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

WRIT PETITION NO. 1173 OF 2016

Rohan J. Tiwari & Ors. ... Petitioners
Versus
Municipal Corporation of Greater
Mumbai & Ors. ... Respondents

WITH

WRIT PETITION NO. 414 OF 2023

J. D. and Company Pvt. Ltd. & Ors. ... Petitioners
Versus
Municipal Corporation of Greater
Mumbai & Ors. ... Respondents

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Mr. Drupad Patil for the Petitioners in WP/1173/2016 and for Respondent No.7 to 11 in WP/414/2023.
Mr. Vishal Kanade a/w Ms. Janhavee Joshi, Ms. Shlesha Sheth, Ms. Kalyani Deshmukh and Mr. Jagdish Rajgor i/by FZB & Associates for Petitioners in WP/414/2023 and for Respondent No.5 in WP/1173/2016.
Mr. A. Y. Sakhare, Senior Advocate, a/w Ms. Anuja Tirmali i/by Ms. Komal Punjabi for Respondent Nos. 1 to 3-MCGM in WP/1173/2016 and for Respondent Nos.1 to 4-MCGM in WP/414/2023.
Mr. Akshay Shinde for Respondent No.4-MMRDA in WP/1173/2016 and for Respondent No.5 in WP/414/2023.
Ms. Varsha Sawant, AGP for Respondent No.6-State in WP/414/2023.
Mr. Mayur Bhande, J. E. (Maintenance) P/S Ward, Present.

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CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.

RESERVED ON : 18th JUNE 2026
PRONOUNCED ON : 17th JULY 2026

Judgment (Per Manish Pitale, J.) :

. The petitioners in these petitions have raised the question regarding determination of compensation payable to them for structures and land, in which the petitioners in Writ Petition No. 1173 of 2016 claim rights as lessees and the petitioners in Writ Petition No. 414 of 2023 claim rights as owners, which have been utilized for construction of a road, over-bridge or flyover in the city of Mumbai. The petitioners contend that the respondent-Municipal Corporation of Greater Mumbai (MCGM) wrongly calculated the quantum of compensation by taking recourse to Sections 298 to 301 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) and according to them, the respondents, including the MCGM, ought to have acquired the lands and structures under Section 296 of the MMC Act read with Section 91 thereof. According to the petitioners, they are entitled to just fair and reasonable compensation upon acquisition of the lands and structures, in accordance with the provisions of law and that the impugned order dated 11th June 2018 passed by the Deputy Municipal Commissioner of the respondent-MCGM, determining compensation payable to them, deserves to be set aside, with a direction to undertake acquisition and to pay monetary compensation, in accordance with law.

2. The petitioners in Writ Petition No. 1173 of 2016 are concerned with their leasehold rights in the land, superstructure and buildings constructed on CTS No.33A, 33A/1 to 33A/3 and

33B/1 to 33B/26, situated at Village Goregaon, Taluka Malad, Mumbai. The predecessors of the petitioners were lessees in the said property and in Suit No.282 of 1960 filed by the land owners before this Court, consent terms were filed on 15th April 1971, whereby the predecessors of the petitioners were accepted as a lessees/tenants in the said property. Accordingly, property register cards were prepared. In the year 1980, the Government of Maharashtra granted exemption under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976. On 8th October 2013, the said petitioners received a communication from respondent No.2-Assistant Commissioner of MCGM, stating that since a portion of the property of the said petitioners would be affected by the construction of the proposed flyover, they could indicate their preference for receiving compensation either in the form of monetary compensation or in the form of Transferable Development Rights (TDR) or in the form of relocation of the affected premises. On 9th October 2013, the petitioners responded by stating that they would be ready for construction of road and flyover on their property, only after they receive compensation for the same. The petitioners further sent communications, demanding compensation.

3. In this backdrop, on 8th January 2014, the respondent-MCGM, in response to an application filed under the provisions of Right to Information Act, 2005, sent a reply, stating that the alignment of the flyover had been finalized by the Executive

Engineer, but there was no indication as regards compensation payable to the petitioners. According to the said petitioners, on 8th February 2016, officers of the respondent-MCGM came to the property and forcibly started demolishing the structures. In this backdrop, on 9th February 2016, the petitioners filed the aforesaid Writ Petition No. 1173 of 2016, praying for a direction against the respondents to stop the work of demolishing the structures and for a declaration that such action was wholly arbitrary and unconstitutional. On 10th February 2016, the said writ petition was taken up for consideration urgently by a Division Bench of this Court and by order dated 10th February 2016, the respondent-MCGM was restrained from demolishing the structures. As part of the structures were demolished, the petitioners in the said writ petition sought permission to amend the writ petition and by order dated 17th February 2016, they were permitted to do so, while the interim order continued to operate.

4. On 17th March 2016, this Court vacated the interim order in Writ Petition No. 1173 of 2016, on the basis that since development work could not be halted and the petitioners in the said writ petition would be entitled to compensation under the provisions of the MMC Act. At the same time, the respondent-MCGM was directed to calculate the compensation payable to the petitioners, with a further direction to deposit 50% of the compensation so determined before this Court and the petitioners were permitted to withdraw the same, without security deposit. It

was also observed that the petitioners would be at liberty to seek higher compensation, in accordance with law. In the light of the interim order being vacated, the possession of the lands and the structures was made over to the respondent-MCGM and the work of the flyover was completed.

