitioner. Accordingly, the resolution adopted by the Administrator of MCGM on 26 September 2024 and decisions communicated vide various letters for implementation of decision of sanction of RL have been challenged by the Petitioner.

2. Brief facts leading to filing of the Petition are that Petitioner purchased property bearing CTS No.610A/1B/1 and 610A/1B/2 admeasuring 6344.04 sq.mtrs. at Village-Malad, Gen. A. K. Vaidya Marg, Mumbai-400 097. On 8 February 2005 the land was occupied partly by slum dwellers and partly by tenants. SRA sanctioned layout comprising of construction of 6 buildings, which included development of land admeasuring 1375 sq.mtrs., which was affected by slum. Later SRA approved amalgamation of slum and non-slum portions of the plot and issued LoI dated 20 April 2022. This is how SRA became the planning authority in respect of the entire plot of land. Petitioner is in the process of completing the development of various buildings on the said plot. Several buildings undertaken by the Petitioner are complete and construction of some of them is under progress. On 7 December 2023, Respondent No.5-Developer and Respondent No.4- Sahayog SRA Co-operative Housing Society (**the Society**) submitted proposal to the SRA for sanctioning Slum Rehabilitation Scheme (**SR Scheme**) on adjoining plot of land bearing CTS No.677/A/1(part). The Executive Engineer (Traffic & Co-

ordination) WS of MCGM sought remarks from SRA on 31 July 2024. By letter dated 5 August 2024, Executive Engineer of SRA recommended the proposal for new RL holding that the proposed road was necessary for implementation of SR Scheme on the adjoining plot. On 26 August 2024, a proposal for declaration of public street was put up before the Deputy Chief Engineer, Traffic. The Municipal Commissioner sanctioned the proposal on 21 September 2024. The MCGM thereafter acted as Administrator and passed resolution No.592 authorizing the Municipal Commissioner to exercise powers under Section 291(a) of the Mumbai Municipal Corporation Act, 1888 (**MMC Act**). The Deputy Chief Engineer (Traffic) of MCGM submitted a plan for declaration of public street on 1 October 2024. On 3 October 2024, the Executive Engineer (Traffic & Coordination) W.S. forwarded the sanctioned RL plan for necessary action to various departments of the MCGM. On the basis of new road approval, the SR scheme of Respondent No.4-Society was accepted by SRA on 11 October 2024. Petitioner made representations on 8 November 2024 and 14 November 2024. In response to Petitioner's representations, Deputy Chief Engineer, SRA issued letter to MCGM stating that the factum of implementation of SR Scheme on the plot of the Petitioner was erroneously missed out while recommending sanction of RL road by the SRA in the letter dated 5 August 2024. However, despite accepting mistake, SRA and MCGM have not yet deleted the RL road passing through Petitioner's land and accordingly Petitioner has filed the present Petition.

3. We have heard Mr. Chinoy, the learned senior advocate appearing for Petitioner, who would submit that the impugned decision of sanctioning RL cutting through Petitioner's plot is taken in gross violation of principles natural justice as the Petitioner was never heard before taking impugned decision. That in any case, the impugned decision suffers from gross non-application of mind as both the SRA and MCGM have not considered factum of the proposed RL cutting through buildings constructed / to be constructed by the Petitioner. That the SRA has admitted the folly committed by it by issuing written communication to MCGM. Though the MCGM has showed willingness to correct the mistake, no action has actually taken and sanctioned RL continues to be reflected thereby seriously affecting development of plot by the Petitioner. He would submit that since the very decision of sanctioning the RL is *ab initio void*, the same deserves to be set aside in its entirety. That plot of Respondent No.4-Society being landlocked itself is a misrepresentation as another road is available for approaching that Plot. That the same developer is developing adjoining plot and it is always possible for that developer to provide for access road through his own plots rather than insisting on creation of new road from Petitioner's Plot, affecting the construction thereon. Mr. Chinoy accordingly pray for allowing the Petition.

4. Dr. Sathe, the learned senior advocate appearing for Respondent No.4 -Society would oppose the Petition submitting

that the MCGM is well within the jurisdiction to exercise power under Section 291 of the MMC Act, for sanctioning new road to a land locked property. That the said power of sanctioning new road has been *bonafide* taken by Respondent -MCGM warranting no interference by this Court in exercise of writ jurisdiction. That what is sanctioned on the plot of the Petitioner is not a new road, but only alignment of the existing road has been altered. That the decision of sanctioning RL is well considered and taken after due consultation with the special planning authority (SRA). He would accordingly pray for dismissal of the Petition.

