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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2831 OF 2015

Sushila Ramesh Kharat

..Petitioner.

V/s.

The State of Maharashtra and Ors.

..Respondents.

Mr.Rahul Kate i/b. Mr.Yuvraj D. Patil for the petitioner.

Mrs.Shobha Ajitkumar for respondent Nos.2 and 3.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 19TH OCTOBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second and third respondents.

2. Considering the limited controversy in the petition, the same is forthwith taken up for final hearing.

3. Our attention is invited to the order dated 3rd July, 2015 passed by the first Court in Notice of Motion (L) No.350 of 2015 in Public Interest Litigation No.140 of 2006.

4. The structure of the petitioner was required for the

purpose of creating a vacant buffer zone having width of 10 meters on both the side of Tansa Pipeline and for construction of protection wall.

5. To decide the issue whether the petitioner is eligible for rehabilitation, he was called upon to submit documents. The petitioner was heard by the Assistant Commissioner, T-Ward in the proceedings described as an appeal. By an order dated 30th April, 2015, the Assistant Commissioner, T-ward held that the petitioner could not produce any documents to show that her structure was in existence prior to 1st January, 2010. There was a second appeal preferred by the petitioner to the Deputy Commissioner (Zone-6). By an order dated 17th April, 2015, the Deputy Commissioner dismissed the second appeal.

6. We have perused the orders passed by both the Assistant Commissioner as well as the Deputy Commissioner. Both the orders have been passed in a pre-conceived format in which the only details filled in are the name of the appellant, the appeal number, the date of hearing of the appeal and the date of decision of the appeal. No reasons have been assigned and it is merely mentioned that documents produced by the petitioner have been examined.

7. The fact that a pre-concieved format of the order was kept ready by both the officers and only the aforesaid details are filled show complete non application of mind on the part of the said municipal officers. The issue was of entitlement of the petitioner to the allotment of premises by way of re-settlement. The petitioner's hut was removed for creation of 10 meters wide open corridor on both sides of Tansa pipeline as per the order of this Court in Public Interest Litigation No.140 of 2006. Both the officers were under an obligation to consider each and every document produced by the petitioner and to record a finding on the entitlement of the petitioner. The officers were under an obligation to record brief reasons.

8. As far as the petitioner is concerned, it is a very important question of making an accommodation available to her in lieu of her residential accommodation which has been taken away. The eligibility of the petitioner to secure an alternate accommodation could not have been decided in such a casual manner by the Assistant Commissioner as well as the Deputy Commissioner. Hence, both the orders stand vitiated. Accordingly, we pass the following order:-

- (i) Both the impugned orders dated 30th April, 2015 and 17th April, 2015 are quashed and set aside;

- (ii) The first appeal of the petitioner is restored to the file of the Assistant Commissioner, T-ward;
- (iii) We direct the petitioner to appear before the Assistant Commissioner, T-ward on 2nd November, 2015 at 11.00 a.m. for fixing the schedule for hearing;
- (iv) After giving an opportunity of being heard to the petitioner and after considering the documents produced by the petitioner, the Assistant Commissioner shall pass a reasoned order by recording reasons in brief;
- (v) While deciding the appeal, the Assistant Commissioner shall keep in mind the observations made by this Court in this order;
- (vi) In the event, there is an occasion for the petitioner to prefer a second appeal, it is obvious that the second appellate authority shall also decide the appeal after considering all the documents and by recording findings in brief;
- (vii) The petition is made absolute on the above terms;
- (viii) All concerned to act upon authenticated copy of this order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)