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

WRIT PETITION NO. 10581 OF 2016

Shri Balu Nivrutti Sutar

... Petitioner

Versus

State of Maharashtra & Ors

... Respondents

Mr. Rajiv Patil, Senior Advocate i/b Mr. Vishal Laxman Kolekar, for the Petitioner.

Mr. R.A. Salunkhe, AGP for Respondent No.1.

Mr. Rajdeep S. Khadapkar, for Respondent No.2.

Mr. M.V. Thorat, for Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATED: 11TH APRIL 2018.

PC:-

1. Not on board. Taken on board.
2. Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the Respondent Nos. 2 and 3 and the learned Assistant Govt. Pleader for the Respondent No.1. Yesterday, we had put the parties to the notice that this Petition will be heard and disposed of immediately.
3. The Petitioner preferred an Appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966. By the impugned communication dated 10th August 2016, the Appeal has been dismissed. The communication is signed by the Under

Secretary of the Urban Development Department of the State Government. The impugned communication records that an Appeal was preferred against two orders mentioned therein by which the applications for grant of development permission were rejected. It is stated that there is a prayer made for stay of action of demolition on the basis of order dated 19th October 2015 of demolition. All that the communication records is that there was a meeting held in the presence of Hon'ble Minister of State, Urban Development Department on 13th January 2016 and that he has been directed to communicate the conclusions which are recorded therein. The two conclusions mentioned therein are that the Petitioner is not the owner of the land and the Petitioner has carried out an illegal construction which cannot be regularised.

4. Firstly, it is apparent that no order has been passed by the Appellate Authority itself for deciding the Appeal under Section 47 of the MRTP Act which by its very nature is a quasi judicial proceedings. An officer of the rank of Under Secretary has been told to communicate certain conclusions. It is not stated in the letter that the said conclusions have been drawn by the Appellate Authority by passing a reasoned order. It is merely stated that in connection with the meeting held on 13th January 2016, the Under Secretary has been directed to communicate the

conclusions. On plain reading of the said communication, the manner in which the Appeal is dealt with by State Government is completely illegal. In Writ Jurisdiction under Article 226 of the Constitution of India, the manner in which the Appeal has been disposed of cannot be countenanced. Therefore, by setting aside the said order, we propose to direct the Appellate Authority to hear the Appeal afresh.

5. Accordingly, we pass following order:-

a) The impugned communication dated 10th August 2016 is hereby quashed and set aside;

b) Parties are directed to appear in the office of Appellate Authority on 25th April 2018 at 3.00 p.m. for fixing the schedule of hearing.. The Appellate Authority will ensure that Appeals is decided as expeditiously as possible and in any event on or before 31st May 2018 by passing a reasoned order. The order passed on the Appeal be communicated to the Petitioner as well as the Respondent No.3;

c) Till the disposal of the Appeal, the protection granted to the Petitioner under the order dated 30th November 2015 in Writ Petition No. 11602 of 2015 will continue to operate. If

the order of the Appellate Authority be adverse to the Petitioner, the limited protection will continue to operate for period of two weeks from the date on which the order is communicated to the Petitioner;

d) We make it clear that we have made no adjudication on merits of the controversy in Appeal and all issues are kept open.

e) The Petition is disposed of on the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)