

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12923 of 2025**

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MANCHA MASJID THROUGH TRUSTEE/MUTAWALLI AMJADKHAN
ASLAMKHAN PATHAN

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MTM HAKIM, ADVOCATE for
MR RIZWAN SHAIKH(7146) for the Petitioner(s) No. 1
MR MRUNAL DHOLARIYA, AGP for Respondent No. 1
MR G H VIRK, GOVERNMENT PLEADER with
MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No. 2,3
MR MANISH S SHAH(5859) for the Respondent(s) No. 4

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 23/09/2025****ORAL ORDER**

1. This petition is filed seeking to quash and set aside the notice dated 25.07.2025 (Annexure-A, Page No. 19A) on the ground that prior to issue of the said notice, due procedure as provided under the provisions of the Gujarat Provincial Municipal Corporation Act, 1949 (for short the GPMC Act, 1949') was not followed. A prayer with regard to restraining the respondents from execution and implementation of the notice dated 25.07.2025 is also made.

2. Heard learned advocate Mr. MTM Hakim for learned



advocate Mr. Rizwan Shaikh for the petitioner and learned Government Pleader Mr. G. H. Virk for respondent Nos. 2 and 3 - Corporation.

3. Learned Advocate for the petitioner submitted that an authorized Trustee/Mutavali, of the petitioner Trust has filed this petition challenging the action of Ahmedabad Municipal Corporation (AMC), to set back a part of premises, of an ancient masjid known as 'Mancha Masjid' situated at Saraspur and believed to be constructed approximately 400 years ago. The name of the masjid also appears in the Revenue record. The said masjid has been reconstructed and renovated multiple times and it has its own importance and significance amongst the Muslim community. After the enactment of Bombay Public Trusts Act, 1950, the Masjid and its properties came to be registered as Mancha Masjid Trust vide Registration No. B-655. The main objective of the Trust was to facilitate prayers and therefore also it has its own significance and importance. Since the Trust is originally a Waqf, upon coming into force of the Waqf Act, 1995 (for short 'the Waqf Act') the property in question is controlled and supervised by the Waqf Board. The details and particulars mentioned in the Public Trust Register (PTR) are maintained by the Waqf trust. Thus, registration of the property in PTR under provisions of the Waqf Act is not in dispute.



3.1 Thereafter, the Town Planning Scheme No. 11 (Bapunagar) was introduced and for implementation of the said Scheme, the respondent – Ahmedabad Municipal Corporation (AMC) initiated proceedings under the provisions of the GPMC Act, 1949, and in this case, it was for widening of the road. It is true that pursuant to implementation of the Town Planning Scheme No. 11 (Bapunagar), earlier respondent No. 3 – Deputy Estate Officer issued show-cause notice dated 17.12.2024 under Section 212 of the Act, 1949 calling upon the petitioner to show-cause as to why property may not be acquired and construction in question may not be removed. The notice dated 17.12.2024, further refers that if reply is found unsatisfactory, proceedings under Section 212(2) of the Act, 1949 will be initiated. A separate notice dated 17.12.2024, under Section 213 of the Act, 1949 was issued for the open land to be acquired. In response to the notices issued under Section 212 and 212(2) of the GPMC Act, 1949, the petitioner filed its reply dated 31.12.2024 (Annexure-J, Page No. 40).

3.2 Learned Advocate Mr. Hakim submitted that prior to issuance of notices under Section 212, 212(2) and 213 of the Act, 1949 the procedure as provided under the Act, 1949 was not followed. Further, though the property is of Waqf trust, the provisions of the Waqf Act are not followed. Ignoring the



procedure, the notice dated 24.01.2025 was issued by respondent No. 3 – Deputy Estate Officer directing the petitioner Waqf, to remain present for hearing on 30.01.2025. The petitioner Waqf appeared before respondent No. 3 and objected, despite that another Notice dated 25.07.2025 was issued directing the petitioner to give peaceful vacant possession of the land and the building. Against notice dated 25.07.2025, this petition is filed.

4. It was submitted that the notices dated 17.12.2024 and 25.07.2025 are unjust and illegal on the following grounds: -

4.1 Earlier the notice dated 24.01.2025 was issued by respondent No. 3 – Deputy Estate Officer for hearing and accordingly hearing took place on 30.01.2025. Though the hearing was before respondent No. 3 – Deputy Estate Officer, an order was passed by the Standing Committee rejecting the objections raised by the petitioner. Thus, this is clearly non-application of mind and the resolution dated 19.09.2024 of the Standing Committee, deserves to be quashed and set aside. Once the initiation of proceedings fails, the consequential order deserves to be quashed and set aside.

