

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

WRIT PETITION NO.540 OF 2026

1. Newkem Products Corporation,]
A Partnership Firm registered under thereafter]
provisions of the Indian Partnership Act, 1932]
Having its office at Harganga Mahal, 3rd Floor,]
Khodadad Circle, Dadar T.T., Mumbai-400014.]
2. Nimish Sura]
Age : 66 years, an Adult, Indian Inhabitant,]
The Managing Partner of Petitioner No.1,]
Having its office at Harganga Mahal, 3rd Floor,]
Khodadad Circle, Dadar T.T., Mumbai-400014.] .. **Petitioners**

Versus

1. The Municipal Corporation of Greater Mumbai]
a Statutory Corporation, constituted under the]
Mumbai Municipal Corporation Act, 1888]
Through its Municipal Commissioner,]
Having its Head Office at Mahapalika Bhavan,]
Mahapalika Marg, Fort, Mumbai – 400 001.]
2. The Chief Engineer (DP),]
5th Floor, Mahapalika Head Office,]
Fort, Mumbai – 400 001.]
3. The Addl. Municipal Commissioner (P),]
BMC Head Office, Fort, Mumbai – 400 001.]
4. The Assistant Commissioner,]
'S' Ward Building,]
Near Mangatram Petrol Pump,]
LBS Marg, Bhandup (West), Mumbai-400078.] .. **Respondents**

ALONG WITH

INTERIM APPLICATION (LODGING) NO.2562 OF 2026

- Marshal S.R.A. Co-operative Housing Society]
Ltd., having its address at Plot bearing CTS]

Nos.200 (Part), 200/1 to 47 of Village Bhandup,]
at 12.20 Meter Aatmaram Bhoir Marg,]
Bhandup (West), S-Ward of MCGM,] .. **Applicant /**
Mumbai – 400 078.] **Intervenor**

ALONG WITH

INTERIM APPLICATION NO.6738 OF 2025

1. Girish Moreshwar Gawand]
2. Vidya Moreshwar Gawand]
3. Manisha Moreshwar Gawand]
4. Manoj Moreshwar Gawand]
5. Shilpa Moreshwar Gawand]
6. Ratnaprabha Ulhas Gawand]
7. Kaustubh Ulhas Gawand]
8. Kimaya Ulhas Gawand]
9. Aakanksha Audumber Gawand]
10. Anmol Audumber Gawand]
11. Kishore Gajanan Gawand] .. **Applicants /**
12. Yogesh Gajanan Gawand] **Intervenors**

Mr. Dinyar Madon, Senior Advocate, with Mr. Bhavik Lalan,
Mr. Priyansh R. Jain, Mr. Punit Agrawal and Mr. Dhruv Dedhia,
Advocates for the Petitioners.

Mr. Girish Godbole, Senior Advocate, with Ms. Sheetal Metakari,
Advocate for the Respondent-MCGM.

Mr. Saket Mone with Mr. Raghav Paneja, Advocates, i/by Vidhi
Partners, for the Applicant-Intervenor in IA(L)/2562/2026.

Mr. R.N. Parab, Assistant Divisional Fire Officer and Mr. Vaibhao
Padmwar, Assistant Engineer, ES-II are present in Court.

**CORAM : RAVINDRA V. GHUGE, ACJ. &
GAUTAM A. ANKHAD, J.**

RESERVED ON : 5th August, 2026

PRONOUNCED ON : 11th August, 2026

JUDGMENT : { Per Gautam A. Ankhad, J. }

1. Rule. Rule is made returnable forthwith and the matter is heard finally with the consent of the parties.

2. Since 1957, the Petitioners have been in exclusive use, possession and enjoyment of the property bearing C.T.S. Nos. 204 and 204/1 to 6, admeasuring 13,337 sq. metres, together with a factory and other building structures standing thereon, at Lake Road, Bhandup (West), Mumbai – 400 078 (**the said property**). The Petitioners challenge the action of the Respondents in issuing the impugned notices dated 5th July, 2024 and 1st April, 2025 under the Mumbai Municipal Corporation Act, 1888 (**the Act**), by which the Respondents have proposed to prescribe a 12.20-metre-wide regular line of the public street known as Aatmaram Bhoir Marg, shown as A-B-C-D in the plan annexed at page 107 of the Petition (**the proposed road**) and consequently to acquire portion of the Petitioner's land forming part of the said property.

