

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

WRIT PETITION (L) NO.765 OF 2019

M/s Grace Urban Development
Corporation

... Petitioner

Versus
Tahsildar, Taluka Kurla,
And Others

... Respondents

.....

Mr. Arun Panickar for the Petitioner.
Mr. H.B. Takke, AGP for the Respondents.

.....

CORAM : S.C. GUPTE, J.

DATE : 14 MARCH 2019

P. C. :

. Heard learned Counsel for the parties.

2 **Rule.** Rule taken up for hearing forthwith by consent of learned Counsel for both parties.

3 This petition challenges an order passed by Sub-Divisional Officer, Mumbai Eastern Suburbs, on 20 February 2019. The Petitioner had filed an appeal challenging an order passed by Respondent No.1 Tahsildar under Section 48(7), (8) of Maharashtra Land Revenue Code, 1966 ("Code"), concerning unauthorized minor mineral excavation. The appeal was under Section 247 of the Code. Pending disposal of the appeal, the Code provides for stay of execution of the order in accordance with Section 256 of the Code. The Appellate Authority, under sub-section (2) of Section 256 of the

Code, has power to stay execution of the order appealed from for such time as it may think fit. A proviso has been added to this sub-section by Maharashtra Act 27 of 2016, which came into force with effect from 22 August 2016. By virtue of this proviso a deposit of 25 per cent of the amount is required, in case the order appealed from involves payment of any amount to the Government, before ordering stay of execution of the order. The impugned order communicates the Appellate Authority's proposal to reject the appeal itself, if 25 per cent of an amount involved in the appeal is not deposited by the Petitioner (the appellant before the authority). Obviously, deposit of 25 per cent amount involved in the appeal or want of it reflects on whether or not execution of the order appealed from should be stayed. Its has no implication in so far as the merits of the appeal are concerned. **Rule** is accordingly made absolute and the impugned notice dated 20 February 2019 is quashed and set aside to the extent it proposes rejection of the Petitioner's appeal for non-deposit of 25 per cent amount. It is made clear that the Respondents would be within their rights to execute the impugned order of Respondent No.1 Tahsildar dated 15 March 2018, in the event the Petitioner refuses to deposit 25 per cent of the amount ordered to be paid by the order dated 15 March 2018. It is expected that the Appellate Authority shall decide the Petitioner's appeal as expeditiously as possible.

(S.C. GUPTE, J.)