

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3449 OF 2024

Eskays Land Developers Pvt Ltd ...Petitioner
Versus
Maharashtra Housing and Area Development
Authority & Ors ...Respondents

Ms Punita Arora, with Puneet Arora, Manish A Kukreja & Richa
Sukhla, i/b Arora & Co, for the Petitioner.
Mr PG Lad, for MHADA-Respondent Nos. 1 to 4.
Mr Pradeep Kadam, for Respondent No.5.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 19th July 2024

PC:-

1. Heard the learned counsel for the parties.
2. The Petitioner challenges order dated 20th June 2022 made by the Maharashtra Housing and Area Development Authority ("MHADA") Officials certifying the premises held by the 5th Respondent as commercial premises.
3. Ms Arora the learned counsel for the Petitioner submits that the impugned order was made without granting the Petitioner any

opportunity of hearing. She submits that upon the Petitioner becoming aware of the certification, the Petitioner has represented to the Vice President and Chief Executive Officer of MHADA who is the Appellate Authority in terms of Government Resolution (GR) dated 16th August 2010. She submits that though this representation/appeal was made on 27th February 2023, till date, the representation/appeal has not been disposed of. She submits that as a result, the Petitioner is forced to provide transit commercial premises to the 5th Respondent.

4. In terms of the GR dated 16th August 2010, any parties aggrieved by the decision of the Chief Officer regards certification, can file a first appeal to the Vice Chairman and the Chief Executive Officer of MHADA within 45 days from the receipt of the order. In this case, the Petitioner claims that it was not served with the order of the Chief Officer. However, upon coming to know of such order, the representation/appeal was made on 27th February 2023.

5. Accordingly, we direct the Vice Chairman and the Chief Executive Officer to dispose of Petitioner's appeal as expeditiously as possible and in any event within four weeks from today, i.e., on or before 16th August 2024. Such appeal must be disposed of after giving an opportunity of hearing to the Petitioner and the 5th Respondent. The 5th Respondent is granted a week's time to file additional documents before the Appellate Authority after giving advance copies of the same to the Petitioner.

6. In case any of the parties are aggrieved by the decision of the first Appellate Authority, then, in terms of Clause 8 of the GR dated 16th August 2010, another appeal lies to the Government. Therefore, the aggrieved parties are free to avail of this remedy provided under the GR.

7. The Appellate Authority must decide the appeal in accordance with law and after complying with principles of natural justice and fair play. The Appellate Authority must also pass a reasoned order and communicate the same to the parties. Mr Lad the learned counsel for the MHADA, who, on our request, has appeared on behalf of the MHADA states that the Petitioner and the 5th Respondent may be directed to appear before the Appellate Authority on 22nd July 2024 at 11:00 am. The Petitioner and the 5th Respondent are so directed to appear before the Appellate Authority on 22nd July 2024 at 11:00 am.

8. At this stage, we clarify that we have not examined merits of the rival contention because these are matters that will have to be looked into in the first instance by the Appellate Authority. Therefore, all contentions of all parties are left open. However, the Appellate Authority should decide the appeal on merits and not non-suit the Petitioner on the ground that the appeal was not instituted within 45 days. This is more so because the Petitioner claims that the impugned order was made without hearing the Petitioner and in any case, the impugned order was never communicated to the Petitioner. Even this contention about alleged

failure of natural justice should be examined by the Appellate authority.

9. The Petition is disposed of. No costs.

10. All concerned must act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)