

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 168 OF 2025
WITH
INTERIM APPLICATION NO. 3589 OF 2025**

Mrs. Pratibha Suresh Ghavale ... Appellant/Applicant

vs.

Municipal Corporation of Greater ... Respondents
Mumbai and Anr

Mr. Amey Sawant i/b. Mr. Suraj Kudalkar a/w. Mr. Pratik Sabrad for
Appellant.

Ms. Pratibha Ghavale, Appellant present.

Ms. Neeta Jadhav i/b. Ms. Komal Punjabi for Respondent-BMC.

Mr. Vijay Kumar Wagh, Asst Engineer, B & F, 'N' Ward(Building and
Factory Dept) present.

CORAM : GAURI GODSE, J.

DATED : 8th APRIL 2025

ORDER:

1. Not on board. Taken on the production board.
2. This appeal challenges refusal of ad-interim relief. The suit is filed to challenge notice dated 12th January 2021, issued under Section 351 and Section 488 of the Mumbai Municipal Corporation Act, 1888 as well as speaking order dated 9th March 2022.
3. Learned counsel for the appellant submits that the partial suit

structure was already demolished by the corporation in December 2024. He submits that the appellant shall vacate the remaining suit structure alongwith the family members and remove unauthorised construction on her own within four weeks from today.

4. Learned counsel for the appellant has tendered affidavit-cum-undertaking dated 8th April 2025. The affidavit-cum-undertaking is taken on record. The assurances given in the affidavit-cum-undertaking are accepted as an undertaking to this court.

5. Learned counsel for the appellant submits that in view of the affidavit-cum-undertaking for removal of suit structure nothing survives in the suit. Learned counsel for the appellant on instructions of the appellant who is present in the court seeks leave to withdraw the present appeal and the suit with liberty to file an appropriate suit to protect her right in respect of the land where the suit structure is situated.

6. Learned counsel for the corporation submits that the appellant be granted time to remove the structure at the risk of the appellant and in any event, if an untoward incident occurs in view of a partially demolished structure, the responsibility would be entirely on the appellant.

7. In view of the aforesaid, the appellant is granted time of four

weeks from today to vacate and demolish the suit structure at the risk of the appellant. In case of any untoward incident, the appellant shall be solely responsible. The appellant is granted leave to withdraw this appeal as well as the suit with liberty to file appropriate proceedings as permissible in law to protect her right if any, in the land beneath the suit structure.

8. Appeal is disposed of in the aforesaid terms. In view of disposal of the appeal, the pending application is disposed of as infructuous.

9. It is clarified that in the event, the appellant fails to comply with the undertaking as recorded above, the corporation will be at liberty to implement the impugned notice and the order on expiry of the period of four weeks, as granted by this order.

(GAURI GODSE, J.)