

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

**APPEAL FROM ORDER NO.299 OF 2018
WITH
CIVIL APPLICATION NO.393 OF 2018**

Bhavin Vinod Panchmia	...	Appellant
Versus		
The Municipal Corporation of Greater Mumbai	...	Respondent

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Mr. Pradeep J. Thorat a/w Ms. Aditi Naikare for the Appellant.
Mr. Dharmesh Vyas a/w Ms. Ms. Madhuri More for the Respondent-
MCGM.
Mr. Deepak M. Parab, Sub-Engineer (T.P), G/N Ward present.

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CORAM : S.C. GUPTE, J.

DATE : 20 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an order passed by the City Civil Court, Greater Bombay on a notice of motion taken out by the Appellant (original plaintiff) in his declaratory suit, concerning his tenancy of the Respondent-corporation (original defendant) in respect of the suit premises. The suit premises consists of a plot of land with a structure consisting of two parts admeasuring 138 sq.ft. and 137 sq.ft., respectively, totally admeasuring 275 sq.ft. made up of B.M.

walls and with A.C. sheets roof known as M/s Bhavin Enterprise. The plot bears Plot No.302 of TPS-IV of Mahim Division, and is situated near Manik Building, Dagdiwadi, Bhayanderkar Marg, Off. S.K. Bole Marg, Dadar (West), Mumbai. The case of the Plaintiff is that he is a tenant and in possession of the suit premises having an assignment from one Darshanand Rai, who was in possession of the suit premises as a heir and legal representative of the original tenant, one Markendey Rai. It is the grievance of the Plaintiff that one part of the premises, namely, the shop area admeasuring 137 sq.ft., which had a shop by the name of K.P. Tailors, has been unauthorizedly demolished by the Respondent-corporation in pursuance of a notice issued to Darshanand under Section 89 of Maharashtra Regional Town Planning Act ("MRTP Act"). It is submitted that another notice has been issued in respect of the balance 138 sq.ft., the presently existing portion of the suit premises, on the footing that the structure was affected by road widening under the current Development Plan sanctioned under MRTP Act. The plaintiff seeks a declaration and perpetual restraint on the Respondent-corporation from acting on that notice. The plaintiff also seeks an order for reconstruction of the other part of the premises, namely, 137 sq.ft. allotted to M/s K.P. Tailors and which has since been demolished as noticed above. It is, on the other hand, the case of the Respondent-corporation that it has accepted the plaintiff as a tenant in pursuance of a transfer from the original tenant/his legal heir and representative only in respect of 138 sq.ft. area, which is presently existing at site, and not the other portion of the original premises, namely, 137 sq.ft. originally forming

part of Plot No.302 of TPS-IV of Mahim Division, and which has since been demolished as noticed above.

3 So far as the demolished portion of the suit property, namely, 137 sq.ft. in the name of M/s K.P. Tailors, is concerned, the matter does not form part of the controversy in the notice of motion; it has to be dealt with as part of the trial in the main suit. So far as the existing part of the suit premises, consisting of 138 sq.ft., is concerned, it is the case of the Respondent-corporation that the premises are affected by a road widening project under the sanctioned Development Plan. There is some controversy between the parties as to the identity of the plot affected by the road widening proposal under the sanctioned Development Plan. The Appellant relies on a draft plan which proposes deletion of the road widening proposal insofar as Final Plot No.302 of TPS-IV, Mahim Division is concerned. The corporation, on the other hand, relies on the sanctioned DP for 2034, which retains the proposed road widening project affecting Final Plot No.302. Learned Counsel for the Respondent-corporation produces the relevant DP remarks, notification and sanctioned plan forming part of the notification. It is apparent from these documents that the original road widening proposal, which was proposed to be dropped at one stage as reflected in the earlier draft plan, has been actually retained in the plan finally sanctioned, so far as Final Plot No.302 is concerned. Learned Counsel submits that the Respondent-corporation has offered to relocate the Appellant so far as the existing area of 138 sq.ft. is concerned to a suitable site on a licence basis.

4 It is apparent that the Respondent-corporation accepted the Appellant as tenant at least insofar as the exiting area of 138 sq.ft. is concerned. If that is so, the Respondent-corporation will have to relocate the Appellant to a suitable alternative site in accordance with its existing policy and the law on tenancy basis and not as a licensee. Upon this being pointed out, learned Counsel for the Respondent-corporation states that suitable orders in that behalf may be passed and the Respondent-corporation shall abide by the directions and offer such alternative accommodation to the Appellant in accordance with its policy.

5 It is, accordingly, clarified that the Respondent-corporation will have to allot alternative accommodation to the Appellant in accordance with law and in particular, its existing policy of accommodating its tenants. It is made clear that this accommodation shall be granted to the Appellant on tenancy basis. Since the Respondent-corporation offers to abide by these directions, no further orders need to be passed in the Appeal from Order.

6 It is made clear that the Appellant shall vacate the existing area of 138 sq.ft. forming part of Plot No.302 of TPS-IV of Mahim Division against allotment of suitable alternative premises as mentioned above.

7 Appeal from Order is disposed of in the above terms.

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.)