5. The respondent-MCGM through its officer, determined amount of compensation payable to the petitioners and in an affidavit filed before this Court, stated that the amount came to Rs.3,98,28,600/-. An amount of Rs.2 crores, as directed by this Court, was deposited and the said amount was withdrawn by the petitioners in the said writ petition. On 6th February 2018, the respondent-MCGM made a statement before this Court that the order approving the amount of compensation determined as payable to the petitioners would be withdrawn and that a fresh order would be passed by the Deputy Municipal Commissioner of the respondent-MCGM. It was stated that the exercise would be completed within a period of three months. In the order passed on 6th February 2018 in the said writ petition, this Court recorded the aforesaid statement made on behalf of the respondent-MCGM and also recorded that there was some controversy about provisions of law under which the compensation was to be fixed, further observing that the Court was not entering into the said controversy, as the Corporation was liable to pay compensation and if the petitioners were aggrieved by the same, they would have remedies to challenge the same. It was further observed in the said

order that the petitioners would be at liberty to place documents before the Deputy Municipal Commissioner of the respondent-MCGM to give various details about the lands and structures and also to place documentary evidence to show the market value of the property on the relevant date. It was also made clear that the amount already withdrawn by the petitioners would remain unaffected, as it would be subject to final determination of compensation.

6. In this backdrop, the Deputy Municipal Commissioner of the respondent-MCGM passed order dated 11th June 2018, determining the amount of compensation payable to the petitioners in the said writ petition. The said officer determined the quantum of compensation on the basis of the ready reckoner rate. After determining the quantum of compensation payable on such rate, the officer proceeded to deduct 40% towards cost of land and 25% towards compensation to the Government of Maharashtra, as its name was recorded in the other rights column. Upon the figure arrived at after such an exercise, the officer held that only 50% of the same was payable to the petitioners as tenants and after adding 100% solatium with a further amount of Rs.10 lakhs towards compensation for demolished structures, it was held that an amount of Rs.2,17,97,650/- was payable to the petitioners in the said writ petition.

7. The petitioners were aggrieved by the said determination of quantum of compensation and hence, they challenged the said

order dated 11th June 2018 passed by the Deputy Municipal Commissioner of respondent-MCGM by amending the writ petition. By amendment, they also sought a direction against the respondents to initiate acquisition of the property, as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013) to pay compensation as per market rate along with 100% solatium. By the said amendment, the petitioners also raised specific objection to the manner in which the compensation was determined by the said officer of the respondent-MCGM by relying upon Sections 298 to 301 of the MMC Act, further asserting that acquisition could have been undertaken only under Section 296 of the MMC Act read with the Act of 2013.

8. The petitioner-company in Writ Petition No. 414 of 2023 also challenged the said order dated 11th June 2018 passed by the Deputy Municipal Commissioner of respondent-MCGM. Apart from raising the grounds already raised by the petitioners in Writ Petition No. 1173 of 2016, it was contended that there was a breach of the principles of natural justice, in as much as the petitioners in Writ Petition No. 414 of 2023, despite being owners of the lands, were not heard when the compensation was determined and when it was apportioned by the Deputy Municipal Commissioner of the respondent-MCGM. It was submitted that the respondent-MCGM was throughout aware about the fact that the said petitioners were owners of the land and therefore, the

quantum of compensation could not have been determined behind their back. It was submitted that to the extent of the grounds raised for challenging the basis for determination of quantum of compensation, the petitioners in the Writ Petition No. 414 of 2023 were supporting the petitioners in Writ Petition No. 1173 of 2016, but they reserved their right to agitate the question of their share in the amount of compensation.

9. The respondent-MCGM filed its affidavits in both the writ petitions at various stages and opposed the contentions raised on behalf of the petitioners. It was asserted that compensation was correctly determined by placing reliance on Sections 298 to 301 of the MMC Act. It was further asserted that there was no question of recourse to Section 296 of the MMC read with the provisions of the Act of 2013. It was submitted that therefore, the writ petitions deserved to be dismissed. Rejoinder affidavits were filed on behalf of the petitioners and therefore, the writ petitions were taken up for hearing.

10. Mr. Drupad Patil, learned counsel appearing for the petitioners in Writ Petition No. 1173 of 2016 submitted that in the present case, the respondent-MCGM could not have relied upon Sections 298 to 301 for determining the quantum of compensation payable for the utilization of the lands and structures for construction of the road and flyover. By inviting attention of this Court specifically to Section 299 of the MMC Act, it was emphasized that even if the regular line concerning the

public street was determined by the respondent-MCGM, a bare reading of the said provision would show that open land could be acquired under the said provision only if it was not occupied by a building. Only if a platform, verandah or other external structure of a building abutting a public street, was within the regular line of such a street, by applying Section 299 of the MMC Act, the Commissioner of the respondent-MCGM, after giving written notice, could take possession of such land and acquire the same, which would then be deemed to be a public street. In such a situation, the quantum of compensation would be determined under Section 301 of the MMC Act, for the loss suffered by the owner and for any expense incurred when such an exercise was carried out. It was emphasized that since in the present case, the buildings on the said land, of which the petitioners in Writ Petition No. 1173 of 2016 were lessees, very much existed on the land which was acquired and utilized for construction of the road and flyover, there was no question of applicability of Section 299 of the MMC Act. This was not a case of a portion of a platform, verandah or some external structure falling within the regular line of the street. On this basis, it was asserted that in such a situation, the respondent-MCGM had no alternative, but to take recourse to Section 296 of the MMC Act, read with Section 91 thereof, to undertake acquisition of the land and buildings, in accordance with the statute governing acquisition. On this basis, it was submitted that the compensation payable to the said petitioners was required to be determined under the Act of 2013.

