

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2774 OF 2014

Mohd. Dilawar Hussain Khan .. Petitioner
vs.
The Divisional Commissioner,
Konkan Division, Mumbai & Ors. .. Respondents

Ms Kamana Kapoor i/b. Mr. Angad Giri for Petitioner.
Mr. S. D. Rayrikar – AGP for Respondent Nos. 1 and 3.
Ms Kiran Bhagalia for Respondent No. 2 - MMRDA.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY, 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition is directed against the order dated 10 October 2012 made by the Administrator & Divisional Commissioner, Konkan Division, Mumbai declining to entertain appeal under Section 35 of the Maharashtra Slum Areas (I. C. & R.) Act, 1971 ("said Act"), on the ground that the same has been preferred against the letter dated 28 April 2011 of Dy. Collector (Enc/Rem) and Competent Authority addressed to the Joint Project Director, MMRDA.

3] A perusal of the letter dated 28 April 2011 would make it clear that the same is not merely a letter but rather the same is an order as contemplated under the said Act. In fact, the learned counsel for the respondent no. 2 points out that the said letter is in fact a

covering letter to Annexure II (Exhibit 'F' to this petition). Accordingly, as against such order or Annexure II, clearly an appeal would lie before the appellate authority under Section 5 of the said Act.

4] On this ground, the impugned order is set aside. The appeal instituted by the petitioner is restored. The appellate authority is directed to dispose of such an appeal within a period of three months from today.

5] The parties to appear before the appellate court on 2 March 2015 at 3 p.m. along with an authenticated copy of this order in order to obtain further directions in the matter of disposal of appeal.

6] It is clarified that this Court has not expressed any opinion on the merits of the matter. The appellate authority shall accordingly decide an appeal in accordance with law and on its own merits.

7] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)