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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 161 OF 2023

Maharashtra Housing And Area Development Authority ...Petitioner
Versus
Airport Authority of India &Anr ...Respondents

Mr Akshay Shinde, *for the Petitioner.*
Mr Rakesh Singh, *i/b MV Kini & Co, for the Respondent-AAI.*
Mr LT Satelkar, *AGP, for the Respondent-State.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 10th January 2024

PC:-

1. This Petition automatically rejects itself.
2. The Maharashtra Housing And Area Development Authority (“MHADA”) comes to Court invoking our Writ jurisdiction seeking that a decision of an Appellate Authority of 15th December 2021 be quashed. MHADA proposed a construction for middle or low-income housing of 560 tenements of a building of a height of 115.54 mtrs, or nearly 40 floors. Why MHADA needs a building of 40 floors is unexplained. But this falls within four kilometre radius of the Chhatrapati Shivaji Maharaj International Airport

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(“CSMIA”) run by the Mumbai International Airport Ltd (“MIAL”). The Airport Authority of India (“AAI”) has specified height restrictions within various radial distances measured from an established starting point or perimeter. These follow internationally mandated aviation safety standards and norms. The height restrictions is sloped: the closer to the airport, the lower the permissible height. Taller buildings are permitted at further distances. The reasons are obvious. There are no exemptions just because these are middle-income group housing scheme or because the Petitioner-Applicant is MHADA. The maximum permissible height was set at 58.48 mts and this was communicated to MHADA. It filed an appeal. The Appellate Authority granted permission of 96.68 mts.

3. This is challenged.

4. Only because the impugned order is of the Appellate Authority of the Ministry of Civil Aviation and presumably has at the fore-front in its mind and decision-making processes concerns of civil aviation safety as paramount, we say nothing further in that regard.

5. MHADA certainly cannot claim a legal, let alone constitutional, right to a taller building. It cannot contend that civil aviation safety standards should not apply to it. It cannot contend that merely because this is a MHADA project, its exceeding a mandated heights poses no danger to civil aviation. We are even more reluctant to accept the proposition, one that paints a quite

startling picture, of aircraft at CSMIA weaving and swooping around an oversized MHADA tower as they take off or land.

6. There is no question of an arbitrariness. If anything, the appellate authority order is favourable to MHADA. Left to ourselves, we would have insisted on the AAI-prescribed much lower height. MHADA is not being selectively targeted for the height restriction. If anything, it is the other way around. We trust the Appellate Authority is aware that if it permits a relaxation to MHADA, it will be required to permit that very relaxation to every other applicant or developer, including a private developer. No relaxation of civil aviation safety norms can be granted only because the project proponent is a public authority. Aviation safety has nothing at all to do with the identity of the developer.

7. Such a Petition was never to have been filed and certainly not by a responsible public authority.

8. The Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)