

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11729 OF 2014

Bharat Dalit Sevak Sangh.

.. Petitioner

Vs

State of Maharashtra and Others.

.. Respondents

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Shri Sandeep Phatak i/by Shri Sugandh B. Deshmukh for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondents.

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CORAM : A.S. OKA & A.K.MENON, JJ

DATED : 11TH FEBRUARY 2015

P.C.

. Heard learned counsel appearing for the Petitioner and the learned AGP for the Respondents.

2. The Petitioner is a Society registered under the Societies Registration Act, 1860 and consequently, a Public Trust under the Bombay Public Trusts Act, 1950. By a Government Resolution dated 26th April 1961, the land subject matter of this Petition which is more particularly described in Paragraph 3 of the Petition was allotted to the Petitioner. Terms and conditions of the allotment are incorporated in the said Government Resolution. On 2nd January 2008, a notice was issued by the District Collector, Pune to the President of the Petitioner calling upon the Petitioner to show cause as to why action should not be taken of the resumption of the said land on the ground of breach of the

terms and conditions. On 14th January 2008, there was a reply issued to the notice by the Petitioner which is annexed at Exhibit-D to the Petition. By the impugned order dated 17th October 2014 issued by the State Government, the said land was ordered to be resumed.

3. When this Petition was heard on the earlier date i.e. 2nd February 2015, the following order was passed.

“Heard learned counsel appearing for the petitioner and the learned AGP for the respondents. Apart from the other controversies raised in the petition, the issue is whether the petitioner was given an opportunity of being heard before passing the impugned order dated 17th October 2014. Before passing the drastic order, if the petitioner was not heard, prima facie, the impugned order may be illegal on that count. The other issue is which competent authority can take action. The learned AGP seeks time to take instructions. Place the petition on 11th February 2015. High upon board. Ad-interim relief granted earlier to continue till then.”

4. In response to the said order, the learned Government Pleader had sought instructions under the letter dated 3rd February 2015 to the District Collector, Pune. In reply to the said letter, the District Collector, Pune has addressed a letter dated 10th February 2015 to the Government Pleader, High Court (Appellate Side), Mumbai. The learned AGP has produced the said letter dated 10th February 2015 for perusal of this Court. On the first issue of giving an opportunity of being heard, it is stated in the said letter that on 26th March 2012, a

show cause notice was issued to the Petitioner. It is stated that the Circle Officer, Kothrud, visited the said land for service of the said notice when he found that the Chairman of the Petitioner was not found and the office of the Petitioner was not found. It is stated that a copy of the said show cause notice was affixed on the land in presence of the Panch witnesses. It is pointed out in the said letter that thereafter a verification was made at various levels and after coming to the conclusion that there was a breach committed by the Petitioner that the impugned order has been passed. Thus, the contention raised by the Collector is that the show cause notice dated 26th March 2012 was served by affixing.

5. It will be necessary to make a reference to the notice dated 2nd January 2008 addressed by the District Collector, Pune to the Petitioner which is Exhibit-C to the Petition. The said notice is addressed to the President of the Petitioner Society not at the address of the said land, but at the address of 207, Ghorpade Peth, Pune – 2. So the District Collector was aware of the address of the Petitioner. In fact, as stated earlier, the said notice was replied by the Petitioner. Notwithstanding the fact that the address of the Petitioner was available, the notice dated 26th March 2012 was purportedly served by affixing on the said land.

6. The impugned order is a drastic order by which a valuable land allotted to the Petitioner has been ordered to be resumed. Going by what is stated in the letter dated 10th February 2015 of the District Collector, an opportunity of being heard has been denied to the Petitioner. The District Collector was aware of the requirement of principles of natural justice and, therefore, the show cause notice dated 26th March 2012 was issued. However, the show cause notice was not served to the Petitioner though the Circle Officer, Kothrud, was aware of the correct address of the Petitioner. Therefore, only on the ground of the breach of the principles of natural justice that the order of resumption will have to be set aside.

7. It is obvious that it will be open for the Respondents to take action of resumption after giving an opportunity of being heard to the Petitioner.

8. The learned AGP urged that this is a case of breach of the terms and conditions as since the 1960, the land has not been used for the purpose for which the same has been allotted. Suffice it to say that the finding regarding the breach committed by the Petitioner will have to be recorded only after an opportunity of being heard is given to the Petitioner. Therefore, in this Petition, it is not necessary for us to go into the question whether breach has been committed by the Petitioner

and the said issue is left open to be decided by the Appropriate Authority of the State Government.

9. Hence, we pass the following order:

ORDER :

- (a) The impugned order dated 17th October 2014 (Exhibit-E to the Petition) only to the extent of the said land which is described in Paragraph 1 of the said order is hereby quashed and set aside only on the ground of the breach of principles of natural justice;
- (b) It will be open for the Appropriate Authority of the State Government to initiate action of resumption of the said land after following the principles of natural justice;
- (c) We make it clear that the order dated 17th October 2014 is quashed and set aside only as regards the said land and the order is maintained as far as the land specified in Paragraph 2 of the said order dated 17th October 2014 is concerned;

- (d) We make it clear that the issue whether the Petitioner has committed a breach is expressly kept open which shall be decided by the Appropriate Authority of the State Government;
- (e) It is obvious that the consequential action of taking over the possession of the land under the impugned order is also set aside;
- (f) All contentions of the parties are kept open;
- (f1) The Petition is accordingly disposed of;
- (g) The parties to act upon an authenticated copy of this order.

(A.K.MENON, J)

(A.S. OKA, J)