

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 495 OF 2017

Vijay Naranji Kataria & Ors.	]	Petitioners
Vs.		
Collector, Mumbai Suburban District & Ors.	]	Respondents

**WITH
CHAMBER SUMMONS NO. 107 OF 2017**

Shri Bharat Sitaram Agavane & Ors.	]	Applicants
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IN THE MATTER BETWEEN

Shri Vijay Naranji Kataria & Ors.	]	Petitioners
Vs.		
Collector, Mumbai Suburban District & Ors.	]	Respondents
And		
Shri Bharat Sitaram Agavane & Ors.	]	Applicants/ Proposed respondents

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 Mr. Ravi Kadam, Sr. Counsel a/w M/s. Y.S. Shukla i/b Mr. Vaibhav Mehta & Associates, for petitioners.
 Mr. Kedar Dighe, A.G.P, for respondents No.1 and 2-State.
 Mr. R.S. Sawant, for respondent No.3.
 Mr. A.S. Khandeparkar a/w Mr. Rakesh H. Pathak a/w Mr. Rajdeep Gude i/b R.H. Pathak, for applicant in Chamber Summons No. 107 of 2017.

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CORAM : R.G. KETKAR, J.

DATE : 21ST JUNE, 2017.

P.C.

Heard Mr. Kadam, learned Senior Counsel for petitioners, Mr. Dighe, learned A.G.P for respondents No.1 and 2, Mr. R.S. Sawant, learned Counsel for respondent No.3, Mr. Khandeparkar, learned Counsel for applicants in Chamber Summons No. 107 of 2017.

2. By this Petition under Article 226 and 227 of the Constitution of India, petitioners have challenged the order dated 30th December, 2016 passed by the Collector, Mumbai Suburban District under Section 53 of Maharashtra Land Revenue Code, 1966 [for short “Code”.]

3. In support of this Petition, Mr. Kadam has raised various contentions. One of the contentions raised by Mr. Kadam is that petitioners are vitally affected parties. In fact, by order dated 9th March, 2015, Division Bench of this Court [Coram: Mrs. Vasanti A. Naik & Mrs. Mridula Bhatkar, JJ.] in Writ Petition No. 1828 of 2012 instituted by third respondent herein directed the petitioners therein to implead the petitioners herein as respondents therein on the ground that they are necessary/proper party. Mr. Kadam submits that in pursuance of that order,

petitioners herein are impleaded as respondents in that Petition. He, therefore, submitted that impugned order deserves to be set aside as petitioners were not heard before passing impugned order. Mr. Khandeparkar also does not dispute the fact that petitioners were not heard before passing impugned order.

4. Mr. Dighe states that Dr. Nitin G. Mahajan, resident Deputy Collector, Mumbai Suburban District is present in the Court. It is not seriously disputed that petitioners were not heard before passing the impugned order. In view thereof, impugned order can't be sustained and is liable to be set aside. Accordingly, the impugned order is set aside.

5. The parties agree that petitioners, applicants in Chamber Summons and third respondent will appear before Collector, Mumbai Suburban District on 17th July, 2017 at 11.00 a.m and for that purpose no fresh notice be issued to them. Collector, Mumbai Suburban District will fix suitable date and thereafter proceed to decide the proceedings at the earliest. Rule is made absolute accordingly with no order as to costs. All the contentions raised by the parties are expressly kept open including contention of the petitioners that Government should not have

issued show cause notice in the light of the stand taken by it in the Affidavit filed in Writ Petition No. 1828 of 2012. Mr. Kadam states that in fact petitioners propose to move Division Bench for staying proceedings before the Collector, Mumbai Suburban District. The statement made by Mr. Kadam is recorded. All the contentions in that regard are expressly kept open.

[R.G. KETKAR, J.]