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

**REVIEW PETITION NO.7 OF 2023
IN
FIRST APPEAL NO.1196 OF 2009**

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GANESH
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Sakinabai Mohamed Ashiq & Ors. ... Petitioners

V/s.

Brihanmumbai Municipal Corporation
& Ors. ... Respondents

Ms. Panthi Desai i/by M.P. Vashi & Associates for the
petitioners.

Mr. Drupad S. Patil with Mr. Mahesh Mishra and Mr.
Zakir Basha for respondent Nos.4 & 5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 7, 2024

PC.:

1. This Court by order dated 27 February 2023 disposed of first appeal as infructuous by recording subsequent fact that the Municipal Corporation issued notice under Section 55 of the Maharashtra Regional Town Planning Act, 1966. However, on perusal of the plaint in addition to seeking relief against defendant Nos.1 to 3, the plaintiffs sought relief against defendant Nos.4 and 5.

2. The due process under Section 55 followed by the Corporation may have reflection on the relief against defendant

Nos.1 to 3. However, following due process of law by the Corporation has no effect on the adjudication of the plaintiffs' rights against private defendant Nos.4 and 5. Therefore, the appeal need to be decided on merits as against defendant Nos.4 and 5.

3. Hence, First Appeal No.1196 of 2009 is restored to file to the extent of adjudication in relation to the relief against defendant Nos.4 and 5.

4. In so far as Civil Application No.102 of 2018 is concerned, to the extent it seeks reliefs against Corporation, the same does not survive. However, if the plaintiffs intend to prosecute defendant Nos.4 and 5 for interim relief, it is open for the appellant to file appropriate application seeking relief against defendant Nos.4 and 5.

5. Therefore, the relief, if any, granted against defendant Nos.4 and 5 in Civil Application No.3232 of 2009 shall stand revive. On perusal of prayer clause (a), it appears that the applicant sought injunction against all the respondents. Therefore, the order of injunction against defendant Nos.4 and 5 shall stand revive to be considered by the Appellate Court at an appropriate stage.

6. The review petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)