

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

**APPEAL FROM ORDER NO. 277 OF 2015
WITH
CIVIL APPLICATION NO. 347 OF 2015**

Kandamkulthil Agasthene VergheseAppellant

Versus

Municipal Corporation of Greater Mumbai And
Anr.Respondents

**WITH
APPEAL FROM ORDER NO. 278 OF 2015
WITH
CIVIL APPLICATION NO. 345 OF 2015**

Ramesh Rajnarayan SinghAppellant

Versus

Municipal Corporation of Greater Mumbai And
Anr.Respondents

**WITH
APPEAL FROM ORDER NO. 279 OF 2015
WITH
CIVIL APPLICATION NO. 349 OF 2015**

Ramkesh Sukhram VishwakarmaAppellant

Versus

Municipal Corporation of Greater Mumbai and
Anr.Respondents

**WITH
APPEAL FROM ORDER NO. 280 OF 2015
WITH
CIVIL APPLICATION NO. 348 OF 2015**

Ajay Ramgulam SharmaAppellant

Versus

Municipal Corporation of Greater Mumbai And
Anr.Respondents

**WITH
APPEAL FROM ORDER NO. 281 OF 2015
WITH
CIVIL APPLICATION NO. 350 OF 2015**

Mohd. Rafiq Mohd. NayeemAppellant

Versus

Municipal Corporation Of Greater Mumbai And
Anr.Respondents

**WITH
APPEAL FROM ORDER NO. 282 OF 2015
WITH
CIVIL APPLICATION NO. 351 OF 2015**

Insan Ali Subhan Ali KhanAppellant

Versus

Municipal Corporation of Greater Mumbai
and anr.Respondents

**WITH
APPEAL FROM ORDER NO. 283 OF 2015
WITH
CIVIL APPLICATION NO. 352 OF 2015**

Dinkar Namdeo Mohite

....Appellant

Versus

Municipal Corporation of Greater Mumbai
and anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 284 OF 2015
WITH
CIVIL APPLICATION NO. 353 OF 2015**

Ramakant Sakharam Kavali

....Appellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 285 OF 2015
WITH
CIVIL APPLICATION NO. 354 OF 2015**

Tanvir Ahmed Mohd. Rafiq

....Appellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 286 OF 2015
WITH
CIVIL APPLICATION NO. 356 OF 2015**

Mohd. Rafiq Mohd. Nayeem

....Appellant

Versus

Municipal Corporation of Greater Mumbai
&Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 287 OF 2015
WITH
CIVIL APPLICATION NO. 355 OF 2015**

Harbinder Singh Sekhon

....Appellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 288 OF 2015
WITH
CIVIL APPLICATION NO. 357 OF 2015**

Kuldeep Nandkishore Shah

....Appellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 289 OF 2015
WITH
CIVIL APPLICATION NO. 358 OF 2015**

Lalita Kuldeep Shah

....Appellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

WITH
APPEAL FROM ORDER NO. 290 OF 2015
WITH
CIVIL APPLICATION NO. 359 OF 2015

Muthu Swamy VadivelAppellant

Versus

Municipal Corporation of Greater Mumbai &
AnrRespondent

WITH
APPEAL FROM ORDER NO. 291 OF 2015
WITH
CIVIL APPLICATION NO. 360 OF 2015

Surendra Bhukkun GuptaAppellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.Respondents

WITH
APPEAL FROM ORDER NO. 292 OF 2015
WITH
CIVIL APPLICATION NO. 361 OF 2015

Kandamkulthil Agasthene Vincent PaulAppellant

Versus

Municipal Corporation of Greater Mumbai &
Anr.Respondents

WITH
APPEAL FROM ORDER NO. 293 OF 2015
WITH
CIVIL APPLICATION NO. 362 OF 2015

Sattar Shaikh Channu

....Appellant

Versus

Municipal Corporation of Greater Mumbai And
Anr.

....Respondents

**WITH
APPEAL FROM ORDER NO. 294 OF 2015
WITH
CIVIL APPLICATION NO. 363 OF 2015**

Ibrahim Mohd. Bhagwan and Anr.

....Appellants

Versus

Municipal Corporation of Greater Mumbai &
Anr.

....Respondents

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Mr.R.S.Apte, Senior Advocate i/b. Mr.Pradeep Havnur for the
Appellant in all AO's.

