

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8708 OF 2018

Balaji Garden Tower No.6 CHSL
through the Chairman

....Petitioner

V/S

State of Maharashtra & Ors.

....Respondents

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Ranjit D. Shinde for the
Petitioner.

Mr. Y.D. Patil, AGP for Respondent Nos.1 to 4-State.

Mr. Sandeep D. Shinde for Respondent No.5-KDMC.

Ms. Ritika Agarwal for Respondent No.6.

...

**CORAM : A.A. SAYED &
ABHAY AHUJA, JJ.**

DATE : 1 MARCH 2022.

P.C.:

1 The Petition is filed seeking the following reliefs:

“[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the order dated 12th February, 2015, bearing No.K2M-1012/1500/ pra.kra.194/12/navi/28 issued by the Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai 400 032, as illegal and bad in law.”

2 Learned Counsel for the Petitioner has invited our attention to section 51 of the Maharashtra Regional & Town Planning Act, 1966, which reads as follows:

“51. Power of revocation and modification of permission to development.

(1) If it appears to a Planning Authority that it is expedient, having regard to the Development Plan prepared or under preparation that any permission to develop land granted or deemed to be granted under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that—

(a) where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;

(b) where the development relates to a change of use of land, no such order shall be passed at any time after the change has taken place.

(2) Where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject

to the provisions of section 19, such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the court; and the decision of the court shall be final and be binding on the owner and Planning Authority.”

(emphasis supplied)

3 It is not in dispute that prior to passing the impugned order dated 12 February 2015, no opportunity of being heard was given to the Petitioner as contemplated under section 51 of the MRTP Act. In the circumstances, we set aside the impugned order and remit the matter back to the State Government to pass a fresh order. In the event, the State Government passes a fresh order, the State Government would grant an opportunity of hearing to the Petitioner as well as Respondent No.6-M/s. Mahavir Enterprises prior to passing of such order.

4 The Writ Petition is disposed of in the aforesaid terms.

(ABHAY AHUJA, J.)

(A.A. SAYED, J.)

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