

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 34101 OF 2015

M/s Aundh Gas Agency
through its Partner
Mrs. Usha Kotbagi

.. Petitioner

vs.

Estate Officer, CSIR - National
Chemical Laboratory, Pune and anr.

.. Respondents

Mr. S.S. Kanetkar for the Petitioner.
Mr. K.P. Anilkumar for Respondents.

CORAM : M. S. SONAK, J.

DATE : 17 DECEMBER 2015.

P.C. :-

1] Heard the learned counsel for the parties.

2] The learned counsel for the Petitioner has taken me through the records for the purpose of attempting to make out a case that the Estate Officer in this case is biased and the proceedings ought to be transferred to some other Estate Officer.

3] From the records, to which learned counsel for the Petitioner has taken me, it is apparent that the Petitioner is bent upon delaying the proceedings before the Estate Officer and it is only for this purpose they have gone to extent of making charges of bias against the Estate Officer. The attempts appear to be to delay the

proceedings as much as possible, so that there is no occasion for the Estate Officer to get into the merits of the matter and make a decision upon the merits.

4] In support of the contention that the Estate Officer is biased, learned counsel for the Petitioner has contended that the Estate Officer had initially declined permission to the Petitioner to be represented by a lawyer. However, from the record it is clear that the Estate Officer has only expressed *prima-facie* opinion. Thereafter the very Estate Officer permitted the Petitioner to be represented by advocate and the Petitioner is in fact being represented by advocates.

5] There is a complaint made that the Estate Officer has not accurately recorded the minutes/roznama. Upon further probe, it appears that on one or two occasions, the Estate Officer may not have stated that the circumstance that the Respondents were not present whilst the Petitioner or their representatives were present. This is, too trivial a circumstance to alleged bias. Though Mr. Kanetkar is right that the roznama must, reflect the factual state. Thirdly, it is contended that even though the Petitioner had till date not filed any reply, the Estate Officer proceeded to frame the issues.

If, the order framing issues is perused, it is clear that the issues framed are the usual issues which arise in eviction proceedings under the Public Premises Act. The learned counsel for the Petitioner may be right that unless reply is filed, there is no question of framing of issues because the authority will not be in a position to decide the controversy between the parties or to decide as to what are the issues, which actually arise. However, though, notice was issued to the Petitioner in September 2015, for one reason or other the Petitioner had been avoiding filing of reply. In these circumstances, the issues came to be framed. The decision to frame issues, may be wrong, however, by no means, the same is indicative of any bias on the part of Estate Officer.

6] From the records as also submissions made before the Estate Officer, it is more than apparent that the Petitioner attempts to delay the proceedings before the Estate Officer. It is in furtherance of this very objective that the allegation of bias have been levelled against the Estate Officer. The jurisdiction under Articles 226 and 227 of the Constitution of India cannot be exercised to further such purposes.

7] In the detailed order made by the Estate Officer, seeking his

own recusal, it does appear that some observations have been made. The learned counsel for the Petitioner submits that these are observations on the merits of the matter. Upon closer examination, it cannot be said that these are observations on the merits of the matter. The Estate Officer has only attempted to answer the issue of bias, which is alleged against him. Since provocative arguments of all sorts were raised before him, there may be some response to those arguments. However, it cannot be said that the Estate Officer is biased or that the Petitioner is entitled to have or have any reasonable apprehension of bias, insofar as the Estate Officer is concerned.

8] Notwithstanding all this, in case, the Petitioner desires to file a reply on the merits, it may do so on or before 31 December 2015. Further, the Estate Officer is directed to afford the Petitioner reasonable opportunity, in accordance with rules, for the purposes of their defence. The Estate Officer must also remember that he acts in a *quasi judicial* capacity. Therefore, he must neither get provoked nor must he deny the parties before himself reasonable opportunity in the matter. Procedural fairness is undoubtedly important. At same time, the petitioners cannot be permitted to stretch the concept of

procedural fairness too far and completely disable the Estate Officer from proceeding with merits of the matter. Issues with regard to public premises have to be resolved one way or other, with reasonable despatch. The Estate Officer is therefore directed to dispose of the proceedings, in accordance with law and within a period of four months from today.

9] There is no merit in this petition. This petition is dismissed. The Petitioner to pay costs of Rs.10,000/- to Respondent No.2.

10] All contentions of all parties on merits of the matter are kept open for decision by the Estate Officer.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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