

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

FIRST APPEAL NO. 2427 OF 2006

WITH

CIVIL APPLICATION NO. 3427 OF 2006

IN

FIRST APPEAL NO. 2427 OF 2006

**The Municipal Corporation of Greater
Mumbai**

...Appellant

Versus

Habibulla Wajidali

...Respondent

Mrs. M.R. Bhoir, a/w Mr. S.K. Sonawane, for the Appellant.

Mr. B.V. Tiwari, for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 2nd August 2016

P.C. :

1. The above First Appeal arises out of the judgment and order dated 6th September 2005 passed by a learned Judge of the City Civil Court, Greater Bombay by which order the Suit filed by the Respondent being L.C. Suit No. 3755 of 2005 came to be dismissed albeit with a direction that the Plaintiff is at liberty to approach the Corporation for alternate accommodation and that the Respondent shall allot alternate accommodation free of costs. The instant Appeal

has been filed by the Municipal Corporation of Greater Mumbai ("M.C.G.M." for short) challenging the decree to the extent of the aforesaid direction issued by the said judgment and order dated 6th September 2005. The Suit in question was filed for a declaration that the order dated 7th May 1993 passed by the Ward Officer, P/N Ward, Municipal Corporation of Greater Mumbai is bad in law, illegal and not binding upon the Plaintiff. By the said order dated 7th May 1993, the Appellant request for being permitted to reconstruct the demolished structure was rejected. Since, the structure was coming in the way of winding of the road the Respondent was allotted permanent alternate accommodation vide letter dated 17th November 2004 on the terms and conditions mentioned therein. However, the Respondent has not acted in terms of the said letter dated 17th November 2004. The Trial Court has dismissed the Suit *inter alia* on the following grounds, that the structure is coming within road widening, that the Respondent has already been allotted permanent alternate accommodation and that the Suit is barred by limitation, as the letter dated 7th May 1993 is sought to be challenged in the year 2003, whereas in terms of Section 527 of the M.M.C. Act, the Suit is to be filed within six months from the cause of action.

2. The Respondent herein that is the original Plaintiff has filed an Affidavit in the above First Appeal in the context of the above First Appeal, paragraphs 4, 5 and 6 of the said Affidavit are material and are reproduced herein under :-

“4. I say that the Appellants abovenamed (being the Defendants in the said Suit) have challenged the said Order dated 6th September 2005 in this Hon'ble Court by filing the above First Appeal.

5. I say that I am no longer interested in making any claim for alternate accommodation to the Appellants, whether free of cost or otherwise.

6. In the circumstances I submit to an Order upholding the First Appeal and do not wish to object to this Hon'ble Court passing appropriate orders making the above Appeal and/or making the above Appeal absolute.”

3. In view of what has been stated in the said paragraphs 4, 5 and 6, the challenge of the M.C.G.M. to the impugned order does not survive, as the Respondent/original Plaintiff has given up his claim. Hence, insofar as the later part of the impugned order is

concerned, in view of the claim given up by the Respondent/original Plaintiff, the grievance of the M.C.G.M. does not survive. The above First Appeal has accordingly turned infructuous and is disposed of as such.

[R.M. SAVANT, J.]