

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11962 OF 2024

Ruturang Developers LLP

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

.....

Mr. A. V. Anturkar, Senior Advocate for the Petitioner.

Mr. J. P. Patil, AGP for Respondent- State.

CORAM : R. M. JOSHI, J.

DATED : 26th AUGUST, 2024.

P.C. :

1. Heard.

2. The petitioner is aggrieved by the stay granted to the Measurement proceedings No. 34459 of 2021 by the District Superintendent of land record, in an appeal filed by the respondent No.3. Learned Senior counsel appearing on behalf of the petitioner raised objection to the impugned order on the ground that the order has been passed without condonation of delay in filing the appeal, which is not permissible in law. He supports his contention by relying upon the Judgment of the Hon'ble Supreme Court in the case of *State of West Bengal and others vs. Somdeb Bandyopadhyay and others*¹, wherein it is held that without condoning delay even writ cannot be entertained by the

¹ (2009) 2 SCC 694

High Court. He further submits on the basis of the documents placed on record contend that the order impugned came to be passed without hearing petitioner and this fact according to him gets reflected from the roznama dated 06.08.2024. A solemn statement is made that on the basis of the said measurement, commencement certificate has been obtained by the petitioner and the construction on the subject property has come up over plinth level, as reflected from photograph placed on record.

It is his submission that on the basis of impugned order respondent No.3 has approached to the Planning Authority for stay of the construction.

3. *Prima facie* petitioner has made out arguable case to challenge order on ground of power to grant stay without condonation of delay and also violation of principles of *Audi alteram partem*. Hence, issue notice to the respondents, returnable on **25th September, 2024**. Learned AGP Mr.Patil, waives service of notice for the State.

4. Till the next date of hearing there shall be stay to the impugned order.

(R. M. JOSHI, J.)