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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2116 OF 2015

Dnyaneshwar P. Suranje

...Petitioner

Vs.

The Assistant Commissioner
N-Ward, Municipal Corporation
of Greater Mumbai & Ors.

...Respondents

Mr. S.A. Sawant, Advocate for the Petitioner

Ms. Geeta Joglekar, Advocate for the BMC Respondent Nos. 1 & 2

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 1ST AUGUST, 2016

PC. :

Parties through their Counsel. The grievance of the Petitioner is that in pursuance to the order passed by this Court on 30th June, 2014 the Deputy Municipal Commissioner has passed the impugned order dated 25th May, 2015, but in the said order there is ignorance to the consideration of the Government Resolution dated 14th May, 1998 in regard to which reference was made in the Petitioners' written submissions, which was filed after the direction was issued by this Court. According to the Petitioner in regard to various

documents incorrect finding has been recorded holding them to be irrelevant and not acceptable without assigning specific reason for the same.

2. On the other hand learned Counsel appearing for the Corporation has submitted that in pursuance to the directions of this Court the Deputy Municipal Commissioner has examined the Petitioner's grievance in detail and recorded his finding, which cannot be said to be illegal so as to assain in a Petition under Article 226 of the Constitution of India. The learned Counsel appearing for the Corporation has also disputed the applicability of the said Government Resolution to the Petitioner's claim.

3. Having considered the submissions made by the learned Counsel and having gone through the impugned order we find that in the order there is no consideration of the entitlement of the Petitioner on the basis of the Government Resolution dated 14th May, 1998. According to the Petitioner even if there was no wall in between the two structures and

the same are being used for residential and commercial purposes, the same are to be treated as two different structures and therefore, the Petitioner and his brother who is Respondent No.4 are entitled to have their rights in regard to the said structure.

4. On going through the impugned order we find that there is no consideration of the said Government Resolution. That order is a nonspeaking order in the circumstances we set aside the impugned order and remand the matter back to the Deputy Municipal Commissioner for fresh consideration. Let the speaking order be passed by the said Deputy Municipal Commissioner in accordance with law after taking into consideration the documents and as to whether the said Government Resolution is applicable to the Petitioner or not, within 3 months from the date of receipt of the copy of this order. The Petition is allowed in part to the extent indicated above.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)