

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2604 OF 2017

Subhash Gangaram Gurav

...Petitioner

vs.

Additional Collector (Encroachment)

And Appellate Authority, Mumbai and Ors.

...Respondents

Mr. K.S. Patil, for the Petitioner

Mr. L.T. Satelkar, AGP for the Respondent-State.

Mr. Sagar Patil a/w. Ms. Pallavi Thakar, for Respondent-MCGM.

**CORAM : SHANTANU KEMKAR &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : SEPTEMBER 21, 2017

P.C.:

. The grievance of the Petitioner is that, to challenge the order dated 6th February, 2016 passed by Respondent No. 2, he had had approached Respondent No. 1 – Additional Collector in Appeal invoking the appellate provision under Section 35 of the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971, but the Respondent No. 1- Appellate Authority refused to accept the Petitioner's Memo of Appeal on the ground that he is not competent to decide the Appeal.

2. The learned counsel for the Petitioner submits that in

the circumstances, the Petitioner had no remedy and therefore he had challenged the order dated 6th February, 2016 before this Court in Writ Petition No. 5762 of 2016. The learned single Judge was of the opinion that the Petitioner has to avail the alternate remedy of Appeal by approaching the Appellate Authority. Accordingly, the Petitioner withdrew the Petition and filed application on 18th September, 2017 before the Appellate Authority once again for making a prayer accepting the Memo of Appeal on record. However, again the Appellate Authority has refused to accept the Petitioner's Memo of Appeal. In the circumstances, the Petitioner has filed this Writ Petition.

3. The learned counsel for the Petitioner has placed reliance on the Notification dated 8th March, 2017 to contend that Respondent No. 1 is the Appellate Authority against the order passed by the Respondent No. 2 under the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971. In the circumstances, the approach of the first Respondent is totally contrary to the law.

4. Be that as it may, we are of the view that the first

Respondent ought to have accepted the Memo of Appeal and pass appropriate orders on it in accordance with law keeping in view the aforesaid Notification. But the said authority denied even acceptance of Memo of Appeal which cannot be said to be a legal approach. In the circumstances, we direct the first Respondent to take on record the Memo of Appeal if filed by the Petitioner within three days from today.

5. On receipt of the Memo of Appeal along with the application seeking condonation of delay explaining cause of delay for non filing of the Appeal within time, the first Respondent shall consider the maintainability of the Appeal, the application for condonation of delay and take appropriate decision on it in accordance with the law.

6. In case the first Respondent finds that the Appeal is maintainable and has been filed along with application for condonation, which deserves to be allowed, the said Appeal be decided on its own merits.

7. The learned counsel for the Petitioner submits that he

will also be filing the application for stay in the said Appeal. In the circumstances, till the Appeal, maintainability of the limitation and the application for stay are decided by the first Respondent, no coercive steps to be taken against the Petitioner in pursuance to the impugned order.

8. With the aforesaid observation and direction, the Petition is disposed of.

(SMT.ANUJA PRABHUDESSAI, J.) (SHANTANU KEMKAR, J.)