5. Mr. Khandeparkar, the learned counsel appearing for Respondent No.5-Developer would also oppose the Petition. He would reiterate that there is already existing road on the plot of the Petitioner and what is effected by the MCGM is only change of alignment. He would invite our attention to the Letter of Intent issued to the Petitioner by SRA, under which Petitioner was not supposed to block any existing access /easement right leading to the adjoining structure. That Petitioner has remedy of filing application under Section 297 of the MMC Act for prescription of fresh RL. He would rely upon provision under Regulation 33(10), Clause 7.1 of Development Control Regulation for Greater Mumbai, 2034 (**DCPR 2034**) in support of his contention that Petitioner has the remedy of seeking shifting of alignment of road/ DP Road under that provision.

6. He would submit that Petitioner otherwise does not have any right of hearing while sanctioning the RL under

Section 291 of the MMC Act. He would rely upon judgment in ***Dr. Abraham Patani of Mumbai and Another V/s. State of Maharashtra and others***¹. He would pray for dismissal of the Petition.

7. We have also heard Ms. Dhond, the learned counsel appearing for MCGM, who would submit that the MCGM has sanctioned the RL only on account of no objection issued by the SRA. That if SRA has now reconsidered its decision, the MCGM is willing to entertain a proposal for modified alignment / re-alignment of subject RL.

8. Ms. Sabharwal, the learned counsel appearing for Respondent No.6-SRA would submit that the impugned decision has been taken by the MCGM under Section 291 of the MMC Act, in which SRA does not have any role to play. She would accordingly submit that SRA would submit to the jurisdiction of this Court.

9. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner has undertaken construction of several buildings on its plot of land by implementing SR Scheme thereon. Since the adjoining plot of land of Respondent No.4-Society was to be taken up for implementation of the SR Scheme, a proposal was submitted by Respondent No.4-Society to MCGM for declaration of new public street of 13.40 meter width passing through

¹(2023) 11 SCC 79

Petitioner's plot by representing that Society's plot is land locked. There is dispute amongst the parties as to whether plot of Respondent No.4 is indeed land locked or not. We are not delving deeper into this controversy considering the nature of order we propose to pass in the Petition.

10. Moving further, it is seen that MCGM sought remarks of SRA on the proposal submitted by Respondent No.4 - Society for proposed 13.40 meter-wide RL. By letter dated 5 August 2024, the Executive Engineer (P/N) SRA gave its remarks to MCGM stating that it is necessary to propose 13.40 meter wide RL for the stretch of existing road for making the SR Scheme on adjoining plots viable and for rehabilitation of the slum dwellers thereon. The MCGM proceeded to exercise power under Section 291 of the MMC Act and prepared a proposal for sanction of new RL passing through Petitioner's land for the purpose of implementation of SR Scheme on adjoining alleged landlocked plot. Perusal of the proposal put up by a committee of five officials headed by Municipal Commissioner would indicate that there is specific reference to non-raising of any objection by SRA for the proposed RL. When the said proposal was placed before the Administration, the same was sanctioned vide Resolution No.592 adopted on 26 September 2024. Accordingly, the Executive Engineer (Traffic and Coordination) Western Suburb, MCGM prepared a sanctioned RL plan and forwarded the same to various departments of MCGM and SRA. This is

how new RL came to be sanctioned, which cuts across the land of the Petitioner.

11. Mr. Chinoy has drawn our attention to the rough sketch depicting the plot of the Petitioner as well as adjoining plot of Respondent No.4-Society. The new RL is superimposed on the said map. The said sketch clearly indicates that sanctioning of new RL would clearly mar construction of some of the buildings of the Petitioner on its plot. Building 'C' apparently is fully affected whereas building 'B1' is partly affected. The open space around building 'B' is seriously compromised. Similarly, the road would also pass through one of the recreational grounds sanctioned in the layout. Since sanctioning of new RL adversely affects the rights of the Petitioner, it has filed the present Petition.

12. After making of representations by the Petitioner, SRA has apparently realized its mistake in not taking into consideration the factum of implementation of SR Scheme on Petitioner's land and accordingly the Deputy Chief Engineer of SRA communicated to MCGM vide letter dated 17 January 2025 stating as under:-

Thus R.L. has been sanctioned under section 291 read with 294 of MMC Act, 1888 by your department. However, the mentioning of adjacent ongoing SR Scheme known as Hari Om CHS (Prop) on plot bearing CTS.No. 610A/1B/1(pt) of Village Malad (East), General A. K. Vaidya Marg, Malad (East), Mumbai was erroneously missed out to be mentioned in this office letter vide reference 1) above.