3. The relevant facts leading to the filing of this Petition are as follows:

- (a) The Petitioners are co-owners of the said property to the extent of a 25% undivided interest and lessees in respect of the remaining 75% in the said property. Their names have been duly mutated in the Property Card and other revenue records. The Block Plan as well as the sanctioned plan in respect of the said property reflects the existence of the Petitioners' factory. As stated earlier, the Petitioners have been in exclusive use, occupation and possession of the said property since 1957.
- (b) On 25th August, 2022, Respondent No.1 proposed a fresh road line for Atmaram Bhoir Marg from the 9.15 metre width mentioned in the Development Plan to a proposed 12.20 metre width. The stated purpose of the proposal is to connect the Gamdevi Road and Lake Road.
- (c) On 5th July 2024, a Public Notice was issued proposing a 12.20-metre-wide regular line, marked A-B-C-D indicating the proposed change. For convenience, a scanned coloured copy of the map annexed at page 107 of the paperbook is extracted:

in order to establish a connector road between Gamdevi Road and Lake Road.

- (e) On 25th July 2024, the Petitioners submitted their objections to the proposal and requested a hearing. On 7th October 2024, a public hearing was held, at which the Petitioners reiterated their objections, including their long-standing use and occupation of the property for over six decades.
- (f) On 1st April 2025, Respondent Nos. 3 and 4 issued the impugned notice under Section 299 of the Act calling upon the Petitioners to hand over possession of the land between points C and D, together with the enclosing wall, hedge, platform, verandah and other structures external to the building standing upon the said land.
- (g) On 22nd April 2025, the Petitioners submitted their objections to the impugned possession notice. The Petitioners challenged the same before this Court by filing Writ Petition (L) No.10861 of 2025. The said Petition was subsequently withdrawn with liberty to file

a fresh Petition. Accordingly as per the liberty granted by this Court on 22nd April, 2025, the present Petition has been filed.

4. Mr. Madon, learned senior advocate appearing for the Petitioners, submits that the portion between points C and D is neither an existing road nor a public street. The said portion forms part of the Petitioners' private property and has at all material times remained in their exclusive possession and control. The public has no easementary right over this portion. A portion of the Petitioners' existing factory stands on the proposed road alignment. If land is acquired for the proposed public street, it would split a functioning factory as the factory stores, workers' canteen, administrative area and discharge facilities would be separated from the main factory. The Petitioners would also lose the space presently available for loading and unloading trucks. It is further submitted that two natural gas pipes forming part of the gas metering connection used by the factory, as well as electrical rooms and buried power cables, are situated within the proposed road alignment. Sections 297(1)(b) and 299 of the Act cannot be invoked in respect of the portion C-D, since the said portion is not an existing public street. Reliance is

placed upon the judgment of a Co-ordinate Bench of this Court in ***Steel Plant Pvt. Ltd. v. Municipal Corporation of Greater Mumbai*** (2022 SCC OnLine Bom 1804) in support of this submission.

5. Mr. Madon further submits that the proposed connector between Gamdevi Road and Lake Road would save a distance of only about 400 metres. Thus, the proposed road would serve no meaningful public purpose and would result in an unnecessary expenditure of public funds. The entire exercise is *mala fide* and an abuse of the process of law. It has been initiated at the instance of a Developer-Marshal Developer, who is developing land bearing C.T.S. No.206 between points A and B and which has been the subject matter of Writ Petition (Lodging) No.2243 of 2026, *Marshal SRA Co-operative Housing Society Ltd. v. Municipal Corporation of Greater Mumbai*. The Developer's plot is accessible from Gamdevi Road and the Developer is now attempting to get two accesses instead of one. Hence, the reliefs sought in the Petition ought to be granted.

6. On the other hand, Mr. Godbole, learned senior advocate appearing on behalf of the Respondents, submits that the

proposed connector road forms part of the Development Plan and that the Respondents have followed the procedure prescribed by law. Public notice was issued, suggestions and objections were invited, the concerned parties were afforded an opportunity of hearing and, thereafter, the impugned notice for possession dated 1st April, 2025 was issued. He relies upon the provisions of Section 3(x), 291, 299 and 301 of the Act and submits that the Corporation has the powers to issue the impugned notices. No prejudice will be caused to the Petitioners as they will be compensated in accordance with the provisions of the Act.

