

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (L) NO.11335 OF 2017
WITH
CIVIL APPLICATION (L) NO.11336 OF 2017**

Ramnarayan Gupta ...Appellant
Versus
The Municipal Corporation of Gr Mumbai & Anr ...Respondents

Mr BS Shukla, for the Appellant.
Mr N Walawalkar, Senior Advocate, with Mrs Madhuri More, for
the MCGM.

CORAM: G.S. PATEL, J
DATED: 13th June 2017

PC:-

1. Heard.

2. The Appeal is directed against an order dated 20th March 2017. After some arguments, Mr Shukla seeks leave to withdraw the Appeal if the Municipal Corporation of Greater Mumbai (“MCGM”) will consider on merits and unaffected by the legal proceedings the Appellant’s application for rehabilitation at a suitable location. Mr Walawalkar on instructions states that if the Applicant makes such an application within three months and if it is

found to be within the existing policy and norms of the MCGM, that application will be considered and disposed of on its merits within 45 days of it being made. The statement is accepted. In the event that no such application is made, the Appellant will be deemed to have given up his rights to seek rehabilitation or alternative accommodation.

3. It is clarified that the rehabilitation or accommodation that the Appellant seeks is not in respect of a residence but for his commercial tea vending stall. This will be borne in mind while deciding any application.

4. The application will be considered on merits uninfluenced by any previous orders.

5. Mr Shukla states that he will in the meantime seek instructions to withdraw the suit itself.

6. It is clarified that the issues in the Suit will not survive on the application being made for alternative accommodation.

7. Mr Walawalkar points out that the structure in question has already been demolished. Mr Walawalkar places on record photographs that show that it was in fact demolished on 23rd March 2017 and a temporary structure was unauthorisedly re-erected on 24th April 2017. The next structure has also since been demolished. The photographs tendered by Mr Walawalkar are taken on record and marked 'X1' and 'X2' for identification with today's date.

8. Apart from anything else, I note that the structure occupied most of the footpath in question. This is not an issue of the structure being affected by a road widening proposal, compulsory setback or a new road. In fact, the photographs *prima facie* indicate that as a result of the obstruction caused by the Appellant's structure, pedestrians are forced to walk on the road itself. There is absolutely no question of any equity obtaining in favour of the Appellant to have this structure at this particular location. This is without prejudice to the contention that the Appellant or his predecessor is entitled to have a licence stall at some other permissible location as approved by the MCGM and within the frame of the MCGM's policy.

9. The Appeal From Order and the Civil Application are disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)