

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.3167 OF 2018

Kiran s/o Venkatrao Nemmaniwar,
Age 50 years, Occu. Medical
Practitioner, R/o Velmpura,
Kinwat, District Nanded

..Petitioner

Versus

1. The State of Maharashtra,
(The Department of Urban
Development, Mantralaya,
Mumbai 32, through the
Secretary)
2. The District Collector,
Nanded, District Nanded
3. The Municipal Council,
Kinwat, through the Chief
Officer
4. Narayanrao s/o Mukundrao
Nemmaniwar,
Aged 74 years, Occu. Agril,
R/o Velmapura, Kinwat,
Taluka Kinwat, Dist. Nanded
5. Ramlu s/o Shankarrao Nilawar,
Aged 75 years, Occu. Business,
R/o Near Dhanraj Talkies,
Kinwat, Taluka Kinwat,
District Nanded

..Respondents

Mr A.G. Godhamgaonkar, Advocate for petitioner
Mr S.M. Ganachari, A.G.P. for respondents no.1 and 2
Mr B.A. Darak, Advocate for respondent no.3
Mr V.P. Latange, Advocate for respondents no.4 and 5

**CORAM : R.M. BORDE AND
A.M. DHAVAL, JJ.**

DATE : 6th June 2018

ORAL JUDGMENT (Per R.M. Borde, J.)

Heard.

2. Rule. With the consent of parties, the petition is taken up for final disposal at admission stage.

3. The petitioner is seeking quashment of the enquiry report dated 29.1.2018 drawn by District Administrative Officer. The petitioner claims that the land Survey Nos.271, 272, 275 and 276 were divided into 95 plots and an advertisement was floated for disposing the plots on the basis of long lease. The terms and conditions of the lease were mentioned in the notice. The petitioner is purchaser of some of the plots and said plots are put to use by him for running a primary school. It further transpires that one Narayan Mukundrao Nemaniwar tendered a complaint relating to disposal of the plots and utilisation of the aforesaid property by certain individuals contrary to the terms of lease. The cognizance of the complaint, it appears was not taken initially. As such, a Writ Petition bearing No.4806 of 2013 was presented to this Court and in pursuance of the directives issued by this Court, enquiry proceedings were initiated. The Enquiry Officer has recommended to take certain adverse steps. One of the recommendations is to confiscate the property as well as to recover loss caused to the State Government as a result of illegal action by the officials and the tenants of the property. The petitioner claims that he is adversely affected by the directives issued during the course of enquiry by the District Administrative Officer. It is the contention of the petitioner that he has not been extended an opportunity of putting forth his contentions by the District Administrative Officer, who conducted enquiry. The adverse

directives contained in the enquiry report as such, according to the petitioner cannot be applied against him so as to cause him prejudice. The petitioner contends that the enquiry report tendered by the District Administrative Officer being without observance of principles of natural justice deserves to be quashed and same report cannot form basis for taking any adverse action against him.

4. On the contrary, respondents contend that the enquiry conducted by the District Administrative Officer is merely in the nature of fact finding enquiry and if at all, any adverse action is required to be taken, it would be open for the Collector or any other Officer entrusted with the authority to take adverse action and before taking such adverse action, the authority has to observe principles of natural justice. The District Collector has issued certain directions to the Chief Officer, Municipal Council on 29.1.2018 to take action on the basis of recommendations made by the District Administrative Officer in the enquiry proceedings. The Collector, before issuing such directions against the petitioner, ought to have extended an opportunity of hearing. The observations made in the enquiry report cannot be presumed to bind the petitioner since he was not party to the enquiry proceedings nor was extended opportunity of hearing by the Enquiry Officer before recording adverse findings. If at all, the Collector decides to accept the report of enquiry, submitted by the District Administrative Officer, it would be obligatory for the Collector to observe the principles of natural justice. The Collector shall extend an opportunity of hearing to the petitioner before recommending any adverse action. It would be open for the petitioner to raise all the contentions and file documents before the Collector to substantiate

his contentions. The Collector must extend an opportunity of personal hearing to the petitioner before recommending any adverse action against him. The Collector is also required to pass a reasoned order for arriving at his satisfaction that any action deserves to be taken against the petitioner. One of the features as regards the observance of principles of natural justice is to record a speaking order. Unless the order passed by the authority records the reasons for his satisfaction, the person adversely affected would not be bestowed with the knowledge as to what are the reasons for recording such adverse findings. Considering these aspects, we deem it appropriate to direct the Collector to pass a reasoned order recording his satisfaction for accepting the observations made by the District Administrative Officer in the enquiry report. The Collector has to observe principles of natural justice before taking any adverse action and to pass orders, as recorded above.

5. The directives issued by the Collector to the Chief Officer, Municipal Council, Kinwat so far as it relates to petitioner shall stand quashed. It is needless to mention that it would be open for the collector to observe the procedure and comply in consonance with the observations made in this order and take decision.

6. Rule is accordingly made absolute to the extent above with no order as to costs.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)