

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 131 OF 2013

Abhyudaya Co-operative Bank Ltd. ... Petitioner.
Versus
State of Maharashtra & ors. ... Respondents.

Mr. Rajeev Pandey i/b. PRS Legal, advocate for Petitioner.

Mrs. Anjali Helekar, AGP for respondent Nos. 1 and 2.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ
DATE : MARCH 18, 2015

P.C.:

1 Rule. Rule made returnable forthwith. Heard by consent of the parties.

2 The Petition challenges the order dated 8/12/2011 vide which the Petitioner has been directed to be evicted within a period of 6 months from the premises which the Petitioner has purchased from the respondent No. 3 in the year 1979.

3 Perusal of the order reveals that the respondent No. 2 has come
to the conclusion that the respondent No. 3 Society has breached
certain conditions which were imposed on the Society while allotting
the Government land to it.

4 It is the contention of the Petitioner that the impugned order
has been passed without giving an opportunity to the Petitioner. The
learned Counsel further submits that for the error committed by the
respondent No. 3, the present Petitioner cannot be penalised who is
the bonafide purchaser.

5 The learned AGP Mrs. Helekar on the contrary submits that the
Petitioner has an alternate remedy of approaching Divisional
Commissioner under Section 247 of the Maharashtra Land Revenue
Code, 1966 and in view that the petition could not be taken up.

6 Perusal of the impugned order would reveal that the order has
been passed only after giving notice to respondent No. 3. Perusal of

the order would clearly reveal that the Petitioner has not been heard while passing the order. It is settled principle of law that every order which adversely affects rights of the parties has to be preceded by the principles of natural justice. We find that since impugned order is in violation of principles of natural justice, the Petitioner cannot be non-suited only on the ground that alternate remedy is available. In any case, rule of non-exercising jurisdiction under Section 226 of the Constitution of India on the ground of availability of alternate remedy is a rule of self-restraint and here in the given case, if this Court's order is lateral in the breach of principles of natural justice, the Court would justified in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India inspite of availability of an alternate remedy.

7 In that view of the matter, the impugned order is not sustained in the law. The Rule is made absolute in terms of prayer clause (A). However, it is made clear that respondent No. 2 intends to take any action against the petitioner, the respondent No. 2 would be entitled

to do so in accordance with law, however, only after giving a notice and opportunity to be heard to the Petitioner. In the facts and circumstances of the case, no order as to costs.

(A.S. GADKARI, J)

(B.R.GAVAI,J)