

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 663 OF 2018**

Salma Khalil Meer .....Petitioner  
versus  
Uran Municipal Council and ors. ....Respondents

Mr. Kishor S. Patil, advocate for the petitioner.  
Mr. S. B. Shetye, advocate for the respondent No.1.  
Mr. A. I. Patel, AGP for the State.

**CORAM : RANJIT MORE &  
SMT.ANUJA PRABHUDESSAI, JJ.**

**DATE : 22<sup>nd</sup> JANUARY, 2018.**

**P. C. :**

Heard Mr.Patil, learned counsel for the petitioner, Mr. Shetye, learned counsel for the respondent No.1 and Mr. Patel, learned AGP for the State.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking quashing and setting-aside of the order dated 11<sup>th</sup> December, 2017, passed by the respondent No.2 in appeal No.12/2017-18. The petitioner is also seeking direction to the respondent No.2 to decide the said appeal on merits.

3. Earlier, the petitioner filed writ petition No. 9056 of 2013 in this Court challenging the order dated 8<sup>th</sup> July, 2013 passed by the respondent No.1- Uran Municipal Council holding the construction of

the petitioner's building as illegal and directing demolition of the same. During the pendency of the said petition, by an order dated 20<sup>th</sup> March, 2014, this Court permitted the petitioner to file an application for regularization to the respondent No.1. The petitioner, accordingly, made an application to the respondent No.1, which came to be rejected on 3<sup>rd</sup> May, 2014. Thereafter, the said petition was placed before this Court on 25<sup>th</sup> July, 2017. This Court specifically observed that the petitioner had an alternative remedy of filing an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") and, therefore, declined to entertain the said petition. This Court, also protected the petitioner, by directing not to take demolition action in pursuance of notice dated 8<sup>th</sup> July, 2013, in order to enable the petitioner to file an appeal. This Court also gave liberty to the petitioner to take out an application for interim relief in this appeal and further directed the appellate authority to dispose of the same on its own merits.

4. The respondent No.2 by an order dated 11<sup>th</sup> December, 2017, which is impugned in the instant petition, dismissed the petitioner's appeal mainly on the ground that the same is not maintainable apart from the fact that the same is not filed within a period of limitation of 40 days.

5. Having heard learned counsel and learned AGP for the respective parties and having gone through the provisions of Sections 44, 45 and 47 read with provisions of Section 52 and 53(3) of the MRTP Act, we are of the opinion that the appeal under Section 47 of the MRTP Act is maintainable. That apart, this Court having observed in the order dated 25<sup>th</sup> July, 2017, passed in civil writ petition No.9056 of 2013 that such appeal is maintainable, the respondent No.2 could not have dismissed the said appeal on the ground that the same is not maintainable.

6. So far as delay in filing the appeal is concerned, the petitioner filed the appeal on 14<sup>th</sup> September, 2017. As stated above, this appeal was filed pursuant to the liberty granted by this Court in civil writ petition No.9056 of 2013. It is true that the appeal is not filed within statutory period of 40 days at least from 25<sup>th</sup> July, 2017 viz.the date on which the writ petition was disposed of. Mr. Patil, learned counsel for the petitioner, having taken instructions from his client, made a statement that he will file an application for condonation explaining the circumstances in which the delay occurred. The statement is accepted.

7. In our view, the respondent No.2 ought to give an opportunity to the petitioner to explain the delay occurred in filing the appeal and if

the appellate authority is satisfied and the delay is justified, it shall enter into the merits of the matter and dispose of the appeal on merits.

8. In the light of above, we dispose of this petition by passing the following order :

1. The impugned order dated 11<sup>th</sup> December, 2017, passed by the respondent No.2 in Appeal No.12/2017-18 is quashed and set-aside.

2. The petitioner is at liberty to file an application for condonation of delay occurred in filing appeal under Section 47 of the MRTP Act within two weeks from today.

3. In the event, such application is filed within two weeks, the respondent No.2 shall decide the same independently on its own merits and in accordance with law as expeditiously as possible and preferably within a period of eight weeks from the date of filing of the same.

4. In the event, the respondent No.2 condones the delay occurred in filing the aforesaid appeal, the respondent No.2 shall decide the petitioner's appeal independently on its own merits as expeditiously as possible and preferably within a period of three months from the date of decision passed in delay condonation application.

5. Till decision in the petitioner's application for condonation of delay, no coercive action shall be taken against the petitioner in respect of the offending structure.

The writ petition stands disposed of.

**(SMT. ANUJA PRABHUDESSAI, J.)**

**[RANJIT MORE, J.]**