

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***APPEAL FROM ORDER (STAMP) NO.3147 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.3148 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO.3147 OF 2016***

Vijaya S. Thorat & Ors.

..Appellants/Org. Plaintiffs

Vs.

The Mumbai Municipal Corporation
of Greater Mumbai

..Respondent/Org.
Defendant

....

Mr.Simil Purohit i/b Mr. Kalpesh Joshi for the appellants and
applicant in CAA(ST) No.3148/2016.

Mr. S. K. Sonawane a/w Mr. A. V. Diwate for the respondent/BMC.
Mr. T. A. Pawar, A. E. (B & F) K/W-West Ward, Andheri.

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***CORAM : N.M. JAMDAR, J.
DATED : 14 MARCH 2016***

P.C.:

. On 23/2/2016 the following order was passed:

“1. Learned counsel appearing for the Municipal Corporation seeks time to take instructions whether the appellants can be heard pursuant to the notices issued by the Municipal Corporation under 351 of the Mumbai Municipal Corporation Act. The matter is adjourned to enable the learned counsel for the Corporation to take instructions.

2. Place the appeal from order for admission along with civil application on 7th March, 2016, high on board. Interim protection granted by the learned trial Court and continued by this Court on 3rd February, 2016 to continue till 10th March, 2016.

2. Mr. Sonawane, the learned Counsel for the Municipal Corporation on instructions of Mr. T. A. Pawar, Assistant Engineer (B & F), K/W ward, states that the Municipal Corporation is ready to give hearing to the appellants and will not act on the communication challenged in the suit. He states that after hearing the appellants, an appropriate order as per law will be passed. In view of this statement, since cause of action in the present appeal does not survive, it is not necessary to examine the merits of the rival contentions.

3. Learned counsel for the Corporation further states that the earlier notice was issued u/s.351 of Mumbai Municipal Corporation Act. Copy of which is given to the counsel for the appellant, which will be considered as fresh cause of action for the appellants to challenge the same before the Competent Authority, as per the law.

4. The appellants will apply for inspection of documents to the respondent/Corporation within one week from today. The respondent-Corporation will accordingly give inspection of documents which are available with them and are germane to the

controversy at hand within a period of three weeks thereafter. After the inspection is so given, the appellants will file reply within two weeks thereafter. The Competent Authority will conclude the proceeding as early as possible. Till the conclusion of the proceeding and a period of one month thereafter, the action will not be taken against the suit structures.

5. Since the Appeal from order is being disposed of in above terms, suit filed by the appellants also does not survive and the learned counsel for the appellants states that appropriate application for withdrawal of the suit will be made within one week. Since the notice handed over today are to be construed as fresh cause of action, earlier notices issued do not survive. Appeal from order is disposed of. In view of disposal of the Appeal, Civil Application does not survive and stands disposed of.

(N.M. JAMDAR, J.)