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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6895 OF 2016**

Shaikh Salim Abdul Subhan ... Petitioner

Vs.

Zilla Parishad, Solapur and Ors. ... Respondents

Mr. Amol Gatne for the Petitioner.

Mr. Anand S. Kulkarni for the Respondent Nos.1 and 2.

Ms. Aparna D. Vhatkar, AGP for the Respondent Nos.3 and 4.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 12th APRIL, 2017

P.C.

. Not on Board. Taken on Board.

1 This Petition was substantially heard yesterday and was kept on today's board of production matters to enable the learned counsel appearing for the petitioner to take instructions. The case made out in the Petition is that the petitioner is the owner of the property subject matter of this Petition which is described in paragraph 5 of the Petition. It is his contention that the said property was requisitioned under the Bombay Land Requisition Act, 1948 for the benefit of the first respondent – Zilla Parishad, Solapur. On 16th January, 1991 the

petitioner filed a Writ Petition No.373 of 1991 seeking a writ of mandamus directing the first respondent herein to restore possession of the said property to the petitioner. In the Petition, the case made out by the petitioner is that a decision was already taken by the Government to release the said property from requisition and to restore the same to the petitioner. On 5th September, 2001 when the Petition was called out before a Division Bench of this Bench, as none appeared for the petitioner and as it was found that the objections were not removed, the Petition was dismissed for non-prosecution.

2 In the present Petition, the relief claimed is of issuing a writ of mandamus directing the first and second respondents to place the petitioner in possession of the said property. Reliance is placed on an order passed by the third and fourth respondents on 21st January, 1989 by contending that by the said order, the third respondent had directed the first respondent to place the petitioner in possession. The petitioner is also relying upon a letter dated 21st February, 1989 issued by the Rural Development Department of the State Government to the Chief Executive Officer of the first respondent directing the Chief Executive Officer to place the owner of the property subject matter of this Petition in possession. The petitioner has made representations which are relied upon in this Petition. In the representations and in particular in the

representation dated 14th March, 2016 addressed by the petitioner to the second respondent, he has relied upon an order passed by the State Government directing the first respondent to place the petitioner in possession. There is an additional affidavit filed to which several documents have been annexed. In some of the documents are annexed to the additional affidavit and even in Exhibit – A, one Smt. Parvatibai Shankarrao Aurangabadkar is shown as the owner of the property in question. The petitioner claims to have purchased the said property from Smt. Aurangabadkar by a sale deed dated 27th February, 1987.

3 The first submission of the learned counsel appearing for the petitioner is that though provisions of the Code of Civil Procedure, 1908 may not directly apply to Writ Petitions under Article 226 of the Constitution of India, in view of the decision of the Apex Court in the case of *Bharat Amratlal Kothari and another Vs. Dosukhan Samadkhan Sindhi and others*¹, principles analogous to the provisions of the said Code may apply. Relying upon Rule 3 of the order IX, the petitioner submits that when the earlier Writ Petition was dismissed for non-prosecution neither the present petitioner nor the respondents were present and hence, it is permissible to file a fresh Petition. The second contention is based on subsequent representations made which are annexed to the Petition.

1 (2010) 1 SCC 234

4 We have considered the submissions. Though in the Petition it is disclosed that earlier Writ Petition filed by the petitioner for the grant of virtually the same relief of a writ of mandamus was dismissed on 5th September, 2001, the petitioner has not even disclosed the date on which he became aware of the dismissal of the Petition. Representations made subsequently which are relied upon in this Petition do not refer to the fact that earlier Petition was filed and was dismissed.

5 Writ jurisdiction under Article 226 of the Constitution of India is always discretionary. According to our view, the remedy of the petitioner was to apply for restoration of the Petition which was dismissed for non removal of office objections. Even assuming that subsequently representations were made by the petitioner, the cause of action for filing this Petition and the earlier Petition is substantially same, namely the refusal of the first respondent to place the petitioner in possession notwithstanding the alleged order of the State Government to release the said property from requisition. Therefore, we are not inclined to entertain this Petition on merits.

6 However, we find from the documents annexed to the additional affidavit and in particular documents from Exhibit – CC to

Exhibit – FF that a direction was issued by the District Collector to the first and second respondents to place the petitioner in possession. In this Petition, the petitioner is relying upon a communication dated 21st February, 1989 which was not relied upon in the Petition filed in the year 1991 and subsequent representations.

7 If the case made out by the petitioner is true, the first respondent will have to act on orders of de-requisition and take necessary steps. Hence, we pass the following order :-

ORDER

- (i) Writ Petition is rejected only on the ground specified in paragraph 3 above;
- (ii) It will be open for the petitioner to make a representation to the first and second respondents by producing documents of title and by producing documents evidencing alleged orders of release of the said property from requisition;
- (iii) If such a representation is made, the second respondent will ascertain whether the petitioner is the owner of the property subject matter of this Petition and whether there is an order passed by the State Government of

cancelling the requisition and/or releasing the said property from requisition. It is obvious if such a direction is issued by the State Government, the first respondent is bound by the same;

- (iv) The second respondent shall pass appropriate order in accordance with law within a period of three months from the date on which such a representation is made by the petitioner.

(A.K. MENON, J)

(A.S. OKA, J)