11. In support of the said contention, the learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of *Indian City Properties Ltd. & Anr. vs. Municipal Commissioner of Greater Bombay & Anr.,* **(2005) 6 SCC 417**. It was submitted that these very provisions fell for consideration before the Supreme Court and the interpretation being advanced on behalf of the petitioners in the present case was accepted by the Supreme Court. On this basis, it was submitted that the position of law is clearly in favour of the petitioners. Reliance was also placed on judgment and order dated 18th July 2018, passed by a Division Bench of this Court in the case of *Jasuben Raghavji Patel vs. Municipal Corporation of Greater Mumbai (MCGM) & Ors.,* in Writ Petition No.3082 of 2014. It was submitted that the said case was concerned with acquisition of a piece of land concerning construction of the same flyover, only a few meters away. In the said case, this Court rendered a finding that the compensation could not have determined under Section 301 of the MMC Act. Thereupon, this Court directed the respondent-MCGM to take recourse to the provisions of the Act of 2013 to acquire the subject land and structures thereon and to pay compensation accordingly. It was further directed that since possession was already taken, rental compensation as per the policy of the respondent-State would also be payable to the petitioners therein. It was submitted that the aforesaid judgment also clearly covered the position of law in favour of the petitioners.

12. The learned counsel for the petitioners in the said writ petition submitted that the respondent-MCGM cannot deny reliefs by placing reliance on judgment of Division Bench of this Court in the case of *Municipal Corporation of Greater Bombay vs. Durgadas Shankarrao Rege & Anr.,* **AIR 1980 Bom 93**. It was submitted that the questions for determination in the said petition pertained to the right of the respondent-MCGM to take recourse to Sections 297 to 301 of the MMC Act. It was submitted that in a given factual scenario, the respondent-MCGM could well be justified in taking recourse to the said provisions, but it was emphasized that in the present case, the said provisions did not apply. It was further submitted that the judgment of the Supreme Court in the case of *Municipal Corporation of Greater Bombay & Ors. vs. Central Bank of India & Anr.,* **(1994) 4 SCC 690**, relied upon by the respondent-MCGM can also not be the basis for denying reliefs to the petitioners because the basis for determination of compensation under Section 301 of the MMC Act, could be different from the determination of market value under the statute pertaining to land acquisition and compensation, but the present case raises the question of the very applicability of Section 301 of the MMC Act. On the basis of the said contention, the learned counsel appearing for the petitioners also sought to distinguish judgment of the Division Bench of this Court relied upon by the respondent-MCGM in the case of *Shankara N. Shetty & Ors. vs. State of Maharashtra & Ors.,* **(2008) 1 Mah LJ 740**.

13. As regards reliance placed on an order passed by a Division Bench of this Court in the case of *Dr. Kirtkumar B. Mehta vs. Municipal Corporation for Greater Mumbai & Ors.,* **2018 SCC OnLine Bom 13684**, it was submitted that the same was a desperate attempt on the part of the MCGM to somehow deprive the petitioners of reliefs. It was submitted that in none of the affidavits filed on behalf of the respondent-MCGM was it ever disputed that the structures of the petitioners were authorized. As a matter of fact, the said structures existed from prior to the datum line of 1962 and they existed even before the city survey was carried out. Attention of this Court was specifically invited to the affidavit in rejoinder dated 7th March 2016 filed on behalf of the petitioners, wherein the said assertion was made. Since, there was no dispute raised by the respondent-MCGM regarding the same, it was submitted that the writ petitions deserved to be allowed.

14. Mr. Vishal Kanade, learned counsel appearing on behalf of the petitioners in Writ Petition No. 414 of 2023, supported the contentions raised by the learned counsel for the petitioners in Writ Petition No. 1173 of 2016. It was submitted that additionally, the petitioners in Writ Petition No. 414 of 2023, being land owners of the subject lands and very much having an interest therein, ought to have been heard by the Deputy Municipal Commissioner of the respondent-MCGM, before issuing the impugned order dated 11th June 2018. It was submitted that the

quantum of compensation and apportionment thereof was determined behind the back of the said petitioners, thereby clearly violating the principles of natural justice. It was submitted that the impugned order deserves to be set aside, on this additional ground also and it was further submitted that the respondents ought to be directed to determine the quantum of compensation by recourse to Section 296 of the MMC Act, read with the provisions of the Act of 2013. It was submitted that the petitioners in Writ Petition No. 414 of 2023 are reserving their right to raise their dispute with the petitioners in Writ Petition No.1173 of 2016. The said dispute would be raised after the compensation is determined, as prayed on behalf of the said petitioners.

