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

**APPEAL FROM ORDER NO. 292 OF 2018
WITH
CIVIL APPLICATION NO. 383 OF 2018
IN
APPEAL FROM ORDER NO. 292 OF 2018**

Raghavendra A. Kulkarni & anr. ..Appellants
vs.
Municipal Corporation of Greater
Mumbai & ors. ..Respondents

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Mr. Chetan Akerkar for appellants.
Mrs. Madhuri More for MCGM.
Mr. A.R. Maurya I/b. R.S. Lodhi for respondent No.4.
Mr. Avinash Arun Vishwasrao, Assistant Engineer (Building
Proposals), K/West-North Ward present in Court.

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CORAM : M.S.KARNIK, J.

DATE : 26th JULY, 2019

P.C. :

Before the City Civil Court the notice/order dated 13/5/2016 issued by the Assistant Engineer, Building Proposal (W.S.), K/West Ward is challenged. By this communication it is informed that the permission is granted for change of user vide letter dated 17/12/2015 is cancelled and the appellants were directed to reinstate the work carried on site at the earliest. It is

the principal contention of the appellant that initially the permission was granted by the Executive Engineer. The said permission is now sought to be revoked by the Assistant Engineer which is impermissible.

2. Learned counsel appearing on behalf of the society submitted that the permission granted for change of user is rightly cancelled.

3. When this Court on the last occasion had asked learned counsel for the corporation as to how an authority lower in rank to one who had issued the permission could cancel the permission earlier granted and that too without hearing the appellant, learned counsel Mrs. More in all fairness and on instructions of the officer Mr. Avinash Arun Vishwasrao, Assistant Engineer (Building Proposals), K/West-North Ward present in Court, would submit that the issue will be considered by the Deputy Chief Engineer, Building Proposals, Western Suburbs -I afresh and appropriate orders would be passed.

4. The Deputy Chief Engineer is directed to communicate the date fixed for hearing to the appellants as well as the society. The appellants as well as the society to appear before the Deputy Chief Engineer on the date fixed. On the date fixed the Deputy Chief Engineer to hear the appellants as well as the society and pass orders in accordance with law.

5. The order dated 13/5/2016 is therefore set aside.

6. The impugned order of the trial Court is set aside.

7. Learned counsel for the appellants states that he would apply to the trial Court within a period of 1 week for withdrawing the suit.

8. The Appeal is partly allowed and disposed of as such.

9. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is also disposed of.

(M.S.KARNIK, J.)