

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

**NOTICE OF MOTION (L) NO. 2180 OF 2018  
IN  
SUIT NO. 44 OF 2014  
WITH  
NOTICE OF MOTION NO. 953 OF 2016**

Municipal Corporation of Greater Mumbai ...Applicant/Orig.Defendant

**In the matter between**

Praveen Moreshwar Apte ...Plaintiff

vs.

Municipal Corporation of Greater Mumbai & Ors. ...Defendants

Ms.Sanjiv A. Sawant with Pankaj Kode for Plaintiff.

Mr.R.V. Govilkar with H.C. Pimple for Defendants/Applicants.

**CORAM : S.C. GUPTE, J.**

**DATE : 9 OCTOBER 2018**

**P.C. :**

Heard learned Counsel for the parties.

2           This notice of motion is taken out by the Municipal Corporation of Greater Mumbai, represented by Defendant Nos.1 to 7 herein, for dismissing the suit in view of the order passed by the Assistant Commissioner (Estate) (Defendant No.6) rejecting the Plaintiff's representation for converting the Vacant Land Tenancy of the suit property into lease.

3           It is the case of the Defendants that conversion of the Vacant Land Tenancy into a lease is one of the alternative reliefs claimed in the

suit and the Plaintiff having agreed to approach the Municipal Corporation for determination of the issue and the issue having been decided against him, his prayer in the suit is worked out and he is estopped from prosecuting the suit any further. The relief claimed in the present notice of motion is unheard of. The Plaintiff's claim in the present case is for a declaration that he ought not to have been dispossessed and for restoration of the possession of the suit property to the Plaintiff. The Plaintiff also seeks performance of the purported promises of the Defendants contained in the documents referred to in prayer clause (c) of the plaint. Pending the hearing and final disposal of the suit, the Plaintiff had sought various mandatory and injunctive reliefs including restoration of the possession of the suit property and appointment of a Court Receiver and an injunction restraining the Defendants from allotting or transferring the suit property to any third party. In the alternative, as and by way of interim relief, the Plaintiff prayed for a direction against the Defendants to forthwith consider and decide the Plaintiff's application for converting Vacant Land Tenancy of the suit property into a lease in accordance with the provisions of MMC Act and the D.C. Regulations and other provisions of Law. Merely because this alternative interim prayer was granted by the court and in pursuance of which the Municipal Corporation considered the Plaintiff's application for conversion of Vacant Land Tenancy into lease and decided such application against the Plaintiff, the Plaintiff cannot be said to have exhausted his remedy. The Plaintiff, in the premises, cannot be non-suited for claiming various reliefs which have been noted above. There is, accordingly, no merit in the notice of motion.

4                   The notice of motion is dismissed. Costs to be costs in the

cause.

5           Place Notice of Motion No.953/2016 along with the suit on 11  
October 2018.

**(S.C. GUPTE, J.)**