



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5632 OF 2024

(Sau. Swapnaja W/o Ritesh Shrinagare & Ors.

Vs.

The State of Maharashtra, Thr. Principal Secretary, Urban Development
Department, Mantralaya, Mumbai & Ors.)

Office Notes, Office Memoranda
of Coram, Appearances, Court's
orders or directions and
Registrar's orders

Court's or Judge's orders

Mr. M.I. Dhatrak, Advocate for the Petitioners.
Mr. A.J. Gohokar, AGP for the Respondent No.1/State.
Mr. A.P. Kalmegh, Advocate for the Respondent No.2.
Mr. Abhay Sambre, Advocate for the Respondent No.3.

CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATED : 16th DECEMBER, 2024

Heard.

2. The Petition which questions the grant of permission under Section 45 of the Maharashtra Regional & Town Planning Act, 1966 (for short "Act of 1966") to the Respondent No.3 by the Respondent No.2, for construction of additional floor on an existing building which was completed in the year 2016, is being objected to, on the ground that a remedy of appeal is available to the Petitioners who are the flat owners in the completed building, under Section 47(1) of the Act of 1966.

3. Mr. Dhatrak, learned Counsel for the Petitioners,

submits that such an appeal is not available to the Petitioners as the language of Section 47(1) of the Act of 1966 speaks about “any applicant” which would relate to person who makes an application under Section 45 of the Act of 1966.

4. Considering the nature of the proceedings and specifically the fact that the building in terms of earlier granted permission under Section 45 of the Act of 1966 already stood completed in the year 2016 and the Petitioners have been placed in possession of various apartments who also have sale deeds of undivided shares in the land in their favour, we do not see any reason to restrict the meaning of the expression “any applicant”, as occurring in Section 47(1) of the Act of 1966, only to the person making the application under Section 45 of the Act of 1966, for a revised plan. This is also for the reason that while making such an application, the Respondent No.3 is doing so, under the authority claimed to have been vested in him, by the Petitioners who are the joint land owners, in terms of the various clauses as contained in the sale deeds executed in their favour by the original land owners.

5. Viewed in this manner, the application for revised sanction, should also be termed as an application on behalf of the Petitioners, considering which, they would also fall within the meaning of the expression “any applicant” as occurring in Section 47(1) of the Act of 1966. In that view of the matter, we have no hesitation to hold that an appeal at the behest of the Petitioners who are the flat owners and owners of undivided shares in the land, would be maintainable under

Section 47(1) of the Act of 1966 to challenge any permission granted or refused under Section 45 of the Act of 1966.

6. Since such an appeal as already been preferred by the Petitioners on 09.08.2024 to the appropriate authority (page 76), the same shall be entertained and decided by the Appellate Authority within a period of three months from the date on which a copy of this order is placed before it.

7. The learned Counsel for the Respondents, undertakes to appear in the appeal without any further notice being required to be issued to them.

8. The learned Counsel for the Petitioners, shall intimate to them the date on which the appeal would now be fixed for consideration.

9. The Petition is accordingly **disposed** of in view of the above terms. No costs.

10. Pending application/s, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)