

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1294 OF 2013**

CVK & Associates	... Petitioners
Vs.	
The State of Maharashtra & Ors.	... Respondents

Mr. Shishir S. Joshi a/w Ms. Bhakti Jugal for the Petitioners.
Mr. M.A. Sayed, AGP for the Respondent Nos.1 and 3.
Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Zubin Kamdin, Mr. Anupam Surve and Mr. Nikhil Mutha i/by M/s. Nanu Hormasjee & Co. for the Respondent No.4.

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

DATE : 4th JULY, 2017

P.C.

1 Heard the learned counsel appearing for the petitioners, the learned Senior Counsel appearing for the fourth respondent, the learned AGP for the first and third respondents and the learned counsel appearing for the second respondent. One of the submissions made across the Bar on the earlier date was that hearing of Appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1947 (for short “the said Act”) was concluded on 14th September, 2012 and the Appellate Authority while dismissing the Appeal has relied upon the letter dated 16th October, 2012 submitted by the Deputy Director of

Town Planning, Mumbai to the Principal Secretary – 1 of Urban Development Department.

2 The original record of the Appeal was called for. The original record shows that letter dated 16th October, 2012 along with its accompaniments was placed on record on 17th October, 2012.

3 We have perused the letter dated 16th October, 2012. It refers to the fact that the hearing of the Appeal was conducted on 14th September, 2012 in the Chamber of the Hon'ble Minister of State. Along with the said letter, the Deputy Director of Town Planning forwarded copies of the letters and other correspondence addressed by the fourth respondent.

4 As we find that the impugned order dated 5th March, 2013 is vitiated as the aforesaid documents tendered on record after the conclusion of hearing were taken into consideration. The learned counsel appearing for the fourth respondent, on instructions, states that instead of keeping the Petition pending, the Appellate Authority can be directed to hear the Appeal afresh.

5 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned order dated 5th March, 2013 is hereby quashed and set aside and the Appeal preferred by the petitioner is restored to the file;
- (ii) We direct the petitioner and fourth respondent to appear in the office of the Principal Secretary of the Urban Development Department of the State Government on 14th July, 2017 at 3.00 pm for fixing a date of hearing. On that day, parties shall be permitted to take inspection of the file of the Appeal. On their application, subject to payment of copying charges, the copies of the relevant document available on the file be supplied;
- (iii) Date for hearing shall be fixed on 14th July, 2017. The Appeal shall be disposed of as expeditiously as possible and in any event, within a period of three months from 14th July, 2017;
- (iv) All contentions on merits are kept open.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)