Thus, Deputy Chief Engineer (Traffic), BMC is requested to give hearing to both the parties i.e. complainant M/s. Raghvendra Construction Pvt. Ltd. and the applicant M/s. Harsiddh Corporation as per suitable provisions of MMC Act 1888

13. Thus, SRA has recommended grant of hearing by MCGM to the Petitioner. By another letter dated 11 February 2025, SRA requested Deputy Chief Engineer (Traffic) WS, MCGM to superimpose the prescribed RL on the approved layout of Petitioner's plot for verification of Petitioner's contention of RL cutting through and interfering with two SRA approved buildings. SRA once again requested MCGM to grant hearing to the Petitioner.

14. The above correspondence by SRA vide letters dated 17 January 2025 and 11 February 2025 indicates a possible mistake on the part of the SRA in giving 'no objection' for sanction of RL without considering the factum of Petitioner's layout development being affected by the impugned RL.

15. Though MCGM has not acted on its own despite two letters of SRA dated 17 January 2025 and 11 February 2025, in its affidavit-in-reply, MCGM has contended as under:-

o) I say that, the entire exercise of prescribing the RL and declaration of Public Road on a subject plot was carried out considering the remarks of the SRA dated 05.08.2024 and by following due procedure as provided under Section 291 (a) of

MMC Act, 1888, the Public Road was declared by Corporation vide CR No. 592 on 26.09.2024. Accordingly, the entire procedure was completed on 26.09.2024. Thereafter, on 17.01.2025 SRA sent a letter admitting their mistake. However, the said letter dated 17.01.2025 and the subsequent letter dated 11.02.2025 nowhere provides modified alignment / realignment of subject RL. Hence, as a planning authority, if SRA proposes a proposal with modified alignment / realignment of subject RL, the same may be considered and submitted for approval of competent authority on its merits.

MCGM has thus shown willingness to reconsider the sanctioning of the impugned RL upon receipt of proposal from the SRA.

16. It is thus evident that the impugned RL has been sanctioned with gross non-application of mind by the SRA to the factum of Petitioner undertaking development on the plot where RL passes through and that the building permissions are granted by SRA itself. It is also noticed that while issuing 'no objection' letter for sanction of new RL, SRA had sanctioned TDR for the Petitioner on the same day. SRA has later accepted its mistake, but MCGM has still failed to take the corrective action. Since the impugned decision is based on ignorance of relevant factors, we would be justified in exercising the power of judicial review in setting aside the impugned RL.

17. The second reason for setting aside impugned RL is non-grant of any opportunity of hearing to the Petitioner. It is sought to be suggested on behalf of Respondent No.5-Developer that no opportunity of hearing is warranted under the provisions

of Section 291 of the MMC Act. Provisions of Section 291 of the Act are extracted below:

291. Power to make new public streets.

The Commissioner, when authorised by the corporation in this behalf may at any time-

- (a) lay out and make a new public street;
- (b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the corporation, and that such street shall become, on completion, a public street;
- (c) declare any street made under an improvement scheme duly executed in pursuance of the provisions of the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, to be a public street.

18. We do not agree with the contention that when the proposed public street transgresses in any building, requiring its demolition, the owner/occupier thereof need not be heard. Similarly if the proposed public street renders any sanctioned building unbuildable, it cannot be that the Municipal Corporation would unilaterally proceed to sanction the street without providing opportunity of hearing to the affected party. MCGM in the present case has realized that the concerned party needed hearing and accordingly called for comments of SRA and relied on SRA's NOC believing that no person was getting adversely affected by sanction of the RL. MCGM possibly proceeded on an assumption that SRA had taken into consideration all the relevant factors. It must be noted here that the special planning authority for both the pieces of land is SRA. It was considering sanction of road through one SR Scheme for making the other SR scheme viable. The real 'sanction' in this

case, upon due application of mind, was by SRA and what is done by MCGM is to merely exercise statutory powers under Section 291 of the Act (which cannot be exercised by SRA) in sanctioning the RL. Otherwise, SRA, being a planning authority, had to take longish route under Maharashtra Regional and Town Planning Act 1966 for sanction of the new road. Thus sanctioning of the impugned RL has affected civil rights of the Petitioner and therefore opportunity of hearing was necessary, though not specifically provided for in Section 291 of the MMC Act. Courts have repeatedly read opportunity of hearing in a statutory provision though not expressly provided for. Thus, the opportunity of hearing to the affected parties ought to have been given by SRA in the present case.

