

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2655 OF 2015
IN
FIRST APPEAL NO.52 OF 2016**

Mrs. Vanita Raghunath Mahadik ..Applicant
Vs
The Municipal Corporation of Greater Mumbai & Anr. ..Respondents

**Mr. Arun Panicker a/w Mr. Mayur Khandeparkar i/b Mr. N. S. Parkhe for
the Applicant**
Mrs. M. R. Bhoir for the BMC

CORAM : R. M. SAVANT, J.
DATE : 11th JULY, 2016

P.C.

1 The above Civil Application has been filed for interim stay pending the above First Appeal. The above First Appeal has been admitted on 15-2-2016. The Suit filed by the Applicant / Appellant herein has been dismissed by the Trial Court by Judgment and Order dated 27-2-2015. The Suit had been filed for a declaration that Shop No.4, Chawl No.8, 718 Morachi Wadi, V. Y. Dahiwalkar Buwa Marg, Naigaon Dadar, Mumbai 400 014 in occupation of the Applicant, be declared as commercial premises and direct the Defendants to allot an alternate commercial premises of not less than 750 sq.ft. in the redeveloped building put up in place of the old structure. In respect of the said claim, the Trial Court has adverted to the document dated 18-10-2007 i.e. letter issued by the MCGM wherein it has been mentioned that

the Plaintiff has failed to produce certain documents which were demanded by the Defendant for conversion of the use from residential to commercial and therefore her application for change of user was filed.

2 The Trial Court has further recorded a finding that the Plaintiff had applied for change of user and for transfer of tenancy in her name which clearly shows that the Plaintiff was using the premises for commercial purposes though the status of the premises was residential. The Trial Court has adverted to the document dated 1-9-2005 marked as Exhibit 13 which clearly shows the name of the Plaintiff as tenant and the user is shown as residential for the area of 650 sq.ft. The Trial Court has observed that though the Plaintiff has produced various documents, the said documents do not indicate any permission of the MCGM for being permitted to use the said premises as commercial premises. The Plaintiff has also executed an undertaking in favour of the MCGM that she will not claim alternate accommodation for shop as and when the land on which the structure is situated, is taken for clearance and for development purpose of a municipal primary school and shall not claim any compensation for loss of business. The Trial Court on the said basis has concluded that the Plaintiff was allowed to use the said premises for her business subject to the condition that she will not claim any right over the premises as commercial premises when the site will be taken up for redevelopment. Hence the claim of the Plaintiff for a declaration that the

premises being used by the Plaintiff be declared as one for commercial user has been rejected by the Trial Court by recording a finding to the said effect. The plot in question on which the structure wherein the Plaintiff's premises are situated is to be used for the purposes of construction of a municipal primary school. The MCGM has offered the Applicant a permanent alternate accommodation admeasuring 650 sq.ft. for residential user but the Plaintiff is not satisfied with the same as the Applicant wants allotment of permanent alternate accommodation for commercial user. Having regard to the facts of the present case, the said demand of the Applicant seems to be unreasonable.

3 In my view, the relief sought by way of the above Civil Application of directing the Respondent to allot a temporary alternate premises for commercial user, or restrain the Respondent from disturbing the peaceful use and occupation of the Appellant / Applicant of her premises or even directing the maintenance of status-quo cannot be acceded to in view of the fact that permanent alternate accommodation admeasuring 650 sq.ft, for residential user is proposed to be allotted to the Plaintiff, as also grant of the second relief of restraining the Respondents i.e. the MCGM from disturbing the Plaintiff's possession would result in putting an impediment in the implementation of the scheme for the construction of municipal primary school. It is required to be borne in mind that the Applicant has given an undertaking to the MCGM that she will not claim alternate premises for commercial user. It seems that all the

other occupants of the structure in question have agreed to shift to the temporary alternate accommodation. Hence no relief can be granted to the Applicant/Appellant in the above Civil Application, the same is accordingly rejected.

[R.M.SAVANT, J]