

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

WRIT PETITION NO.2632 OF 2007

M/s. Achala Resorts Pvt. Ltd.

.. Petitioner

Vs

The State of Maharashtra & Ors.

.. Respondents

...

Mr. Madhav J. Jamdar for the Petitioner.

Mr. A. A. Alaspurkar, AGP for the Respondent Nos. 1 and 2.

Mr. Rajdeep S. Khadapkar for the Respondent Nos. 3 and 4.

***CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.***

DATE : 05/07/2017.

ORAL JUDGMENT : (PER SHRI A. S. OKA, J.)

1] Called out for final hearing. An application for grant of development permission was made by the Petitioner in respect of the subject property. Commencement Certificate was issued by the Respondent No. 3 - Municipal Corporation on 18th September, 1998. On 23rd April, 1999 the Petitioner was served with a letter of the same date issued by the City Engineer (4th Respondent) of the 3rd Respondent informing the Petitioner that the commencement certificate and permission dated 18th September, 1998 have been suspended. The said communication was issued on the basis of decision dated 4th September, 1999. Being aggrieved by the said communication dated 23rd April, 1999 and 4th September, 1999 the Petitioner purported to prefer an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the said Act"). By the impugned order, the State Government has dismissed the said appeal on the ground of

bar of limitation as well as on merits. The appeal was preferred on 28th December, 2004. According to the case of the Petitioner, on 15th September, 2016 an application was filed by one Petitioner before the Appellate Authority seeking permission to withdraw the appeal.

2] Even before the aforesaid appeal was preferred, Civil Suit No. 1030 of 2000 was filed by the Petitioner for declaration that the orders/communication dated 23rd April, 1999 and 4th September, 1999 be set aside. A prayer was made for declaration that the action of suspension was illegal. In fact, in the appeal preferred by the Petitioner under Section 47 of the said Act, more or less identical prayers were made.

3] Learned counsel appearing for the Petitioner on instruction states that now the Civil Suit have been decreed granting declaration as prayed for by the judgment and decree dated 5th April, 2014.

4] In any event, an appeal against order suspending operation of development permission was not maintainable under Section 47 of the said Act.

5] An appeal is always a creation of statute. As the appeal itself was not maintainable, the impugned order passed on appeal which is not maintainable has no legal effect at all.

6] In any event, now the suit filed by the Petitioner stands decreed. Hence the impugned order dismissing the appeal will not come in the way of the Petitioner.

7] Subject to what is held above, petition is disposed of. Rule is disposed of accordingly.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)