4.2 Further under Sections 212 and 213 of the GPMC Act, 1949 the powers are assigned to take decision to the



Commissioner of Municipal Corporation. In this case, the notices were issued by respondent No. 3 – Deputy Estate Officer and the hearing was also conducted before respondent – Deputy Estate Officer and therefore, action initiated being contrary to the provisions of the Act deserves to be quashed and set aside.

4.3 Further, Section 91 of the Waqf Act provides for acquisition of the property strictly in accordance with the said Act. Under Section 91 of the Waqf Act, any property of the Waqf cannot be taken/acquired without providing opportunity of hearing to the Waqf Board. In this case, since no hearing was given to the Board prior to issuance of notice dated 25.07.2025 under section 212 of GPMC Act, the action taken deserves to be quashed and set aside. The action taken by the notice dated 25.07.2025 under Section 212(2) of the GPMC Act, 1949 is also contrary to Section 51, 104A, 108 and 110 of the Waqf Act, because the said provision protects the Waqf property from encroachment, alienation or acquisition by the authority unless specifically permitted by law and with due involvement of the Waqf Board. Hence, the action initiated ignoring the provisions of the Waqf Act and by placing reliance on Section 212 of the GPMC Act, 1949 being contrary to the provisions of the Waqf Act deserves to be quashed and set aside.



4.4 In this case, the principles of natural justice have been breached whereby no opportunity of hearing was provided to the Waqf Board and since the order was passed by the Standing Committee being contrary to the provisions of the Act, notice dated 25.07.2025 deserves to be quashed and set aside.

4.5 Moreover, the property in question is 400 years old ancient religious masjid forming part of religious and cultural heritage and demolition of the same would violate the fundamental rights of the petitioner of independent religion and worship and therefore also the notice deserves to be quashed and set aside.

4.6 Further, by placing reliance on the rejoinder, learned advocate Mr. Hakim submitted that from the documents annexed along with the affidavit filed by respondent No. 2 - Ahmedabad Municipal Corporation it is evident that the Deputy Estate Officer has issued notice dated 17.12.2024 and before whom the reply by petitioner was filed on 31.12.2024. However, the order under Section 212 of the GPMC Act, 1949 was issued wherein the objections of the petitioner have not been dealt with. The tenure of notice dated 25.07.2025 issued under Section 212 of the GPMC Act, 1949 refers to the



objections of all the stakeholders taken into consideration by simply stating that they are without any basis. Further, the submission made of providing opportunity to Waqf Board at the time of decision on compensation is contrary to the provisions of the GPMC Act, 1949 in view of Section 91 r/w Section 51(a) of the Waqf Act. Learned advocate Mr. Hakim relied upon the decision in the case of **Bhavan Sanga Gamara v.s. Rajkot Municipal Commissioner** reported in 2022 (O) **AIJEL-HC 244591**.

5. Opposing the petition, learned Government Pleader Mr. G. H. Virk for respondent submitted the following: -

5.1 As required under Section 210 of the GPMC Act, 1949 the respondent issued public notice (Annexure-R1, Page Nos. 54 and 55) giving adequate opportunity to all stakeholders including the present petitioner to raise objections within the time prescribed. Thereafter, a resolution No. 582 dated 19.09.2024 was passed by the Standing Committee authorizing the Municipal Commissioner to take appropriate steps under Section 210(1)(a) of the GPMC Act, 1949. Accordingly, resolution dated 19.09.2024 (Annexure R2, Page No. 56) was passed.

5.2 Thereafter, Municipal Commissioner, Ahmedabad, by



exercising powers under Section 210(1)(a) of the GPMC Act, 1949 passed an order dated 17.10.2024 (Annexure R3, Page No. 57) prescribing fresh road lines which includes the land and the structure which is in possession of petitioner. Thereafter, in compliance of the order dated 17.10.2024 by exercising powers under Sections 212 & 213 of the GPMC Act, 1949, the Deputy Estate Officer, North Zone issued two separate notices under Sections 212 and 213 of the GPMC Act, 1949 to the petitioner. Notice under Section 212 of the GPMC Act, 1949 was issued for the constructed portion admeasuring 14.80 sq. mtrs whereas notice under Section 213 of the GPMC Act, 1949 was issued for the vacant land admeasuring 83.12 sq. mtrs which are in petitioner's possession.

