

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.172 OF 2017
WITH
CIVIL APPLICATION NO.233 OF 2017
WITH
CIVIL APPLICATION NO.470 OF 2017
WITH
CIVIL APPLICATION NO.471 OF 2017

Daksha Subhash Sonawane	...Appellant
<i>Versus</i>	
Municipal Corporation of Gr Mumbai	...Respondent

Mr Sameer Vaidya, i/b Mrs Leela Ranga, for the Appellant.
Mrs Madhuri More, for Respondent/MCGM.
Mr Bhavin Bhatia, Intervener & for the Applicant in CAA No.470/17.

CORAM: G.S. PATEL, J
DATED: 15th June 2017

PC:-

1. Mr Vaidya on instructions seeks leave to withdraw Appeal From Order No.172 of 2017. The Appeal is dismissed as withdrawn. The Trial Court will hear the Motion on its merits uninfluenced by the previous order or by the present order. Further, Anant Mahadeo Pethe, the co-owner of the premises, will be joined as a party

Defendant to the Suit and his Chamber Summons before the Trial Court will be allowed by the Trial Court. It will pass necessary order to that effect. The co-owner Anant Pethe will also be entitled to be heard at the final hearing of the Motion and will be entitled to file an Affidavit in Reply.

2. The Municipal Corporation of Greater Mumbai (“MCGM”) confirms that the premises sought to be protected by the Plaintiff have been demolished. There is also a previous order directing the Plaintiff to vacate the premises. It is clear that the Plaintiff is not entitled to occupy or squat on open land. The Plaintiff is required first to move herself, her family and belongings before she can seek any equitable relief. The reason for this is that sufficient time has been given to the Plaintiff to vacate the premises. Also, as I have noted, there are *prima facie* documents produced by the co-owner Anant Pethe for which there is no explanation from the Plaintiff. These documents do not commend themselves without full explanation.

3. Subject to this, the Plaintiff will be heard on merits but without seeking any equity on account of any protective order that may have been passed in the Appeal.

4. If there are any other claims that the Plaintiff has against the co-owner (Anant Pethe), the Plaintiff may either adopt suitable proceedings or may seek an appropriate amendment to the existing Suit as she may be advised. This application will also be decided on its merits.

5. The Appeal is disposed of in these terms along with the Civil Application.

(G. S. PATEL, J.)