

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

**APPEAL FROM ORDER STAMP NO.19568 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.19570 OF 2016**

Ram Harichandra Rajbhar

.. Appellant

Versus

Mumbai Municipal Corporation

for Greater Mumbai and another

.. Respondents

Mr. R. U. Singh for the Appellant.

Mrs. M. R. Bhoir for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 25th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 29.06.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Notice of Motion filed by Appellant/original Plaintiff came to be dismissed. The Appellant's structure was coming within the alignment of the road widening which was to be undertaken. The Appellant was therefore issued with a notice dated 04.07.2013 calling upon him to submit documents to show that his structure was in existence prior to 01.01.1995. The Plaintiff submitted as many as twelve documents. The Assistant Commissioner K/West Ward of the MCGM passed an order dated 08.10.2015 whereby the Appellant was

held to be disentitled to allotment of any permanent alternate accommodation since the Appellant's brother Shyam Rajbhar has already been allotted permanent alternate accommodation in the scheme of rehabilitation applicable to the project affected persons of the MCGM. This resulted in the Plaintiff filing the suit in question and filing the instant Notice of Motion for injuncting the Respondents from evicting him from the suit structure. The said Notice of Motion was considered by the Learned Judge of the City Civil Court who by the impugned order has dismissed the same. The Learned Judge of the City Civil Court in the impugned order has adverted to the documents produced on behalf of the Appellant which are in the name of his mother Smt. Munnidevi and since the said documents have already been taken into consideration to make the allotment to his brother Shyam Rajbhar and since the family was residing in one structure as evidenced by the voters list as on 01.01.1998, held that the Plaintiff is not entitled for any reliefs in the Notice of Motion.

2 The Learned Counsel appearing on behalf of the Appellant/original Plaintiff would once again endeavour to point out to this Court that the Appellant's structure was different than the structure in respect of which allotment was made to his brother Shyam Rajbhar.

3 As indicated above, the Appellant has placed reliance solely

on the documents which are in his mother's name i.e. Smt. Munnidevi, the documents which are in the name of the Appellant are post the year 2000 i.e. the documents of the year 2007 onwards which are beyond the cut of date. The reason why the Trial Court has rejected the interim reliefs sought by the Appellant is on the ground that the voter's list as on 01.01.1998 indicates that the entire family was residing together and that since the Appellant's brother has already been allotted alternate accommodation, the Appellant is not entitled for the same. Hence, even assuming that the Appellant had a separate structure than his brother, he cannot be entitled to another alternate accommodation as the object of the said scheme is rehabilitation and not profiteering or self aggrandizement. In my view, therefore, no case for interference is made out. The Appeal from Order is accordingly dismissed.

4 In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

5 At this stage, the Learned Counsel for the Appellant seeks continuation of the protection order granted by the City Civil Court. In the facts and circumstances of the case, where the structure is coming in the way of road widening the said prayer is refused.

[R.M. SAVANT, J]