

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9835 OF 2017

AYG Realty Pvt.Ltd. ... Petitioner.  
V/s.  
State of Maharashtra and others. ... Respondents.

Mr.Ashish Kamat with Mr.Kunal Mehta i/b. Dipashri Raorane  
for the petitioner.  
Mrs.R.A.Salunkhe, AGP for respondent No.1.  
Mr.Rajdeep S. Khadapkar for respondent Nos.2 and 3.

CORAM : A.S.OKA AND P.N.DESHMUKH, JJ.

DATE : 29<sup>th</sup> January 2018

P.C.:

Heard the learned counsel for the petitioner, the learned AGP for respondent No.1 and the learned counsel for respondent Nos.2 and 3. Considering the narrow controversy involved in the petition, on 9<sup>th</sup> November 2017, this Court issued notice for final disposal of the petition at the admission stage.

2. The petitioner made an application for grant of development permission for carrying out construction on the subject land. By a communication dated 2<sup>nd</sup> February 2016, the Deputy Engineer of the Building Construction Department of the Pune Municipal Corporation rejected the said application. Being aggrieved by the said order, the petitioner preferred an appeal under section 47 of the Maharashtra

Regional and Town Planning Act, 1966 (for short “MRTP Act”). By communication dated 1<sup>st</sup> June 2017, the petitioner was informed that the appeal has been dismissed on the ground that it was time barred and though an application for condonation of delay was made, there was no provision to condone the delay. The petitioner was also informed that considering the report dated 20<sup>th</sup> October 2016 submitted by the Pune Municipal Corporation, necessary compliances shall be made by the petitioner.

3. The contentions raised by the learned counsel appearing for the petitioner are twofold. Firstly, he submitted that the application for development permission is rejected only on the ground that there were suits pending. The submission is that it was not mentioned in the communication dated 2<sup>nd</sup> February 2016 that there was any prohibitory order which was preventing the Municipal Corporation from considering the application for grant of development permission. The second submission is that the petitioner was not heard in appeal. He submitted that on one hand, the appellate authority has rejected the appeal on the ground that it is barred by limitation and, on the other hand, there is some observation on merits.

4. The learned counsel appearing for the second and third respondents invited our attention to the report dated 20<sup>th</sup> October 2016 submitted by the Municipal Commissioner of the Pune Municipal Corporation to the Principal Secretary No.1, Urban Development Department of the State of Maharashtra in response to an appeal preferred by the petitioner under section 47 of the MRTP Act. He submitted that detailed reasons have been set out in the said report. The

learned AGP has produced for the perusal of the Court, a file of the appeal. It shows that one Mr.Pravin Kule attended the hearing on 18<sup>th</sup> March 2017 before the Hon'ble Minister of Urban Development Department. She invited our attention to the decision which is at pages 1 to 3 of the file.

5. We have perused the note and the other documents in the file. It is a note prepared by the Officer of the Urban Development Department on 24<sup>th</sup> November 2016. In the said note, there is absolutely no reference to any hearing given to the petitioner's representative or any submissions made by the petitioner's representative. The note firstly bears the signature of one Shri Sanjay Savji. Thereafter, there is a noting by the Director of Town Planning that the appeal may be dismissed as it is time barred. Below that, there are signatures of the Principal Secretary of the Urban Development Department and the Hon'ble Minister of the State. Admittedly, there is no order passed by the Hon'ble Minister himself. On the basis of the said noting approved by the said Hon'ble Minister that the impugned communication has been issued by the State Government. Thus, the decision of the State Government is clearly in breach of the principles of the natural justice inasmuch as the note does not show that any opportunity of being heard was granted to the petitioner. Even assuming that the representative of the petitioner was present on 18<sup>th</sup> March 2017, the said note is drawn on 24<sup>th</sup> November 2016 which is, ultimately, signed by the Hon'ble Minister in December 2016.

6. In our view, an appeal under section 47 of the MRTTP Act could not have been decided in such a manner. It was the duty of the Appellate Authority to give hearing to the petitioner on the issue of bar of

limitation and thereafter the Appellate Authority ought to have passed an order dealing with the appeal/ application for condonation of delay. Therefore, the impugned order passed in appeal cannot be sustained.

7. What was challenged by way of appeal was a letter dated 2<sup>nd</sup> February 2016 by which an application for grant of development permission was rejected. It records that as there were two civil suits pending in respect of the subject property, an opinion of the legal department was sought and the said opinion records that considering the pendency of the suits, the proposal for development permission cannot be considered. The letter does not record that as a result of any prohibitory order passed by the civil Court, the Municipal Corporation was prevented from considering the application.

8. In the report dated 20<sup>th</sup> October 2016 submitted by the Municipal Corporation to the State Government on the basis of the appeal preferred by the petitioner, apart from making a reference to the pendency of the suits, altogether different reasons have been recorded. It is stated that appropriate marginal distance is not available and that additional construction of staircase has been carried out contrary to the sanctioned plan. These two reasons have not been mentioned in the order by which the application for grant of development permission was rejected.

9. In normal course, we would have remitted the appeal under section 47 of the State Government. However, we find that the reasons given by the Municipal Corporation in communication dated 2<sup>nd</sup> February 2016 cannot be sustained at all. Therefore, it would be appropriate if the

Municipal Corporation is directed to reconsider the application for grant of development permission made by the petitioner.

10. Accordingly, we dispose of this petition by passing the following order:

- (i) The communication dated 2<sup>nd</sup> February 2016 (Exh.K to the petition) and communication dated 1<sup>st</sup> June 2017 (Exh.R to the petition) are hereby quashed and set aside;
- (ii) We direct the appropriate officer of the second respondent- Municipal Corporation to reconsider the application for development permission made by the petitioner in accordance with law;
- (iii) An appropriate order shall be passed on the said application as expeditiously as possible and, in any event, within a period of six weeks today;
- (iv) The said order to be communicated to the petitioner;
- (v) All contentions on merits are kept open;
- (vi) Rule is partly made absolute in the above terms.

(PN.DESHMUKH, J.)

(A.S.OKA, J.)