15. On the other hand, Mr. Sakhare, learned Senior Counsel appearing on behalf of respondent Nos.1 to 4 and 6, the officers of the MCGM, opposed the contentions raised on behalf of the petitioners in both the writ petitions. It was submitted that the Deputy Municipal Commissioner of the respondent-MCGM had correctly taken recourse to Sections 298 to 301 of the MMC Act, for determining the quantum of compensation payable to the petitioners. It was submitted that since the regular line pertaining to the street/road was admittedly determined and the subject lands were located within the regular line, respondent-MCGM was entitled to proceed to determine compensation under Section 301 of the MMC Act. Much emphasis was placed on the judgment of this Court in the case of ***Municipal Corporation of Greater***

Bombay vs. Durgadas Shankarrao Rege & Anr. (supra), wherein it was held that Sections 298 to 301 of the MMC Act constituted a code in itself for determination of compensation and that recourse to the provisions of land acquisition statute was not necessary. It was emphasized that since the regular line of the public street in the present case was admittedly determined and the land as well as structures in the present case were located within the said regular line, there was no question of recourse to Section 296 of the MMC Act, for determination of compensation. The judgment and order of this Court in the case of ***Jasuben Raghavji Patel vs. Municipal Corporation of Greater Mumbai (MCGM) & Ors.*** (supra) relied upon by the petitioners, was sought to be distinguished on the ground that in the said case, it was recorded that the subject land was not within the regular line of the public street and therefore, in the said case, it was held that the compensation could not be fixed under Section 301 of the MMC Act.

16. It was emphasized that the Supreme Court in the case of ***Municipal Corporation of Greater Bombay & Ors. vs. Central Bank of India & Anr.*** (supra) had specifically held that when the compensation was determined under Section 301 of the MMC Act, the determination of quantum of compensation was not required to be made as per market value of the land and building. In this backdrop, it was submitted that a perusal of the impugned order dated 11th June 2018 would show that the Deputy

Municipal Commissioner of the respondent-MCGM had properly taken into consideration the ready reckoner rate and after applying all relevant factors, arrived at a just figure of compensation payable to the petitioners, which did not deserve interference in writ jurisdiction. Reliance was also placed on the judgment of this Court in the case of ***Shankara N. Shetty & Ors. vs. State of Maharashtra & Ors.*** (supra) on the aspect of existence of regular line. Reference was also made to judgment and order dated 26th April 2019 passed by a Division Bench of this Court in Writ Petition No. 213 of 2019 *(Ramesh G. Karani & Ors. vs. Slum Rehabilitation Authority & Ors.)* and connected writ petitions. Towards the end of the arguments, learned Senior Counsel appearing for respondent-MCGM referred to order passed by this Court in the case of ***Dr. Kirtkumar B. Mehta vs. Municipal Corporation for Greater Mumbai & Ors.*** (supra) to contend that since there was nothing to show that the structures of the petitioners were legal, recourse to Section 299 of the MMC Act was justified. On this basis, it was submitted that the writ petitions deserved to be dismissed.

17. The learned counsel for the other respondents supported the contentions raised on behalf of the respondent-MCGM and sought dismissal of the writ petitions.

18. We have considered the rival submissions. The real controversy in the present case concerns the question as to whether determination of compensation for utilization of the land

and buildings in these two writ petitions was to be undertaken by recourse to Sections 298 to 301 of the MMC Act or under Section 296 read with Section 91 thereof, along with provisions of the Act of 2013. At the heart of the controversy is Section 299 of the MMC Act, because if the respondent-MCGM is found to be justified in asserting that the facts of the present case gave rise to a situation covered under Section 299 of the MMC Act, compensation would certainly be payable under Section 301 thereof. On the other hand, if it is found that the factual position in the present case does not give rise to a situation covered under Section 299 of the MMC Act, Section 301 thereof would not be applicable and respondent-MCGM would be liable to undertake the exercise of acquisition of the subject land and buildings by recourse to Section 296 of the MMC Act, read with the provisions of the Act of 2013.

19. Therefore, it would be appropriate to refer to the aforementioned provisions of the MMC Act. The relevant provisions of the MMC Act, read as follows :

> ***"91. Procedure when immovable property cannot be acquired by agreement.—*** *(1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement the State Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Improvements Committee and subject to the other provisions of this Act order proceedings to be taken for acquiring the same on behalf of the corporation, as if such property were a land needed for a public purpose within the meaning of the Land Acquisition Act, 1870.*

(2) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the corporation.

Sections 92 to 295 ************************

296. Power to acquire premises for improvement of public street.— *(1) The Commissioner may, subject to the provisions of section 90, 91 and 92—*

(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street, and the buildings, if any standing upon such land;

(b) acquire in addition to the said land and the buildings, if any, standing, thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the corporation to acquire outside of the regular line, or of the intended regular line, of such street;

(c) lease, sell or otherwise dispose of any land or building purchased under clause (b).

(2) Any conveyance of land or of a building under clause (c) may comprise such conditions as the Commissioner thinks fit, as to the removal of the existing building, the description of new building to be erected, the period within which such new building shall be completed and other such matters.

