

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10863 OF 2013

Niyaz Abdul Gafoor Shaikh	..	Petitioner
vs.		
Deputy Collector (Encroachment and Removal) & Anr.	..	Respondents

Ms Shabana Sothe for Petitioner.

Ms Aparna Vhatkar – AGP for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 03 MARCH 2015

P.C. :-

1] Rule. With the consent and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 4 September 2012 made by the Administrator and Divisional Commissioner, Konkan Division, declaring the petitioner as ineligible to avail the benefits of rehabilitation. The learned counsel for the petitioner submits that the petitioner is entitled to the benefit of the Government Resolution dated 2 January 2012, in the matters of determination of his eligibility. However, the said G.R was not available at the time when submissions were made before the Administrator.

3] In this case, the petitioner was already granted a tenement by way of rehabilitation. However, upon further enquiry, in pursuance of orders made by this Court in public interest litigation no. 49 of 2008, the petitioner came to be declared as ineligible. The petitioner however continues to stay in the tenement allotted to him by way of rehabilitation. It is now the case of the petitioner that if the G.R dated 2 January 2012 is taken into consideration, then the petitioner fulfills the eligibility criteria prescribed.

4] In view of the aforesaid, without going into the merits of the matter, it would be appropriate if the petitioner's case is reconsidered by the Authorities. Accordingly, the impugned order made by the then Appellate Authority is set aside. The petitioner's appeal is restored to present Appellate Authority i.e. Additional Collector (Western Suburbs) for fresh determination in accordance with law. The Appellate Authority to consider the effect of G.R dated 2 January 2012 upon the aspect of eligibility of the petitioner.

5] It is clarified that this Court has not examined the merits of the matter and accordingly all contentions are left open for decision by the Appellate Authority.

6] The petitioner to appear before the Appellate Authority on 16 March 2015 at 11.00 am. along with authenticated copy of this order.

7] The Appellate Authority is requested to dispose of the petitioner's appeal in accordance with law and on its own merits within a period of three months from today.

8] All parties to act on the basis of an authenticated copy of this order.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka