

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (L) NO.1724 OF 2016

RAJKUMAR SINGH CHAUHAN

)...PETITIONER

V/s.

DEPUTY COLLECTOR (ENCROACHMENT /)

EVICTION & COMPETENT AUTHORITY,)

COLABA & ANR.

)...RESPONDENTS

Ms.J.P.Thakkar a/w. Mr.Shaikh Shafi Ahmed, Advocate for the Petitioner.

Mr.Bharat Mehta, AGP, for the Respondent – State.

Dr.Padamashri Shriram Bainade, Dy.Collector Enc./R & Competent Authority, Colaba Division, present in court.

**CORAM : S.C.DHARMADHIKARI &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 29th JUNE 2016.

P.C. :

1 At the request of Shri Mehta, this matter was posted today only because on 27th June 2016, when it was again mentioned by the petitioner, Mr.Mehta stated on oral instructions that before the ad-interim order was passed by this court on 26th

June 2016, the structure was already demolished. Pertinently, this order was passed at about 11.30 a.m. on 26th June 2016. On that date, the petitioner's advocate mentioned the matter because the structure, according to her, was to be demolished by 11.00 a.m. on 27th June 2016. That is why an emergent protection was required according to the petitioner's advocate and as she was instructed to so state. That is how the matter was taken up at the residence of one of us, and when it was stated that advance intimation was given by the petitioner's advocate of the mentioning at the residence. Since none was present, a limited protection was granted till 27th June 2016, and the matter was directed to be mentioned on that date. When it was so mentioned, Mr.Mehta appeared on behalf of the respondents. The Deputy Collector instructed him to make a statement that the structure was already demolished on Friday, 24th June 2016. Though the petitioner's advocate was desirous of withdrawing the petition with liberty to file a statutory appeal and apply for stay therein, in view of this statement of Mr.Mehta, we did not pass final order but deferred it till today. Today, the Deputy Collector (Encroachment / Eviction)

is present in court. She admits that she is the Competent Authority for carrying out demolition. However, no affidavit has been filed, and what is purported to be an official record of the demolition carried out on 24th June 2016 was handed over to us for perusal in court. We found that, there is a document styled as panchnama, stated to be recorded on the date of demolition and after the same was carried out. That was drawn up in the presence of two panchas, who are stated to have signed it. The panchnama is not in a any format but on a plain sheet of paper. In the regime of the Right to Information Act, 2005, maintenance of records in such a manner may invite serious legal consequences. However, we find that the next document equally a blank sheet or paper dated 23rd June 2016 is also styled as panchnama, but the explanation orally given is that it records the service of the notice of demolition and is not a record of the demolition itself.

2 We leave this matter at that and do not enter into a dispute, which is factual in nature. However, beyond noting the oral version of this Deputy Collector coming through Mr.Mehta,

we clarify that we have not vacated our ad-interim order. It would be entirely for the Appellate Authority to satisfy himself / herself as to whether prior to the order passed by this court, the demolition was carried out and completed or otherwise. Based on this independent satisfaction, which can be prima facie, he/she may either pass an order on the stay application or on the appeal itself.

3 While granting liberty to the petitioner to move such an appeal, we maintain our order for a period of four weeks. The writ petition is disposed of as withdrawn with liberty as above.

4 It is purely on account of the persuasion of Mr.Mehta, that we do not make any observations, much less adverse, about the conduct of the official in-charge of the demolition. Else, there was lot to say and comment.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)