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

**CIVIL APPLICATION NO. 107 OF 2018
IN
WRIT PETITION NO. 4872 OF 2012**

M/s. Mutha Construction ... Applicant
In the matter between
Mr. Ganesh Shripat Kot ... Petitioner
Versus
Kalyan Dombivali Municipal Corporation & ... Respondents
Ors.

Mr. Sagar A. Joshi, for the Applicant.
Mr. Dnyaneshwar Deshmukh for the Petitioner.
Mr. Prashant Kamble, i/b Mr. A.S. Rao, for Respondent No.1.
Mr. Manish Pabale, AGP for Respondent Nos. 2 to 4.
Mr. Arsh Misra, i/b M.V. Kini & Co. for Respondent No.5.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 24TH APRIL 2018.

PC:-

1. Heard the learned counsel appearing for the Applicant (the Original Respondent No.6 in the Writ Petition) and the learned counsel appearing for the Writ Petitioner as well as the learned counsel appearing for the Respondent No.1. In paragraph 3 of the order dated 12th June, 2013 passed in the main Writ Petition, a statement of the Applicant was recorded. The paragraph nos. 3 and 4 of the said order read thus:-

3. *“Learned Counsel appearing for the sixth respondent, on instructions, submits that as stated that in the said report of Assistant Director of Town Planning as well as in the communication issued by the Municipal Corporation which are annexed on pages 29 to 32 of the Petition, the sixth respondent is willing to construct open nullah.*

4. *We accept the statement. The Municipal Corporation shall provide location plan of the open nullah together with detailed specifications thereof to the sixth respondent within a period of two weeks from today.”*

2. The order dated 18th February, 2014 passed in the Petition refers to the same order dated 12th June, 2013 and said order reiterates that the Applicant is bound by the said order. Interim relief was granted by said order restraining Applicant from carrying out further construction. After complying with the statement recorded in the order dated 12th June, 2013, a liberty was granted to the present Applicant to apply for modification of the interim relief.

3. Now, the present Application is filed on the footing that the Applicant has complied with the statement recorded in paragraph 3 of the order dated 12th June, 2013. There is an Affidavit in Reply filed by Shri Baban H. Baraf, Executive Engineer, (Drainage Department) of the first Respondent in the Writ Petition which is the Municipal Corporation. In the said Affidavit, he has placed on record certain annexures. It is stated in the Affidavit that the

Applicant has complied with the statement recorded in the aforesaid order. Though initially, the correctness of the said statement was disputed by the Writ Petitioner, today, learned counsel appearing for the Writ Petitioner accepts on instructions that the Applicant has complied with the statement recorded in order dated 12th June, 2013. However, he submits that the Applicant has used the FSI of the land covered by nullah while applying for development permission and he is trying to utilize the said FSI. We find that this contention is admittedly not raised in the main Writ Petition. Moreover, in the main Writ Petition, in the prayer clauses, there is no challenge to the development permission granted to the Applicant. Hence, in this Civil Application filed by the Applicant, the said contention cannot taken in to consideration.

4. On the conjoint reading of order dated 12th June, 2013 and 18th February, 2014, interim relief was granted only on the ground of the failure of the Applicant to comply with the statement recorded in the order dated 12th June, 2013. As admittedly now the Applicant has complied with the statement recorded in the order dated 12th June, 2014, the interim relief will have to be vacated. Accordingly, we dispose of the the Civil Application by passing the following order:-

a) Interim relief granted by order dated 18th February, 2014 stands vacated. However, further construction which may be carried out by the Applicant will be subject to final outcome of the Writ Petition. We made it clear that the Applicant can carry out further construction provided there is a valid development permission.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)