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

WRIT PETITION NO.13838 OF 2023

Vaishali Vinayak Developers ... Petitioner
V/s.
Kalya Dombivali Municipal Corporation ... Respondent

Mr. Rajesh S. Datar i/by Mr. Dushyant Pagare, for
Petitioner.

Mr. Ram Apte, Sr. Advocate i/by Mr. A. S. Rao, for
Respondent (KDMC).

Ms. Indu Rani Jakhar, Commissioner of Corporation
(KDMC).

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 11, 2023

P.C.:

1. In furtherance of earlier order passed by this Court on 8 December 2023, the Commissioner of respondent No.1/Municipal Corporation has placed an affidavit on record personally. The affidavit is taken on record.

2. The petitioner is a plaintiff in a suit for declaration and injunction. Declaration is sought that the petitioner has right to retain the possession of the suit property till the compensation is determined and paid. However, direction is sought against the

Municipal Corporation to implement resolution No.68 dated 30th August 2010 and letter dated 9th March 2012. Further, declaration not to take forcible possession of suit property without following due process of law is sought. In the suit, petitioner filed application for temporary injunction. The Trial Court by order dated 28th April 2006 restrained Municipal Corporation from taking forcible possession of suit property till the determination of the TDR, compensation, or price to the plaintiff. The appeal filed by the corporation was dismissed. The writ petition against the dismissal of appeal was also withdrawn with the result order dated 28th April 2006 attained finality.

3. On 17th September 2022, the Trial Court dismissed the suit for non prosecution.

4. The petitioner filed an application for restoration of suit along with the application for condonation of delay and application for temporary injunction.

5. The petitioner filed application for condonation of delay in filing restoration application as well as application for injunction on 25th July 2023. The said application came to be rejected dated 23rd August 2023.

6. On 7th September 2023, respondent took forcible possession of the suit property.

7. On 30th September 2023, the Appellate Court dismissed the appeal rejecting the application for condonation of delay, mainly on the ground that respondent has already taken possession of the

suit property.

8. Since, the issue regarding relief of restoration of possession which the petitioner applied before the Trial Court is yet to be decided, it may not be proper to make observation on the stand taken by the Municipal Corporation.

9. However, considering the peculiar facts of the case, it would be appropriate for the petitioner to apply for restoration of possession under Order 39, Rule 1 of the Code of Civil Procedure, 1908.

10. Since, the application for restoration along with application for condonation of delay is pending, the Trial Court shall decide the application for restoration of suit along with application for condonation of delay within one week from 3 January 2024.

11. The petitioner shall apply within one week from 10 January 2024 for restoration of possession from Municipal Corporation and their transferee.

12. Such application filed by the petitioner for restoration of possession, shall be decided within four weeks from the date of filing of application.

13. The parties agree that they will maintain status quo as directed by this Court by order dated 8 November 2023 till the decision on restoration of possession on merits passed by the Trial Court.

14. Contentions of both the parties are kept open to be agitated

before the Trial Court.

15. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)