

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.752 OF 2019

Mukund Vitthalrao Gadkari & Ors.

.. Petitioners

Vs.

The Municipal Corporation of Greater Mumbai & Ors. .. Respondents

Mr. S.M. Gorwadkar, Sr.Adv. a/w. Mr. E.K. Sasidharan for the Petitioners.

Mrs. Vandana Mahadik for MCGM.

Mr. M.A. Sayed, AGP a/w. Mr. Abhay L. Patki, Addl.Govt. Pleader for the State.

CORAM : SUNIL B. SHUKRE &

M.W. CHANDWANI, J.J.

DATE : 25TH JANUARY, 2023.

P.C. :

1. Heard learned counsel for the petitioners.
2. The petitioners are the persons who are claiming to be eligible for providing alternate accommodation in lieu of their demolished structures, which, before their demolition, stood at Tansa Vihar Pipeline, Saibaba Vyapari Seva Sanstha, Saibaba Market, Sion-Koliwada, Mumbai. The petitioners, in view of the directions issued by this Court on 07.03.2018 in earlier petition being Writ Petition (L) No.688 of 2018, approached the Competent Authority, i.e. Assistant Engineer (Maintenance), seeking

declaration that they are eligible for providing alternate accommodation in terms of the Notification dated 23.08.2016. The application so filed by the petitioners was termed as an appeal and it was also decided by treating it as an appeal, albeit erroneously. Considering the various authorities created for deciding such an application, we are of the view that the order passed by the competent officer of the Corporation was actually the order passed on the application filed by the petitioners in terms of the Notification dated 23.08.2016 and not the order which was passed in capacity as an Appellate Authority, and therefore, the petitioners would indeed have a remedy to file an appeal against this order before the Appellate Authority i.e. Additional Commissioner, Mumbai City, in terms of the Notification dated 23.08.2016.

3. At this juncture, learned counsel for the petitioners seeks leave of this Court to withdraw the petition with liberty to file an appeal before the Competent Authority, i.e. Additional Collector, Mumbai City, against the order which is impugned in this petition. Having regard to the remedy made available in the Notification dated 23.08.2016, leave as prayed for is granted and the petition is dismissed accordingly. The petitioners may file their appeal against the impugned order dated 27.12.2018 before the Additional Collector, Mumbai City within a period of four weeks from the date of this order and if any such appeal/s is/are

filed by any of the petitioner/petitioners, the same shall be decided by the Additional Collector, Mumbai City, in accordance with law, after giving opportunity of hearing to the petitioners and other interested parties as expeditiously as possibly and preferably within 8 weeks from the date of appearance of the petitioners.

4. The petition is disposed of in the above terms. No costs.

[M.W. CHANDWANI, J.]

[SUNIL B. SHUKRE, J.]