19. Reliance by Respondent No. 5 on the Apex Court judgment in ***Dr. Abraham Patani*** (supra) is inapposite. The Apex Court has held as under:-

43. For these reasons, we reject the contention of the appellants that the only means by which the link road through their property could have been constructed was through an amendment to the DP under Section 37 of the MRTP Act. Respondent 2 had the option to either follow the procedure under the MRTP Act, or to invoke the parallel process provided under Sections 91, 291(a) and 296 of the MMC Act. Respondent 2's recourse to the latter cannot be said to defeat any provision of the DP or be contrary to the scheme of the MRTP Act.

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47. In our considered opinion, this does not advance the appellants' case either. Merely because a right to object to a modification of a DP exists under Section 37 of the MRTP Act does not automatically give it an ascendant

position in the hierarchy that the appellants seek to create between the MRTP Act and the MMC Act. It is up to the legislature to determine the amount of discretion that is accorded to the relevant authorities under each statute.

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48. While it is true that this Court has previously read the requirement of giving affected persons an opportunity to be heard into statutes and provisions which did not provide for it, such a right was held even in those cases to not be absolute. However, we need not even go so far. A closer reading of the MMC Act and the LAA shows that there are adequate safeguards available and, in the facts of the case, **The appellants were given ample opportunity to object to the proposed expropriation of their land.**

(emphasis added)

20. In our view the issue before the Hon'ble Apex Court in ***Dr. Abraham Patani*** was entirely different. The issue was with regard to difference in statutory scheme under Section 37 of the Maharashtra Regional Town Planning Act, 1966 and Section 291(a) of the MMC Act. In any case, the Appellant therein was given ample opportunity to object to the proposed expropriation of their land. Therefore, the judgment rendered in unique facts of the case, where interested party was given ample opportunity of hearing, cannot be cited in support of an absolute proposition that no opportunity of hearing is warranted under the provisions of Section 291(a) of the MMC Act. We are therefore of the view that Petitioner was required to be heard if new RL was to be sanctioned, which cuts across Petitioner's plot and particularly when it affects two sanctioned buildings in the layout.

21. The impugned decisions dated 1 October 2024 and 3 October 2024 are being set aside only on counts of non-application of mind and violation of principles of natural justice and therefore the proposal for sanctioning of new public street needs to be reconsidered by MCGM after securing fresh comments from SRA. SRA needs to properly apply its mind to all the relevant factors after grant of opportunity of hearing to all parties concerned. Accordingly, we propose to remand the proposal for reconsideration before the MCGM, which shall proceed to decide the proposal afresh after seeking fresh comments from SRA. Before giving its comments, CEO/SRA shall afford due opportunity of hearing to the parties concerned.

22. For the reasons aforesaid, sanction of the impugned RL is indefensible and deserves to be set aside. The Petition accordingly succeeds partly and we proceed to pass the following order:-

- (i) All decisions taken by MCGM for sanctioning of new public street under Section 291 of the MMC Act, passing through Petitioner's plot of land, are set aside.
- (ii) The MCGM shall however be at liberty to take a fresh decision of sanctioning of new public street under Section 291 of the MMC Act in due consultation with the SRA.
- (iii) The CEO/SRA shall afford an opportunity of hearing to the Petitioner and Respondent Nos. 4 and 5 before

recommending sanction of new public street to MCGM from the plot of the Petitioner.

- (iv) Parties shall appear before the CEO, SRA on 8 July 2025 when CEO/SRA shall afford them an opportunity of hearing.
- (v) CEO/SRA as well as MCGM shall take fresh decision in the matter strictly in accordance with law without being influenced by any of the observations made in the present order.
- (vi) After completion of process of hearing of the parties, CEO/SRA shall forthwith give its comments to MCGM within a period of four weeks. MCGM shall take decision on recommendations so made by SRA on or before 11 August 2025.
- (vii) Till 11 August 2025, the interim order passed by this Court on 5 March 2025 shall continue to operate.
- (viii) All contentions raised by parties are specifically kept open to be raised before the CEO/SRA during the course of hearing.

23. With the above directions, Writ Petition is **partly allowed** and disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE].