

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12852 OF 2017

Shaikh Salim Abdul Subhan	.. Petitioner
Vs.	
The Zilla Parishad Solapur and ors.	.. Respondents

Mr.A.V.Anturkar, Senior Advocate a/w Mr.S.M.Pathak, for the
Petitioner.
Mr.M.P. Thakur, AGP for Respondent – State.
Mr.A.S.Kulkarni, for Respondents No. 1 & 2.

**CORAM : R.M.SAVANT &
M.S.KARNIK, JJ.
DATE : 21st SEPTEMBER, 2018**

P.C. :

. The above Writ Petition has been filed challenging the communication/order dated 23/10/2017 passed by the Respondents No. 1 & 2 by which order the representation dated 16/05/2017 made by the Petitioner came to be dismissed. The said order has been passed pursuant to the directions as contained in the order dated 12/04/2017 passed by a Division Bench of this Court (Coram : A.S.Oka and A.K.Menon, JJ.) in

Writ Petition 6895 of 2016. In the context of the relief sought in the present Petition clauses 7(i) & 7(ii) of the operative part of the said order are relevant and are reproduced hereinbelow :

“(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;”

2. Insofar as the said order is concerned, as can be seen from its reading, the representation of the Petitioner has been rejected on the ground that the earlier Writ Petition filed by the Petitioner being Writ Petition No. 373 of 1991 seeking possession of the property has not been restored and therefore the Petitioner's representation cannot be considered.

3. It is required to be noted that the Petitioner had filed the said Writ Petition No. 373 of 1991 seeking a direction that the premises in question which were requisitioned under the

Bombay Land Requisition Act, 1948 by the Collector, Solapur be handed over back to the Petitioner. It seems that the said Petition came to be dismissed for non-prosecution and that no application for restoration of the said Writ Petition was made by the Petitioner and the original owner one Mrs.Aurangabadkar. It is notwithstanding the same that the Petitioner thereafter filed Writ Petition No.6895 of 2016 seeking the same relief as was sought in the said Writ Petition No. 373 of 1991. An objection was raised on behalf of the Respondents i.e. the State and the Zilla Parishad as regards the maintainability of the said Writ Petition in view of the fact that the Petitioner had earlier filed Writ Petition No. 373 of 1991 which had been dismissed for default and no application for restoration was filed. The said objection commended acceptance to the Division Bench comprising of A.S.Oka and A.K.Menon, JJ. and therefore by clause 7(i) of the operative part of the order the Division Bench rejected the said Writ Petition on the ground mentioned in the paragraph 3 above namely earlier Writ Petition No. 373 of 1991 has not been got restored to file. However, notwithstanding the

same, the Division Bench vide clause 7 (ii) of the operative part of the order permitted the Petitioner to make a representation to the Respondents by producing documents of title and producing documents evidencing alleged orders of the release of the said property from requisition. The Petitioner it appears made the said representation and produced the said documents. However, unfortunately, inspite of the liberty granted by the Division Bench to the Petitioner to make a representation, the Chief Executive Officer, Zilla Parishad has rejected the application only on the ground that the earlier Petition has not been got restored.

4. In our view in passing the said order, the Chief Executive Officer, Zilla Parishad has not taken into consideration the import of the said order dated 12/04/2017 passed by the Division Bench. Since by the said order dated 12/04/2017, the Petitioner was granted liberty to make a representation, it was necessary on the part of the Chief Executive Officer, Zilla Parishad to consider the said application independently without

taking into consideration the fact that the earlier Writ Petition No. 373 of 1991 has not been restored to file. However, unfortunately that has not been done and the Chief Executive Officer, Zilla Parishad has rejected the representation only on the ground that the earlier Writ Petition has not been restored to file. In our view the consideration of the representation by the Chief Executive Officer, Zilla Parishad is therefore not in terms of the directions as contained in the order dated 12/04/2017 of the Division Bench of this Court. The same is therefore unsustainable and is therefore required to be quashed and set aside and is accordingly quashed and set aside and the following directions are issued.

i) The impugned order dated 23/10/2017 passed by the Chief Executive Officer, Zilla Parishad, Solapur would stand quashed and set aside and the matter would stand relegated to the Chief Executive Officer, Zilla Parishad, Solapur for a de novo consideration of the Petitioner's representation.

ii) The Chief Executive Officer, Zilla Parishad, Solapur to consider and decide the Petitioner's representation

independently and without taking into consideration the fact that the earlier Writ Petition No. 373 of 1991 has not been restored to file.

iii) The Chief Executive Officer, Zilla Parishad, Solapur would also take into consideration the material on record which includes the letter of the Collector, Solapur wherein he has directed that the possession be handed over to the Petitioner.

iv) The said representation of the Petitioner be considered on its own merits and in accordance with law subject to the above.

v) The Petitioner to appear before the Chief Executive Officer, Zilla Parishad, Solapur on 03/10/2018. The Chief Executive Officer, Zilla Parishad, Solapur thereafter to pass orders within 4 weeks of the said date.

5. With the directions as aforesaid, the Writ Petition is disposed of.

(M.S.KARNIK, J.)

(R.M.SAVANT, J.)