

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 395 OF 2016

Pralhadkumar s/ Roshanlal Agarwal

.. PETITIONER

VERSUS

The District Collector, Nanded
& others

.. RESPONDENTS

Mr. A.A. Mukhedkar, advocate for petitioner.
Mr. S.B. Pulkundwar, AGP for the State.

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**CORAM : R.M. BORDE &
A.I.S. CHEEMA, JJ.**

DATE : 12th JANUARY, 2016.

PER COURT :

1. Petitioner is praying for issuance of directions to the Collector to take decision on the representation dated 28.12.2015 and to conduct an enquiry within stipulated period.

2. Petitioner claims that he was in possession of the commercial property for about forty years and the owner of the property in collusion with the officials of the Municipal Council proceeded to take action of demolition of the property. It is the contention of petitioner that the procedure as prescribed under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial townships Act, 1965, was not observed while conducting demolition activity. Petitioner states that as a result of demolition, he suffered loss to the tune of Rs. 30 Lacs and further loss of Rs. 2 Lacs on account of damage caused to the furniture. It is also further contended by him that an amount of Rs. 2 Lacs has been stolen from the premises. Petitioner seeks enquiry into the matter by District Collector.

According to petitioner, in view of section 89 of the act, the Collector is empowered to conduct enquiry. Section 89 of the Act reads thus :

89. Decision of claims to property by or against the Council :

(1) In any municipal area to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only, has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the Council, or by any person as against the Council, it shall be lawful for the Collector after inquiry of which due notice had been given, to pass an order deciding the claim.

(2) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector under sub-section (1) or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority as determined according to Section 204 of the Bombay Land Revenue Code, 1879, (Bom. V of 1879) (Hyd. VII of 1317 Fasli) (M.P. II of 1955). Section 158 of the Hyderabad Land Revenue Acts, or section 41 of the Madhya Pradesh Land Revenue Code, 1954, as the case may be, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has ad due notice of such order.

(3) (a) The powers conferred by this section on a Collector may also be exercised by an Assistant or Deputy Collector or by a Survey Officer or a Settlement Officer or Assistant Settlement Officer, as the case may be;

(b) the inquiry referred to in this section shall be conducted in accordance with the provisions relating to conduct of formal inquiry ordinarily contained in the relevant Land Revenue code or Act in force in the municipal area.

3. In our view, provisions of section 89 of the act are not attracted to the instant case and the provisions are applicable where any property or any right in or over any property is claimed by or on behalf of the Council, or by any person as against the Council. In the instant matter, neither the right is claimed on behalf of the Council or against the Council. It would be open for the petitioner to pursue alternate remedy and claim damages from the wrongdoers. With liberty as aforesaid, writ petition stands rejected.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE

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