

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

**APPEAL FROM ORDER NO.288 OF 2019
WITH
CIVIL APPLICATION NO.339 OF 2019**

Mr. Shivprasad Ramkhelawan Gupta ... Appellant
Versus
Municipal Corporation of Greater
Mumbai ... Respondent

.....

Mr. Ashok M. Saraogi for the Appellant.
Ms. Madhuri More for the Respondent-MCGM.

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CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 Rule.

3 Rule is taken up for hearing forthwith by consent of the parties.

4 The present Appeal from Order challenges a short order passed by the Bombay City Civil Court at Dindoshi, rejecting the application of the Appellant (original plaintiff) for ad-interim relief in respect of the suit structure. The suit structure is affected by alignment of 120

feet wide Jogeshwari Vkhroli Link Road. By a notice issued under Sections 314/351 of Mumbai Municipal Corporation Act, the Appellant was directed to vacate the structure and remove the same within 48 hours. The Appellant filed a civil suit, being L.C. Suit No.356 of 2014, challenging the Notice. By an order dated 6 February 2017, that suit was decreed in favour of the Appellant by the City Civil Court. The Court held that the impugned notice of demolition/removal/pulling down was null and void and could not be enforced against the suit structure, without passing a fresh speaking order after considering the Appellant's reply. Till the passing of such speaking order, the Respondent-MCGM was restrained from proceeding with demolition, removal or pulling down of the suit structure. The Respondent-MCGM was directed to consider eligibility of the Appellant, if any, for alternate accommodation. Whilst hearing of his reply and application for eligibility for claiming such alternate accommodation, the Appellant relied on Annexure-II produced by him at the hearing, which indicated his eligibility to obtain an alternate accommodation. Despite that Annexure, eligibility was denied to the Appellant. This has been challenged by the Appellant in the present new suit. It appears that at the hearing of the Appellant's notice of motion, in his new suit, the Respondent-MCGM tendered a document titled as Annexure-II showing ineligibility of the Appellant in respect of the affected structure. In that list, the Appellant is shown ineligible for alternate accommodation, purportedly on the ground that his structure was used for commercial purposes, for which no document was submitted as of a date prior to 1 January 2000.

5 In the facts of the case narrated above, if it was the Respondent-MCGM's contention that the Appellant was not entitled to alternate accommodation by reason of Annexure II relied upon by it, it was for the Respondent to produce the Annexure with its reply filed in the Appellant's notice of motion. Had it been so produced, the Appellant would have had a chance to deal with it, particularly, when the Appellant himself was relying on a different Annexure II, purportedly issued to him under the Right to Information Act by the Respondent-MCGM, which had held him to be eligible for an alternate accommodation. The impugned order indicates that Annexure II, which was relied upon by the Respondent-MCGM, was produced on the very date and across the bar at the hearing in Court, when the impugned order was passed. The Appellant, obviously, had no opportunity to meet the Respondent's case in so far as this Annexure II is concerned. (In fact, the impugned order indicates that the Respondent-MCGM was directed to provide a copy of Annexure II to the Appellant on the next date.) The net result is that the Appellant's eligibility was rejected on a document produced in Court, which the Appellant had no opportunity to deal with. That obviously cannot be permitted, since it is opposed to the very idea of rule of law.

6 The impugned order, accordingly, will have to be set aside and the matter will have to be remanded back to the trial court for a fresh hearing in accordance with law. Considering, however, that the Respondent-MCGM needs the suit structure anyway to be pulled down, since it is coming in the way of a road widening project, which is a

public utility project, the application on remand ought to be disposed of expeditiously.

7 In the premises, the following order is passed.

: O R D E R :

- i) Appeal from Order is allowed and the impugned order dated 6 March 2019 is quashed and set aside;
- ii) The Appellant's application for ad-interim reliefs is restored to the file of the Bombay City Civil Court at Didoshi for a fresh decision in accordance with law and after allowing the Appellant to file an affidavit dealing with Annexure II produced by the Respondent-MCGM;
- iii) The Appellant shall file his affidavit dealing with Annexure II within a period of one week from today;
- iv) The Court shall thereafter hear the parties and decide the application afresh and in accordance with law ;
- v) The application must be disposed of as expeditiously as possible and preferably within a period of four weeks from today.

8 In view of the disposal of the Appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)