Preservation of Regular Line in Public Streets

297. Prescribing the regular line of a street.— *(1) The Commissioner may:—*

(a) prescribe a line on each side of any public street:

Provided that in the case of any public street in the suburbs the regular line of a public street operative under any law in force in any part of the suburbs on the day immediately preceding the date of coming into force of the Bombay Municipal (Extension of Limits) Act, 1950 (Bom. VII of

1950), 2[land in the case of any public street in the extended suburbs the regular line of a public street operative under any law in force in any part of the extended suburbs on 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 (Bom. LVIII of 1956)] shall be deemed to be a line prescribed by the Commissioner under this clause.

(b) from time to time, but subject in each case to his receiving the authority of the corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed or for any part thereof provided that such authority shall not be accorded—

(i) unless, at least one month before the meeting of the corporation at which the matter is decided public notice of the proposal has been given by the Commissioner by advertisement in local newspapers as well as in the 3[Official Gazette], and special notice thereof, signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed, and

(ii) until the corporation have considered all objections to the said proposal made in writing and delivered at the office of the municipal secretary not less than three clear days before the day of such meeting.

(2) The line for the time being prescribed shall be called 'the regular line of the street'.

(3) No person shall construct any portion of any building within the regular line of the street except with the written permission of the Commissioner, who shall, in every case in which he gives such permission, at the same time report his reasons in writing to the Standing Committee.

298. Setting back buildings to regular line of the street.— *(1) If any part of a building abutting on a public street is within the regular line of such street, the Commissioner may, whenever it is proposed—*

(a) to rebuild such building or to take down such building to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet; or

(b) to remove, re-construct or make any addition to any portion of such building, which is within the regular line of the street,

in any order which he issues, under section 345 or 346, concerning the re-building, alteration or repair of such building require such building to be set back to the regular line of the street.

(2) When any building, or any part thereof within the regular line of a public street, falls down, or is burnt down, or is taken down whether under the provisions of section 351 or 354 or otherwise, the Commissioner may at once take possession on behalf of the corporation of the portion of land within the regular line of the street therefor occupied by the said building, and, if necessary, clear the same.

(3) Land acquired under this section shall thence forward be deemed a part of the public street and shall vest, as such, in the corporation.

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.*

Explanation.— For the purposes of acquisition of open land lying within the regular line of a public street, and not occupied by a building constructed before the 25th March, 1991 and occupied without obtaining the permission to occupy the building from the Commissioner under section 353A, 'owner' of the said land or building means a co-operative housing society or a federation of co-operative housing societies registered under the Maharashtra Co-operative Societies Act, 1960 or any condominium or a company incorporated under the Companies Act, 1956 with limited liability or an association of person or any ad hoc body formed by the occupants of the building.

(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.

300. **********************

301. Compensation to be paid in cases under the three last sections.— *(1) Compensation shall be paid by the Commissioner to the owner of any building or land acquired for a public street under section 298 or 299, for any loss which such owner may sustain in consequence of his building or land being so, acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner under either of the said sections; provided that any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation.*

(2) If, in consequence of any order to set forward a building made by the Commissioner under the last preceding section, the owner of such building sustains any loss or

damage, compensation shall be paid to him by the Commissioner for such loss or damage.

(3) If the additional land which will be included in the premises of any person required or permitted under the last preceding section to set forward a building belongs to the corporation, the order or permission of the Commissioner to set forward the building shall be a sufficient conveyance to the said owner of the said land; and the price to be paid to the corporation by the said owner for such additional land and the other terms and conditions of the conveyance shall be set forth in the said order or permission.

(4) If when the Commissioner requires a building to be set forward, the owner of the building is dissatisfied with the price fixed to be paid to the corporation or any of the other terms and conditions of the conveyance, the Commissioner shall, upon the application of the said owner at anytime within fifteen days after the said terms and conditions are communicated to him, refer the case for the determination of the Chief Judge of the Small Cause Court, whose decision thereupon shall be conclusive."

20. A perusal of the above quoted provisions of the MMC Act, shows that the Commissioner can prescribe the regular line of the street under Section 297 of the MMC Act and as per Section 299 thereof, the respondent-MCGM can acquire and take possession of land occupied by platform, etc within the regular line of a street. The words used in Section 299 of the MMC Act, quoted hereinabove, are of much significance. In the first place, the pre-requisite for applying Section 299 of the MMC Act is prescription of a regular line of a public street. In this case, it is undisputed that the regular line was indeed prescribed. But, it is important to note that Section 299 of the MMC Act applies when the subject land lies within the regular line of a public street and it is not occupied

by a building. Only if a platform, verandah, step or some other structure external to a building abutting the public street is found to be within the regular line of such street, the Commissioner can take possession of such land or of such platform, verandah, step or other structure, clear the same and the land so acquired is then deemed to be part of the public street. Section 301 of the MMC Act provides for compensation to be paid in cases that are covered under Section 299 thereof. Therefore, Section 301 of the MMC Act would apply only where the land lying within the regular line of the public street is not occupied by a building or if only a platform, verandah, step or some other structure external to a building abutting the public street lies within the regular line of such street.

