

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

WRIT PETITION NO.7730 OF 2016

Mrs. Jayashri Sharadchandra Oak & Ors.

..Petitioners

Vs.

Govt. of Maharashtra through Urban
Development Department & Anr.

..Respondents

Mr. R. V. Govilkar for the Petitioners.

Mr. A. A. Alaspurkar, AGP for Respondent No.1.

Mr. A. S. Rao for Respondent No.2/KDMC.

**CORAM: B. R. GAVAI AND
M.S. KARNIK, JJ.**

DATE: 7th SEPTEMBER 2017

P.C. :

. Rule. Respondents waive service. Rule is made returnable forthwith. The Writ Petition is taken up for hearing and final disposal, by consent of the parties.

2. The facts, in brief, giving rise to the present petition are as under:

The Petitioners were granted permission for construction of the building on 27/11/2006. However, by order dated 12/2/2013 the Respondent refused the permission for construction of the area to the extent of 676.86 sq. mtrs.

3. Being aggrieved thereby the Petitioners preferred an appeal before the State Government under Section 56(2) read with section 47 of the MRTP Act. By the impugned order the Respondent has observed that since the appeal was not under Section 47 of the said Act, the same cannot be treated as an appeal, however, the same is treated as an application.

4. Shri Rao, learned counsel for the Corporation submits that the action taken by the Municipal Corporation is only in consonance with the law. We do not find it necessary to go into the issue as to whether the action taken by the Municipal Corporation is legal or otherwise.

5. On perusal of the material placed on record, it would reveal that the appeal which is preferred by the Petitioner before the Appellate Authority would squarely fall under the provisions of section 56(2) of the MRTP Act.

6. It is a settled principle of law that the proceedings have to be referred to a statutory provision, which enables exercise of such provision and wrong mentioning of the provision will not make the proceedings untenable.

7. In that view of the matter, Rule is made absolute. The impugned order is set aside. The matter is remanded to the Respondent/State to pass order afresh in accordance with law. The same shall be done within 12 weeks from today. Needless to state that all the rival contentions available to the parties are kept open.

(M.S. KARNIK, J.)

(B. R. GAVAI, J.)