

mm

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4588 OF 2016**

Ratan Banvarilal Sharma & Ors. ...Petitioners

Vs.

The Commissioner K.D..C. & Ors. ...Respondents

Ms. Yasmin Tawaria i/b. Mr. Sandeep Waghmare, Advocaate  
for the Petitioners

Mr. R.S. Apte, Senior Counsel a/w. Mr. Kashyap Bhalerao  
Advocate for Respondent Nos. 4 to 7

Mr. A.S. Rao, Advocate for Respondent Nos. 1 to 3

**CORAM : SHANTANU S. KEMKAR &  
M.S. KARNIK, JJ.**

**DATED : 16<sup>TH</sup> JUNE, 2016**

PC. :

Parties through their Counsel. The matter has been heard at length. During the course of hearing we have noticed that in the impugned order which has been passed by the Commissioner, the Commissioner has merely approved the notings of the Officers regarding granting permission to restart the work.

2. We find that a Division Bench of this Court on 20<sup>th</sup>

November, 2012 in Writ Petition No. 4738 of 2012 had passed following order:

*“Counsel for the applicants submits that in view of the subsequent arrangement arrived at between the parties and as recorded by the Commissioner in the Minutes dated 5<sup>th</sup> November, 2012, nothing survives for consideration in this petition. As a matter of fact, it is agreed that private parties would abide by the arrangement mentioned in the said Minutes dated 5<sup>th</sup> November, 2012. If there is any issue which the occupants would like to pursue, that issue be brought to the notice of the Commissioner, who can consider the same in accordance with the agreed terms and conditions specified in the Memorandum of Understanding and issue such directions as may be necessary.*

*In view of the above, Writ Petition as well as Civil Application is disposed of. The Commissioner assures compliance of the directions contained in the order dated 9<sup>th</sup> October, 2012.”*

3. In view of the aforesaid order when the issue was raised by the occupants before the Commissioner, the Commissioner himself ought to have heard and passed a reasoned order. Whereas in the present case we find that the Commissioner has not passed the order, but has approved the notings only. In the circumstances we have suggested the learned Counsel appearing for the Municipal Corporation as to whether in terms of the order passed by the Division Bench of this Court on 20<sup>th</sup> November, 2012 the Commissioner would pass a reasoned order himself. The learned Counsel appearing for the Corporation has fairly agreed to this suggestion.

4. Learned Counsel for the Petitioner submits that the Petitioner may be given one more opportunity of hearing before the Commissioner, to this learned Counsel appearing for the Corporation and for Respondent Nos. 4 to 7 submit that in fact when the earlier order was passed the Commissioner himself heard the Petitioner and the very same Commissioner is still in the office. In the circumstances we

feel that the principles of natural justice will be well served if the Petitioner is given an opportunity to submit written arguments before the Commissioner. Learned Counsel for the Petitioner submits that she will submit written arguments within 2 weeks.

5. Accordingly we direct that from the date of receipt of the said written arguments the Commissioner shall pass a speaking order within 2 weeks in regard to the points as may be raised by the Petitioner in the written arguments. The Petitioner to raise all the points in the written arguments comprehensively including the grounds raised in the Writ Petition.

6. Needless to say that this Court has not decided any point on the merits of the case and the Commissioner shall be free to decide the matter in accordance with law.

7. At this stage learned Counsel appearing for Respondent Nos. 4 to 7 submits that the Respondent Nos. 4 to 7 may also

be granted liberty to submit their written arguments before the Commissioner. The prayer is accepted. Respondent Nos. 4 to 7 are also at liberty to file their written arguments before the Commissioner within the aforesaid period of two weeks.

8. With the aforesaid directions the Petition is disposed of accordingly.

**(M.S. KARNIK, J.)**

**(SHANTANU S. KEMKAR, J.)**