21. The Supreme Court in the case of ***Indian City Properties Ltd. & Anr. vs. Municipal Commissioner of Greater Bombay & Anr.*** (supra) had an occasion to deal with the interpretation of the said provision and after referring to the same, in the said judgment, it was held as follows :

> *"17. Sections 297 to 311 are grouped together under the sub-title "Preservation of Regular Line in Public Streets". Section 297 prescribes the method by which the Commissioner may prescribe a line on each side of any public street which is called the "regular line" of the street. Section 298 allows the Commissioner to dispose of proposals relating to rebuilding or removal or reconstruction or additions in respect of any part of a building abutting on a public street which is within the regular line of such street. In passing an order on the proposals under Section 345 or 346, the Commissioner may require such building to be set back to the regular line of the street. Section 301 mandates*

payment of compensation to be paid by the Commissioner to the owner of any building or land acquired for a public street under Section 298 or 299 for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expenses incurred by such owner in consequence of an order made by the Commissioner under either of the sections.

18. It needs to be noted that in all these sections the word used is "building" in contradistinction with Section 299 which speaks of "structures" and "buildings".

19. The word "structure" is used as a generic term so that while all buildings may be structures, all structures are not buildings. That structure which is not a building and is a platform, verandah, step, or some other such structure external to a building may be taken over by the Commissioner under Section 299(1) if it is within the regular line of the street. The words "some other such" must be construed as structures similar or like platform, verandah and step. The words must be read ejusdem generis with the preceding words since the word "such" means "of the type previously mentioned" [See Concise Oxford English Dictionary (10th Edn.)]. The word "other" has also been held to indicate that it must be construed ejusdem generis [Siddeshwari Cotton Mills (P) Ltd. v. Union of India, (1989) 2 SCC 458 : 1989 SCC (Tax) 297; CCE v. Ramdev Tobacco Co., (1991) 2 SCC 119]. The underlying characteristic of platforms, verandahs and steps is that they are not independent structures and are external to a building, that is they are attached to the outside and form an inessential part of a building. In our opinion, therefore in order to be a building for the purpose of Section 299 the structure would have to be an independent, permanent structure. Thus, there is no repugnancy if one were to read the definition of building and Section 299 and in our opinion the word "building" has been used in Section 299 in the sense defined in Section 3(s)."

22. We are of the opinion that the moment it is found that a building exists on the land lying within the regular line of a public street, Section 299 of the MMC Act does not apply. In this context, it is also necessary to peruse Section 298 of the MMC

Act, which has been quoted hereinabove. It pertains to setting back of buildings to regular line of the street. Sub-section (1) thereof, pertains to a situation where a part of a building abutting the public street, is within the regular line and when it is proposed to rebuild such a building or take down such a building, the Commissioner can pass an order concerning such rebuilding or repair, so as to require such building to be set back to the regular line of the street. Sub-section (2) of Section 298 of the MMC Act, specifies that when any building within the regular line of a public street falls down or is burnt down or is taken down, the Commissioner can at once take possession of that portion of the land within the regular line of the street and clear the same. Thereupon, such land under sub-section (3) of Section 298 is deemed to be a part of the public street and vests in the Corporation.

23. It is an admitted position that none of the contingencies contemplated under Section 298 of the MMC Act, are found in the present case. This is evident from the fact that the buildings of the petitioners neither fell down nor were they burnt down and they were not taken down under Section 351 of the MMC Act (pertaining to unauthorisedly constructed buildings) or Section 354 thereof (pertaining to removal of ruinous structures likely to fall). It is an admitted position that the respondent-MCGM started the work of demolishing the buildings of the petitioners without notice, for the stated object of construction of the road and

flyover, without any reference to or claiming any of the contingencies found in Section 298 of the MMC Act.

24. Once such a factual position is established, we find that there is considerable substance in the contentions raised on behalf of the petitioners. Considering the averments made in the Writ Petition No. 1173 of 2016 and the tenor of the affidavits filed on behalf of the respondent-MCGM, we find that the buildings and structures occupied by the petitioners therein, fully existed and lay within the regular line of the public street and hence, Section 299 of the MMC Act could not have been invoked by respondent-MCGM. The only logical consequence is that Section 301 of the MMC Act does not apply and therefore, the respondent-MCGM could not have determined compensation by taking recourse to the said provision. In that light, it was incumbent upon respondent-MCGM to have acquired the lands and buildings of the petitioners by taking recourse to Section 296 of the MMC Act, which pertains to power to acquire premises for improvement of public streets. This would necessarily require reference to Section 91 of the MMC Act, which prescribes that when MCGM is unable to acquire immovable property by way of agreement, it would have to be acquired by recourse to the land acquisition statute. Hence, we do not find force in the contention raised on behalf of the respondent-MCGM that compensation was correctly determined by the Deputy Municipal Commissioner of the respondent-MCGM in the order dated 11th June 2018, by taking recourse to

Section 301 of the MMC Act.

