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

WRIT PETITION NO.2393 OF 2013

Shri. Girish Vrajlal Sheth ... Petitioner
Vs.
Mumbai Municipal Corporation and Ors. ... Respondents

Mr. Robin Jaisinghani i/by Jacinta D'silva for the Petitioner.
Ms. Pallavi Thakkar for the Respondent Nos.1 and 2.
Mr. S.B. Gore, AGP for the Respondent No.3.
Mr. Girish Godbole i/by M/s. Pathak & Co. for the Respondent Nos.4 and 5.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 5th JUNE, 2017

PC.

1 Heard the learned counsel appearing for the petitioner.
Prayer clauses (a) and (b) which are the prayers for substantive reliefs read thus :-

- (a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondent Nos.1 and 2 to delete/deduct the TDR FSI loaded on the said plot of land at the instance of Respondent Nos.4 and 5 so that the Petitioner can in exercise of his legitimate rights in the said plot of land proceed to carry out development work on the said plot of land which belongs to the Petitioner.

(b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondent Nos.1 and 2 to withdraw, revoke, cancel the TDR Utilisation Forms, copies whereof are annexed as Exhibits B-1 and B-2 hereto.”

2 Prima facie, it appears to us that the remedy of the petitioner is to approach the Civil Court as according to the petitioner, he has terminated his arrangement with the fourth respondent. However, the learned counsel appearing for the petitioner relies upon the guidelines for cancellation of the TDR utilization entries in DRC and TDR utilization register issued by the Mumbai Municipal Corporation on 9th January, 2002. He submits that the applications made by the petitioner through his Advocate be ordered to be disposed of by the Municipal Corporation in the light of the said guidelines.

3 The learned counsel appearing for the fourth respondent has invited our attention to the order passed by the Appeal Bench of this Court on 13th July, 2012 in Appeal (L) No.458 of 2012 arising out of the order passed on a Notice of Motion taken out by the fourth respondent. He submits that in view of the statement recorded in paragraph 9 of the said order, the petitioner ought to have approached the Civil Court.

4 Our attention is invited to the letter dated 27th December, 2012 addressed by the petitioner to the office of the Mumbai Municipal Corporation (page 64) raising an objection to loading of TDR on the subject property. Our attention is also invited to legal notice dated 15th April, 2013 issued by the Advocate for the petitioner to an officer of the Municipal Corporation in which the Municipal Corporation has been called upon to forthwith remove/ unload TDR loaded on the subject property. The learned counsel appearing for the petitioner on instructions states that no decision has been taken by the Municipal Corporation on the said prayers.

5 In view of the aforesaid statement made by the learned counsel appearing for the petitioner, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the Mumbai Municipal Corporation to treat notice dated 15th April, 2013 (Exhibit – J to the Petition) as representation of the petitioner for seeking removal/unloading of the TDR loaded on the subject property;

- (ii) We direct that the appropriate officer of the Municipal Corporation to consider the said representation after giving an opportunity of being heard to the petitioner and the fourth respondent in accordance with law as expeditiously as possible and in any event within a period of three months from the date on which this order is uploaded. It will be open for the petitioner to rely upon guidelines dated 9th January, 2002 at the time of hearing. All objections of the fourth respondents are expressly kept open to be considered by the concerned officer of the Mumbai Municipal Corporation;
- (iii) The order passed on the representation of the petitioner be communicated to the petitioner as well as to the fourth respondent;
- (iv) The Petition is disposed of on above terms;
- (v) All contentions on merits are kept open.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)