

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.1243 OF 2019**

S.D. Corporation Private Limited

....Petitioner

vs

The Maharashtra Housing And Area
Development Authority And 13 Ors.

...Respondents

.....

Mr. Vineet Naik, Senior Advocate, a/w. Mr. Nikhil Sakhardande, Mr. Abinash Pradhan, Mr. Aryan Srivastava and Mr. Viren Mandhle, i/b. Wadia Ghandy & Co., for the Petitioner.

Mr. P.G. Lad, for Respondent Nos. 1 and 2 – MHADA.

Mr. Saket Mone, i/b. Vidhii Partners, for Respondent No.3.

Mr. B.N. Shukla, for Respondent Nos. 5 to 14.

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CORAM : S.C. GUPTE, J.**DATED: 2 MAY 2019****P.C.:**

. This writ petition challenges an order passed by Executive Engineer, MHADA, in an application for summary eviction under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (“Act”). The impugned order, it appears, has been passed by the Executive Engineer on the basis of an order passed by a Division Bench of this Court on 3 April 2019 in Writ Petition (L) No.781 of 2019. By that order, the Division Bench had noted the statement made by learned

Counsel for MHADA that Executive Engineer would decide the pending proceedings under Section 95A of the Act within two weeks. The Division Bench noted that whilst passing any order under Section 95A, the competent authority of MHADA should follow the procedure prescribed by law. It appears that in pursuance of these directions, the impugned order was passed by the Executive Engineer. By the impugned order, the Executive Engineer chose not to decide the application under Section 95A, but to keep it in abeyance. This was impermissible. The Executive Engineer was required to decide the application one way or the other; he could not have kept it in abeyance. Mr. Lad, appearing for MHADA, does not refute this position. This petition can, accordingly, be conveniently disposed of by directing the Executive Engineer to decide the pending application under Section 95A of the Act in a time bound schedule. Even the grievance of Respondent Nos. 5 to 14 in the present petition, and which has been voiced in the affidavit-in-reply filed by them in the present petition, can be considered by the Executive Engineer whilst disposing of the application under Section 95A.

2. Accordingly, the petition is disposed of in terms of the following order:

(i) The impugned order of the Executive Engineer, Borivali Zone/Mumbai Board of MHADA, dated 12 April 2019, is quashed and set aside and the application is remitted to the Executive Engineer for a fresh hearing in accordance with law;

(ii) The application shall be decided by the Executive Engineer

within a period of four weeks from this order being pointed out to him. The parties appearing before this Court may, to that end, bring this order to the notice of the Executive Engineer by producing an authenticated copy on 7 May 2019 at 11.00 a.m.;

(iii) The Executive Engineer shall hear all stakeholders, including Respondent Nos. 5 to 14, on the merits of the application under Section 95A of MHADA Act before passing any order;

(iv) Considering the urgency of the matter, all parties shall cooperate in the matter of expeditious disposal of the application under Section 95A in accordance with this order.

(S.C. GUPTE, J.)