25. A perusal of the said order dated 11th June 2018 shows that there are some self-contradictory observations made therein. While it appears that eventually, the final compensation amount was determined by the Deputy Municipal Commissioner in the said order dated 11th June 2018, by taking recourse to Section 301 of the MMC Act, at one place, it is recorded in the said order itself that the respondent-MCGM shall pay compensation as per the Land Acquisition Act. Since, the Deputy Municipal Commissioner had proceeded eventually under Section 301 of the MMC Act, the quantum of compensation has been determined on the basis of the ready reckoner rate. Even while reaching the final figure payable to the petitioners in Writ Petition No. 1173 of 2016, we find that the Deputy Municipal Commissioner has proceeded to make deductions on various grounds, that also appear to be arbitrary and unjustified. But, it would not be necessary for this Court to go into the said controversy, if it is found that the Deputy Municipal Commissioner, while passing the said order dated 11th June 2018, was not justified by taking recourse to Section 301 of the MMC Act for determining the quantum of compensation. Once the contention raised on behalf of the petitioners is accepted that the said lands/buildings could have been acquired only under Section 296 of the MMC Act, read with the Act of 2013, the entire exercise of determining compensation would have to be carried out afresh.

26. We also find that the petitioners in Writ Petition No. 414 of 2023 are clearly justified in claiming that principles of natural justices were violated when the quantum of compensation was determined behind their back, despite acknowledging in the order itself that there were multiple claimants, including the landlords. This is another ground on the basis of which the aforesaid impugned order dated 11th June 2018, deserves to be set aside.

27. But, it would be necessary to deal with the judgments upon which much emphasis is placed on behalf of the respondent-MCGM.

28. A perusal of the judgment in the case of ***Municipal Corporation of Greater Bombay vs. Durgadas Shankarrao Rege & Anr.*** (supra), upon which much emphasis was placed on behalf of the respondent-MCGM, would show that the following three questions fell for determination before this Court :

> *"4. The questions which thus fall our determination in this Appeal so far as the challenge under Article 14 is concerned are:*
>
> *(1) whether the group of sections, namely, sections 297 to 301 of the Act, constitute a mode of acquisition alternative to the mode of acquisition provided for by section 296 or whether this group of sections constitutes an exception to the general provisions contained in section 296;*
>
> *(2) if this group of sections constitutes an exception to the general provisions contained in section 296 of the Act, whether the classification made thereby is a reasonable one founded on an intelligible differentia and having a rational relation or nexus to the object sought to be*

achieved; and

(3) *whether there is any substantial or quantitative prejudice to the owner whose land is acquired under this group of sections as compared to owner of land who is proceeded against under section 296 of the Act."*

29. The said questions were answered by analysing Sections 297 to 301 of the MMC Act. In paragraph 10 of the said judgment, the language of Sections 298 and 299 of the MMC Act was considered and interpreted on a plain reading of the said provisions. Thereafter, in paragraph 11, it was observed as follows:

> *"11. An analysis of these sections show that sections 297 to 301 of the Act constitute a complete scheme for a particular purpose. The acquisition under sections 298 and 299 can only be in respect of land falling within the regular line of the street. Further, it can only be in respect of land which is not occupied by a building or which is occupied only by a compound wall or a platform, verandah, step or some other structure which is external to the building. Any other type of land or any building can only be acquired under section 296 of the Act. Thus, the acquisition under sections 298 and 299 is in respect of a particular kind of properly only. These sections are thus particular enactments contained in the Act. If they are particular enactments, then on the rules of interpretation of statutes enunciated above, the general provisions contained in section 236 of the Act and these particular provisions must be read harmoniously and the general provisions must be interpreted to affect only those types of properties which do not come under the particular provisions. These particular provisions thus constitute an exception to the general provisions enacted in section 296 of the Act. If the Municipal Commissioner desires to acquire land which is not built upon or land from which the owner voluntarily wants to remove his building for the purpose of rebuilding or reconstruction or which becomes open by reason of the building falling down or being compulsorily demolished or removed and if such land falls within the regular line of the street, in our opinion, the Municipal Commissioner has no discretion and no power to proceed to acquire it under section*

> *236 of the Act. He must proceed to acquire it only under section 298 or 299, as the case may be. As held by the Supreme Court in State of Gujarat v. Shantilal Mongaldas, AIR 1969 SC 634, 654 (1), it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all."*

30. Thereafter, it was held in the said judgment that the land owner, whose land is acquired and compensation is paid under Sections 297 to 301 of the MMC Act, does not suffer any prejudice, as compared to the owner of the land, who is proceeded against under Section 296 of the MMC Act. In that context, it was observed as follows :

> *" Thus, while the object underlying sections 297 to 300 of the Act is to prescribe a building line, the object underlying section 296 is wholly different. That object is that of opening, widening, extending or otherwise improving any public street or making a new public street. This section is not concerned with the regular line of the street or with the building line nor is the acquisition thereunder confined by any reference to the regular line of the street. The powers under that section are not to be exercised by the Municipal Commissioner alone. They are to be exercised in the manner prescribed by sections 90 and 91 of the Act to which reference has already been made. The contention of the first respondent that the object of widening a street is common to both sections 296 and 297 of the Act must, therefore, be rejected."*

31. We are of the opinion that the findings rendered in the said judgment, pertaining to the three questions identified therein, do not take the case of the respondent-MCGM any further, simply for the reason that we have reached the conclusion that in the facts of the present case, the self-contained code under Sections 297 to 301 of the MMC Act does not apply and that acquisition

of lands and buildings as well as determination of compensation could have been undertaken only by recourse to Section 296 of the MMC Act, read with the Act of 2013.