Mr.A.Y.Sakhare, Senior Advocate a/w. Mrs. Madhuri More for
Respondent No.1/ Municipal Corporation.

Ms. Kiran Bagalia for Respondent No.2/MMRDA.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : DECEMBER 21, 2017**

P.C.

1. These Appeals are taken together, as the issues involved in all these Appeals are one and the same, all these Appeals are disposed of by a common order.

2. These Appeals are directed against the order dated 13th February, 2015 passed by the learned Judge, City Civil Court, (Borivali Division), Dindoshi thereby dismissing the respective Notices of Motion in the respective Suits.

3. In all Suits, the Appellants/Original Plaintiffs have challenged the notice dated 19th August, 2014 issued under Section 488 of the Mumbai Municipal Corporation Act by respondent no.1/ Municipal Corporation. The suit structures are mainly the shops situate at Vishwakarma Rahivashi Sangh, Mahakali Caves Road, Jogeshwari-Vikhroli Link Road (hereinafter referred to as "JVLR"), Andheri (East), Mumbai. All these suit structures are affected due to road widening project of JVLR. MMRDA has followed the due process of law before undertaking and commencing the public project of road widening and preparing the list of structures and accordingly, granted alternate premises to eligible persons. The present suit structures are coming in the way of road widening, but MMRDA did not prepare the list of these structures and did not include the names of the owners in Annexure –II prepared by it and, therefore, their structures are going to be demolished. The appellants/original plaintiffs will not

get benefits of the scheme of alternate accommodation in lieu of their structures. Hence, the appellants/original plaintiffs have filed the respective suits challenging the impugned notices. The Municipal Corporation and MMRDA both opposed the claim of the appellants/plaintiffs and the learned Judge of the trial Court dismissed their respective Notices of Motion.

4. Learned counsel for the appellants/plaintiffs has submitted that the suit structures are in existence since long and the persons working for MMRDA have failed to count those structures of the appellants/plaintiffs at the time of making Annexure –II, cannot be appreciated at this stage and do not hold substance in view of the facts disclosed in the case.

5. Preparing the list of eligible persons is a big and loud work known to all the public at large. If the persons affected by such project, then they should approach the authority for inclusion of their names. Moreover, learned counsel for the Municipal Corporation and MMRDA have pointed out that they have followed the due process of law in preparing Annexure-II. No procedural flaw is specified by the appellants.

6. At this stage, the only issue before this Court is whether the suit structures are within JVLR Road alignment?

7. During the course of hearing and submissions of the learned counsel for the appellants and respondent no.2/ MMRDA and learned senior counsel for respondent no.1/Municipal Corporation, it is found necessary to get a report of the Licensed Architect on the point whether the suit structures or part of the suit structures of the 18 appellants/plaintiffs are on the service road of JVLR and the structures or any portion of the structures is falling in the alignment of the service road of JVLR.

8. By consent, Mr.A.B.Patwardhan and Mr. Amit Patwardhan were appointed as Licensed Architects to verify the position of the said structures. In their report dated 9th December 2017, they have informed that they have carried out this work on 9th December 2017 itself in the morning and they have found that the suit structures or part of the suit structures of the 18 appellants/plaintiffs are on the service road of JVLR so also the suit structures are falling in the alignment of the service road of JVLR.

9. At this stage, no good ground is shown to challenge this report.

10. In view of this report, learned counsel for the appellants makes statement that the appellants/plaintiffs are ready to vacate or remove their respective suit structures.

11. Perused the pleadings, documents, reply so also affidavit of Mr. Ashok Dhangar, Assistant Community Development Officer, MMRDA. In the said affidavit, it is mentioned that sufficient notice was given and announcement was made in the affected area about implementation of the project by MMRDA under MUTP. The area upto service road of Sariput Nagar was surveyed and demolition/rehabilitation work for structures affected by works was carried out. These structures were not found at that time and, therefore, their names were not mentioned in the eligible list.

12. The statement made by the learned counsel for the appellants/original plaintiffs is accepted. In view of this, I pass the following order:

The respondent no.1/Municipal Corporation should verify and give details on or before 30th December, 2017 that how much portion of these eighteen suit structures come within the Jogeshwari-Vikhroli Link Road alignment and which are required to be demolished. Thereafter, the appellants shall demolish or remove their respective suit structures or portion of the suit structures accordingly till 25th January, 2018;

13. With this, Appeals from Order are disposed of. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)