5.3 By placing reliance on map (Annexure R4, Page No. 60) learned advocate submitted that from the map it is evident that a small portion of constructed building and land is taken for fresh road line which has been prescribed by the Municipal Commissioner in exercise of his power under Section 212 of the GPMC Act, 1949. In relation to the objections raised, learned Government Pleader submitted that the same are forming part of the Resolution No. 499 dated 18.06.2025. Therefore, the Standing Committee had considered the objections and after due application of mind had not accepted the same. Thereafter, a notice dated 25.07.2025 was issued and



therefore the submission canvassed that procedure is not followed is contrary to the documents on record and deserves to be ignored.

5.4 Learned Government Pleader further submitted that the Road Line prescribed by the Municipal Commissioner is of vital importance to regulate traffic facilitating planned growth, movement of emergency vehicles and it is in the larger public interest. Therefore, individual inconvenience may be ignored as against the larger public interest more particularly, when the statutory powers are exercised by the authority after following due procedure under provisions of law. Moreover, the road in question leads to Kalupur Railway Station which is also a junction for the Ahmedabad Metro Rail and on account of the increased traffic if the implementation is not carried out, that would cause serious inconvenience to public at large. Moreover, the practice adopted by the petitioner is to delay the process.

5.5 In relation to applicability of provisions of Waqf Act, Learned Government Pleader submitted that it would not apply because in this case special powers are exercised as available to the Municipal Commissioner under provisions of the GPMC Act, 1949. Further, the law does not provide for grant of personal hearing before the Standing Committee and as per the



document on record it is evident that before the Estate Officer the petitioner was given personal hearing and therefore, when procedure as required under the provisions of the Act has been followed this petition deserves rejection.

5.6 **Learned Government Pleader in support of his submissions relied** upon the following decisions: -

- **Special Civil Application No. 3551 to 3553 of 2003 decided on 17.06.2005**
- **Letters Patent Appeal No. 833 of 2005 in Special Civil Application No. 3551 of 2003 and allied matters decided on 24.10.2005**
- **Special Civil Application No. 2575 of 2012 and allied matters decided on 25.02.2013**
- **Letters Patent Appeal No. 249 of 2013 in Special Civil Application No. 2575 of 2012 and allied matters decided on 26.04.2013**

6. Having considered the submissions and documents on record, it is noticed that **the petitioner's grievance is against the notice dated 25.07.2025, on the ground of prior procedure not being followed. Firstly, from the notice dated 25.07.2025, of respondent no.3- Deputy Estate Officer, it is noticed that the said show cause was issued, under Section 212(2) of the GPMC**



Act, 1949, where it refers to removal of construction and acquiring of some portion of land for the purpose of Road line. The petitioner responded to the notice by reply and thus, petitioner was aware of commissioners' decision to set back the building for regular line of street. For the next submission, that though powers are assigned to Commissioner under Section 212 of GPMC ACT, the notice issued and hearing given by Deputy Estate Officer, is also not tenable because, the action taken was upon delegation of powers as evident from the Notice. In relation to grievance that objections of petitioners are considered along with objections of other stake holders having different facts by observing that they are not tenable shows non application of mind, it would be apposite to refer to the documents annexed with the reply.

7. Annexure-R1 (Page No. 54) is the Notice under Section 210(1) of the GPMC Act, 1949. Section 210(1) of the GPMC Act, 1949 provides for power to prescribe street lines. Under the said section the Commissioner may prescribe a line on one or both sides of any public street. In this case, by public notice dated 29.12.2023, in two different local newspapers, the Commissioner prescribed street lines and the maps were kept for the perusal of public in the office of Deputy Estate Officer and objections were invited. The notice was also placed on the website of Corporation. After, publication of the notice under



Section 210(1) of the GPMC Act, 1949, the Commissioner gave his opinion on 28.02.2024 and the opinion of the Commissioner dated 28.02.2024 was placed before the Standing Committee held on 19.09.2024, wherein the Standing Committee passed a Resolution No. 582 dated 19.09.2024 approving the street line prescribed by the Commissioner. This aspect is evident from Annexure-R2 (Page No. 56) wherein the Resolution No. 582 refers to the Commissioner's letter dated 28.02.2024. Therefore, in the opinion of this Court the Commissioner first prescribed a line on sides of public street and invited objections and upon consideration of objections an opinion dated 28.02.2024 was formed that it is necessary to set back the building to the regular line of street.

8. Thereafter, in view of the approval granted by the Standing Committee, an order dated 17.10.2024 under Section 210(1)(a) of the GPMC Act, 1949 was passed (Annexure-R3, Page No. 57). The order dated 17.10.2024 refers that the Municipal Commissioner had proposed to prescribe a fresh road line as shown in Green, whereby the Standing Committee of Ahmedabad Municipal Corporation has accorded its approval by Resolution No. 582 dated 19.09.2024. The order further refers that said line shall be called the regular line of street. Thus, an order under Section 210(1)(a) of the GPMC Act, 1949 is passed by Municipal Commissioner dated 17.10.2024.



9. Thereafter, an order dated 17.12.2024 was passed under Section 213 of the GPMC Act, 1949 for the open land and Section 212(1) of the GPMC Act, 1949 for the constructed portion, whereby the petitioner was put to notice as to why construction necessary for street line may not be removed. Admittedly, the petitioner responded to the notices dated 17.12.2024, by reply dated 31.12.2024 and upon consideration of the said reply Commissioner formed an opinion dated 13.06.2025 that the objections are not tenable. The objections of the petitioner, and opinion of the Commissioner was once again placed before the Standing Committee in its meeting held on 18.06.2025 where the Standing Committee passed a resolution No. 499 (Annexure-R-5 page 61), rejecting objections giving 35 days' time for handing over possession of their land and building.

10. Thus, under Section 212(2) of the GPMC Act, 1949, all powers are given to the Commissioner to pull down the building or acquire land for the purpose of street line, once prescribed. The power assigned to the Commissioner under Section 212 of the GPMC Act is subject to approval by the Standing Committee of the Municipal Corporation. Moreover, if the owner fails to show sufficient cause to the satisfaction of the Commissioner that why the building or part thereof which



is within the regular street line shall not be pulled down, the Commissioner may with the approval of the Standing Committee require the owner by written notice to pull down the building or part thereof which is in the regular line of street. Accordingly, the notice dated 25.07.2025 was issued. Therefore, if the entire chronology is perused as referred herein above then in the opinion of this Court, Municipal Corporation has followed the procedure as provided under Section 210, 212 and 213 of the GPMC Act, 1949.

11. In the above context, if the decisions are considered, then the decision relied upon by learned advocate for the petitioner **Bhavan Sanga Gamara [supra]** is in relation to breach of principles of natural justice since the authority hearing the objections had not passed the order. Whereas in the present case, from the notice dated 17.12.2024 it is evident that the Deputy Estate Officer issued a notice, gave hearing and passed an order and that too upon he being authorized vide office order No. 3731 dated 24.12.2018. Therefore, in the opinion of this Court the said decision would not be applicable in the facts of this case.

12. In relation to the provisions relied upon by learned advocate for the petitioner relating to Section 91 r/w 51 of the Waqf Act, in the opinion of this Court, the same are not



applicable because of special powers exercised by Municipal Commissioner under Section 210 of GPMC Act, 1949. The provision under Waqf Act has no correlation with the powers of Board over the subject property.

13. In the decision dated 17.06.2005, in Special Civil Application No. 3551 to 3553 of 2003, it is held that as per the provisions of Section 91 of the Waqf Act, 1995 in the event of any property of Waqf being acquired by the Government under the provisions of the Land Acquisition Act, 1894, the Board is required to be heard and in this case as submitted by learned Government Pleader that at the time of ascertainment of compensation, the Board shall be given hearing.

14. In one more decision dated 25.02.2013, in Special Civil Application No. 2575 of 2012 and allied matters, it is held by this Court that when the procedure prescribed under Section 210 to 213 of the GPMC Act, 1949 is followed then personal hearing is not mandatory. In Letters Patent Appeal No. 249 of 2013 this view is upheld.

15. Hence, in the opinion of this Court when the procedure prescribed under the provisions of Sections 210 to 213 of the GPMC Act, 1949 is followed by issuance of notice to the



stakeholders and after taking approval of the Standing Committee as envisaged under the said provision, in the opinion of this Court no error is committed as contended on behalf of the petitioner. Therefore, the present petition is rejected.

16. At this stage, learned advocate for the petitioner requested to stay the effect and implementation of the order dated 25.07.2025 for a further period of 4 weeks. In view of reasons recorded herein above, the request to stay the order dated 25.07.2025, is rejected.

SHRIJIT PILLAI

(MAUNA M. BHATT,J)