32. As regards judgment of the Supreme Court in the case of ***Municipal Corporation of Greater Bombay & Ors. vs. Central Bank of India & Anr.*** (supra), one of the questions that fell for consideration was, as to whether Section 301 of the MMC Act specified a principle for determination of compensation, according to market value of the lands and/or buildings. After referring to the relevant provisions and precedents, the Supreme Court answered the question by holding that the principles specified in Section 301 of the MMC Act, for determination of compensation payable to the owners of the lands or buildings acquired under Section 298 or 299 of the MMC Act, did not warrant determination of compensation according to market value of the lands and/or buildings. The aforesaid conclusion was based on the words used in Section 301 of the MMC Act, which refers to loss or damage suffered by the owner, as a consequence of acquisition of such land or building. We fail to understand how the ratio of the judgment can come to the aid of the respondent-MCGM in opposing the reliefs claimed in the present petition, once it is found that Sections 298 and 299 of the MMC Act do not apply to the facts of the present case, as the subject land was occupied by buildings and such buildings lay within the regular line of the public street. For the same reason, reliance placed on judgments of

this Court in the cases of ***Shankara N. Shetty & Ors. vs. State of Maharashtra & Ors.*** (supra) and ***Ramesh G. Karani & Ors. vs. Slum Rehabilitation Authority & Ors.*** (supra), is not justified.

33. Towards the end of arguments, we were surprised to note that a contention was sought to be raised on behalf of the respondent-MCGM that since the buildings and structures of the petitioners were not demonstrated to be authorized, it could be said in law that the land was not occupied by buildings, thereby justifying recourse to Section 299 of the MMC Act. A perusal of the affidavits filed on behalf of the respondent-MCGM in Writ Petition No. 1173 of 2016, shows that nowhere did the said respondent raise any such contention at all. As a matter of fact, a proper appreciation of the contents of the said affidavits would show that the response of the respondent-MCGM to the said petition proceeded on the basis that the buildings and structures were authorized. We also find that the petitioners specifically stated in their rejoinder affidavit dated 7th March 2016, as follows :

> *"6. I say that in Affidavit-in-Reply dated 17th February, 2016, the Respondents have admitted that the Petitioners are owners of R.C.C. structure standing on the land bearing C.T.S. No.33B, 33B/1 to 33B/26. I say that the said structure is in existence prior to the datum line. The structure is completely authorised. Therefore, at the most the provisions of Section 298 will apply. By no stretch of imagination the provisions of Section 299 can be made applicable to the present case."*

34. This was never disputed by respondent-MCGM. It was

brought to our notice that the said buildings and structures existed prior to the datum line of 1962 and before the city survey was carried out. In the face of such facts, we find that a public body like the Municipal Corporation i.e. respondent-MCGM, by way of a desperate attempt, is somehow seeking to wriggle out of Section 296 of the MMC Act, read with the provisions of the Act of 2013. Therefore, we find that the aforesaid contention belatedly raised on behalf of the respondent-MCGM is not justified and the judgment of this Court in the case of ***Dr. Kirtkumar B. Mehta vs. Municipal Corporation for Greater Mumbai & Ors.*** (supra) cannot be relied upon by the said respondent.

35. In view of the above, we find that the writ petitions deserve to be allowed. We also find that the *inter se* dispute between the petitioners in Writ Petition No. 1173 of 2016 on the one hand and the petitioners in Writ Petition No. 414 of 2023 on the other, regarding apportionment of compensation need not be considered and decided in these proceedings. The said dispute can be decided in accordance with law, after the quantum of compensation is determined as per the directions proposed to be issued by this Court, as a consequence of the writ petitions being allowed.

36. The writ petitions are allowed in the following terms :

(a) It is found that respondent-MCGM wrongly determined the compensation by taking recourse to Section 301 of the MMC Act, as Section 299 thereof is found to be inapplicable to the facts of the present case.

(b) The impugned order dated 11th June 2018 passed by the Deputy Municipal Commissioner of respondent-MCGM, determining the compensation by taking recourse to Section 301 of the MMC Act, is quashed and set aside.

(c) As a consequence, the respondents, including the respondent-MCGM, are directed to take steps for acquisition of the subject lands and buildings/structures of the petitioners by taking recourse to Section 296 of the MMC Act, read with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(d) The said exercise shall be completed and award shall be passed within one year from the date of this order.

(e) The claims of the petitioners in both the writ petitions, with regard to their right to compensation and *inter se* apportionment thereof, shall be determined in accordance with law, after the award is pronounced, determining the quantum of compensation. All rights and contentions of the petitioners in both the writ petitions in that regard, are kept open.

(f) Since possession of the subject properties was taken, the petitioners shall be entitled to rental compensation, if any, in accordance with the policy of the respondent-State in that regard. All rights and contentions of the parties in that regard, are kept open.

(g) The amounts already withdrawn by the petitioners in Writ Petition No. 1173 of 2016 shall be taken into account and adjusted, when the quantum of compensation is determined in terms of the directions given hereinabove.

37. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**