7. Mr. Godbole contends that the proposal is intended to connect two important roads, namely, Gamdevi Road and Lake Road. Respondent No.1 had received a representation from an elected public representative to prescribe a 12.20-metre-wide road line. The representation was based upon demands made by residents of the area for provision of the proposed connector road and reduction of traffic congestion. Reference to the said representation is made in paragraph 5(c) of the affidavit-in-reply dated 20th July, 2025. The proposed connectivity will reduce traffic congestion in the area and result in a substantial reduction in pollution. Apart

from this, there is a municipal garden known as Japanese Garden on Gamdevi Road. Members of the public can avoid a detour from the Lake Road if the proposed connector is made operational. The proposed road would subserve a larger public interest, which must prevail over the private commercial interest of the Petitioners. The proposed road, having already been incorporated in the Development Plan, is necessary for completion of the proposed infrastructure project and that the Petitioners are not entitled to the reliefs sought in the Petition.

Reasons and Conclusion

8. We have heard the learned counsel for the parties and perused the record. There is no dispute as regards the factual position. The Petitioners have been in exclusive possession and enjoyment of the said property since 1957. The portion between points C and D on the map forms part of the Petitioners' factory, though it is shown as part of Aatmaram Bhoir Marg in the sanctioned Development Plan. The Respondent's proposal now is to take possession of this portion of the Petitioners' property for providing a connector between Gamdevi Road and Lake Road.

9. Section 297 of the Act empowers the Commissioner to prescribe a regular line of a street. Section 297 (1)(a) expressly refers to the power to prescribe a line on each side of any public street. Section 297 (1)(b) permits a fresh line to be prescribed in substitution of a road line already prescribed. Section 299 enables the Commissioner, after following the prescribed procedure, to take possession of land which lies within the regular line of a public street, subject to the conditions contained therein. While there is no doubt of the powers of the Commissioner under Sections 297 and 299 of the Act, in our view the Respondents cannot take possession of the Petitioners' private land between points C and D by invoking Sections 297 and 299 of the Act in the facts of the present case. The existing road terminates at point C and there is no existing road between points C and D. The portion from points C to D forms an integral part of a long-settled factory on the said property which has been in the Petitioners' possession and use since 1957. The Petitioners have placed on record that the proposed acquisition would sever or materially affect the functioning of the factory by separating the factory stores, workers' canteen, administrative area and discharge facilities from the main factory and by affecting the space presently used for loading and unloading the dispatch activity

through trucks / heavy vehicles. The alignment between points C and D also contains gas pipes, electrical rooms and buried power cables connected with the factory. The impact of the proposed acquisition therefore, substantially and actually dismembers an existing factory by invoking a provision which is intended to deal with land and structures falling within the regular line of a public street in the circumstances contemplated by that provision.

10. We also note that the proposed connector would save merely 400 metres between Gamdevi Road and Lake Road. Currently, the Aatmaram Bhoir Marg is heavily encroached and instead of 9.15 metres width, at many places its current width is less than 6 metres. The Respondents have not placed any material on record which shows the steps taken by it to restore the width to even 9.15 metres. Hence, there is no possibility of the connector being used to reduce traffic congestion or pollution in the area or to provide access to the Municipal Garden on Gamdevi Road from the Lake Road. We do not see how public interest will be sub-served, upon the Petitioners land being acquired. In this context there is also some merit in the submission that the entire exercise may have been initiated at the instance of a Developer of a nearby plot

bearing C.T.S. No.206, who seeks connectivity from two sides instead of Gamdevi Road. It also appears that the issue of taking over a part of the Petitioners' property is at the behest of a representation made by an elected representative as is relied upon in the affidavit filed by the Corporation. In our view, the statutory power under Section 297 and 299 cannot be extended to such an exercise.

11. For the above reasons, **the Petition is partly allowed** and the impugned notices dated 5th July, 2024 and 1st April, 2025 issued by Respondent Nos.3 and 4 under Section 299 of the Act, insofar as it seeks possession of the Petitioners' land between points C and D shown in the plan annexed to the Petition, are quashed and set aside.

12. Interim Application (Lodging) No.2562 of 2026 and Interim Application No.6738 of 2025 do not survive and are disposed off accordingly.

[GAUTAM A. ANKHAD, J.] [ACTING CHIEF JUSTICE]