

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.823 OF 2022
WITH
INTERIM APPLICATION NO.17497 OF 2022**

Rajesh Gangji Savla ...Appellant
vs.
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Bipin Joshi, for the Appellant.
Mr. B.V. Bukhari a/w. Ms. Sunita Tondwalkar, for Respondent-
Corporation.
Mr. Sandeep Deshpande, Asstt. Engineer, T Ward present.

CORAM : N. J. JAMADAR, J.
DATE : JULY 26, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. This appeal is directed against an order dated 6th August, 2022 passed in Notice of Motion No. 3575 of 2019 in L.C. Suit No. 2448 of 2019 whereby the Notice of Motion taken out by the appellant to restrain the respondent-Corporation from demolishing the structure bearing No. TX-16-1/3, 2/3 and 3/3 (the suit structure), came to be dismissed.
3. Mr. Joshi, the learned counsel for the appellant submits that the appellant is aggrieved by the determination of eligibility of the appellant for alternate premises. Though the appellant holds three distinct structures, by the determination dated 7th September,

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This is a corrected order as per Speaking to Minutes order dated 02-08-2023

2019, the appellant is held eligible only for one alternate premises. Mr. Joshi further submits that the appellant is not keen on holding up the development but desires to pursue the remedies for allotment of three alternate premises.

4. Inviting the attention of the Court to a circular dated 20th March, 2017 which incorporates the policy guidelines for removal of Bottlenecks/ missing links of DP roads TP roads and RL, Mr. Joshi submits that the scheme provides for an appeal against an order of determination of eligibility before the Deputy Municipal Commissioner. The learned counsel seeks leave to withdraw the appeal with liberty to prefer an appeal against the determination of eligibility before the competent authority.

5. Mr. Bukhari, learned counsel for the respondent-Corporation submits that as per the Government Resolution dated 21st August, 2021 the appellate authority has been changed and now the appeal against determination by the Assistant Commissioner, T Ward would lie before the Additional Collector (Removal & Encroachment), Eastern Suburbs.

6. Since the controversy revolves around the determination of eligibility of the appellant for the alternate premises, it may be expedient to allow the appellant to prefer an appeal before the competent authority.

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7. Hence the appeal stands disposed with liberty to the appellant to prefer an appeal before the competent authority against the determination of eligibility dated 7th September, 2019 (page 31 of the appeal memo) within a period of two weeks from today.

8. The competent authority shall decide the appeal in accordance with law and the governing rules within a period of two weeks thereafter.

9. In view of the disposal of the appeal, the interim application also stands disposed.

10. The appellant is granted two weeks time to vacate the subject structures.

11. In the event the subject structures are not vacated within the said period of two weeks, the respondent-Corporation is at liberty to act upon the notice.

12. In view of the disposal of the appeal, nothing survives in the Long Cause Suit No. 2448 of 2019.

13. The suit also stands disposed as having been rendered infructuous.

(N. J. JAMADAR, J.)

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