

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION {L} NO.2472 OF 2016

Nisar Ahmad Habibullah Shaikh Petitioner
Vs.
The State of Maharashtra & Others Respondents

WITH
WRIT PETITION {L} NO.2473 OF 2016

Peer Mohd. Abdul Razzak Shaikh Petitioner
Vs.
The State of Maharashtra & Others Respondents

WITH
WRIT PETITION {L} NO.2474 OF 2016

Rizwan Ahmed Abdul Wahab Shaikh Petitioner
Vs.
The State of Maharashtra & Others Respondents

WITH
WRIT PETITION {L} NO.2475 OF 2016

Radheshyam Motilal Varma Petitioner
Vs.
The State of Maharashtra & Others Respondents

WITH
WRIT PETITION {L} NO.2477 OF 2016

Mohd. Aslam Mohd. Yasin Petitioner
Vs.
The State of Maharashtra & Others Respondents

WITH

WRIT PETITION {L} NO.2487 OF 2016

Rajkumar Singh Chauhan

.... Petitioner

Vs.

The State of Maharashtra & Others

.... Respondents

Mr. Ram Mani Upadhyay for the Petitioner in
WPL-Nos.2472, 2473, 2474 & 2475 of 2016.

Mr. Ram Mani Upadhyay with Mr. Shafi Ahmed
Shaikh for the Petitioner in WPL-Nos.2477 &
2487 of 2016.

Mr. Mohit Jadhav, AGP, for the Respondent-State
in all petitions.

Mr. Hiralal Sonawane, Additional Commissioner,
Konkan Division and Ms Vrushali Patil, Tahsildar
(Enc./Rem.), Colaba Division, present in Court.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 13, 2016

P.C:

1. On these writ petitions we had passed a detailed
order after hearing Mr. Upadhyay and the learned AGP.

2. We called for explanations from the concerned
officials, particularly on the point as to whether they are right in

urging before us that the applications for stay and filed by the petitioners before the Appellate Authority were rendered infructuous because of a demolition already carried out and effected. The applications were filed seeking a stay against demolition but that was completed, according to the learned AGP, before the said applications could be decided .

3. We insisted on such oral statements being backed by record. If the authorities who are in-charge of deciding appeals are bold enough to make such oral statements, then, we insisted that they file their personal affidavits and based on the relevant and germane records. We called for an affidavit and personally to be filed by the Appellate Authority.

4. When such affidavit was filed, copy duly handed over to Mr. Upadhyay and the original records produced for our perusal, on instructions, Mr. Upadhyay states that the petitioners may be granted leave to withdraw the writ petitions with liberty to pursue the remedies that they have already resorted to.

5. It is on such a request that each of these writ petitions are allowed to be withdrawn with liberty to pursue the remedies which are alternate and equally efficacious.

6. The original records and papers be returned to Mr. Jadhav, the learned AGP. We expect them to be preserved for perusal by the superior authorities and equally by this Court at a later stage.

7. In the passing of this order we make it clear to Mr. Jadhav that we are not impressed, much less satisfied, with the explanation of the Additional Commissioner (Appellate Authority) that it is the appellants before him who should have apprised him of the developments and events at the site. If there was an ongoing demolition activity, then, whether that is complete or whether the structures are existing or partly demolished, this fact the Appellate Authority ought to have ascertained from the official record and from his team of officers. He cannot expect the litigants or their Advocates to place before him the details, for either they are busy pursuing

the cause in a Court of law or before the statutory authority, for they would definitely seek a benefit by not allowing the true and correct facts to be placed or produced before the Court or authority. We expect hereafter the Additional Commissioner to be more responsible, careful and particularly in sensitive matters. These delicate matters pertain to demolition of structures near the Haji Ali Dargah and Cuffe Parade. These matters should be, therefore, an eye-opener for the Appellate Authority and all such authorities who are in-charge of removing unauthorised structures and encroachments in exercise of power conferred by Section 50 of the Maharashtra Land Revenue Code, 1966.

8. The writ petitions accordingly stand disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)