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

**CIVIL APPLICATION NO. 2009 OF 2018
IN
FIRST APPEAL NO. 1548 OF 2013**

Amanullah Fateh Mohd. Khan ... Applicant
V/s.
The Municipal Corporation of Greater Mumbai ... Respondent

.....
Mr. B. S. Shukla for the Applicant.
Mrs. Sheetal Mane for the Respondent-MCGM.

.....
CORAM : K.K. TATED, J.

DATE : 25th JUNE, 2019.

P.C.:

Heard the learned Counsel for the parties.

2. By this Civil Application, Applicant is seeking direction against respondent Corporation to consider their documents in respect of suit structure i.e. Shop No. 11, made of patra sheet and A.C. sheet roof, Manjuwadi, Gopal Mistry Compound Dharavi Cross Road, Mumbai-400 017 and permit them to occupy the same and/or provide the alternate accommodation to that effect.

3. In the present proceedings, initially the Applicant-Plaintiff filed L.C. Suit No. 645 of 2010 before the Bombay City Civil Court, Bombay for an order of direction to the Respondent to provide the permanent alternate accommodation in lieu of suit structure and also not to take any action against him as per notice dated 16th January 2010 issued under Section 314 of BMC Act and Order dated 11th March 2010 passed by Assistant Commissioner, G/North Ward in respect of the suit premises. That suit was dismissed by the Trial Court by Judgment and Decree dated 6th July 2013 on the ground that Applicant failed to make out a case. Following were the issues in suit :-

- i) Whether the Plaintiffs proves that the notice dated 16/01/2010 and the order dated 11/03/2010, are illegal and void?
- ii) Whether the Plaintiffs proves that he is entitled to get an alternate accommodation from the defendant/BMC?
- iii) Whether the Plaintiff proves that the order dated 29/07/2011, passed by the Defendant/BMC, is illegal, bad-in-law and malafide?
- iv) Whether the Plaintiff is entitled to get declaration and permanent injunction, as prayed for?
- v) What order and decree?

4. The learned Counsel for the Applicant submits that in view of the subsequent development i.e. the new policy of the State Government as well as Corporation, Applicant suit structure can be protected and applicant is entitle for alternate accommodation.

5. The learned Counsel appearing on behalf of the Respondent-Corporation vehemently opposed the present Civil Application. She submits that suit structure is already demolished by them on 17th March 2010 itself. She further submits that, they filed affidavit in reply dated 16th June 2017 in Civil Application No. 1435 of 2017. She submits that in para 6 and 7 of the said reply, they specifically stated that the suit structure was demolished on 17th March 2010 itself. She submits that in view of these facts, there is no question of allowing the present Civil Application. Hence, the same is required to be dismissed with cost.

6. I heard both the sides. It is to be noted that by this Civil Application, Applicant is seeking direction against the Respondent-Corporation to consider their application for allotment of plot at land in view of the subsequent policy of the State Government and the Corporation. As the suit structure was demolished by the

Corporation on 17th March 2010, as stated by Corporation in their affidavit in reply dated 16th June 2017 in Civil Application No. 1435 of 2017, there is no question of allowing Applicant's case.

Para 6 and 7 of the said reply dated 16th June 2017 reads thus:

“6. I say that these respondents had made survey and found unauthorised construction adm. 20'x50' made up of B.M. Wall and A.C.sheet roof situate at Manju wadi, Gopal Mistry Compound, A.K. Road, Dharavi, Mumbai -400 017. The said work is obstructing the work of Box drain and widening of A.K.G. Nagar Road for public purpose. Hence notice under section 314 of the MMC Act dt 16.1.2010 to the occupant/owner i.e. Appellant directing him to submit the documents showing authorisation of the structure prior to 1.1.1995. I say that the appellant replied the notice by letter dt. 5.2.2010 and considering the said reply and documents, the concerned officer came to the conclusion that the structure is unauthorised and no single document is produced showing the existence of the structure prior to datum line and hence by order dt.11.3.2010, the appellant was directed to remove the notice structure as he failed to prove authorisation of the structure and also not eligible for alternate accommodation as per policy of Govt. I say that the said order was served upon the appellant.”

“7. I say that these respondents demolished the notice structure on 17.3.2010 by following due process of law. I am annexing herewith the

photographs showing demolition of the notice structure and I reserve my right to produce demolition report as and when necessary. I say that the appellant filed the suit bearing No.645 of 2010 challenging the notice and order. On 18.3.2010, when the matter was before the City Civil Court it was pointed out to the court that the structure was already demolished and produced the photographs. The Hon'ble Court directed the Corporation to consider the documents for getting alternate accommodation. I say that accordingly the representation made by the appellant on 3.5.2010 was considered and hearing was given to the plaintiff, i.e. Appellant on 21.7.2011. The concerned Asstt. Commissioner G/North Ward after considering the documents passed the order dt. 30.7.2011 whereby informing that appellant is not entitled for alternate accommodation.”

7. In view of this, I do not find any substance in the present Civil Application.

8. Hence, Civil Application rejected.

(K.K. TATED, J.)