

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1091 OF 2018

Madhukar Ramu Devendra	..	Petitioner
Vs.		
State of Maharashtra & Ors.	..	Respondents

Mr.R.K. Mendadkar for the petitioner.

Ms.Kavita Solunke, AGP for the respondent nos.1 to 3-State.

CORAM : R.D. DHANUKA, J.

DATE : 20th March 2018

P.C.:

. Rule. Learned AGP appearing for the respondent nos.1 to 3 waives service. By consent of parties, the petition is heard finally forthwith.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 8th November 2017 passed by the respondent no.2 dismissing the appeal filed by the petitioner ex parte. In paragraph 11 of the writ petition, it is averred by the petitioner that the petitioner was not served with any of the notices referred to and relied upon in the impugned order dated 8th November 2017 and the said order was passed ex parte.

3. By an order dated 28th February 2018, this Court directed the respondents to file affidavit-in-reply and shall disclose whether any notice of hearing was served upon the petitioner or his advocate by the

Additional Collector, (Encroachment and Removal), Mumbai Suburban before passing an order dated 8th November 2017 or not. No affidavit-in-reply is filed till date.

4. I am inclined to accept the averments made by the petitioner in this writ petition. A perusal of the order dated 8th November 2017 annexed at Exhibit 'A' clearly indicates that the said order has been passed ex parte thereby dismissing the appeal filed by the petitioner. Since the impugned order dated 8th November 2017 is in violation of principles of natural justice, the same is accordingly quashed and set aside. Appeal filed by the petitioner is restored to file before the learned Additional Collector (Encroachment and Removal), Mumbai Suburban.

5. Learned Additional Collector (Encroachment and Removal), Mumbai Suburban shall hear the petitioner and pass a fresh order without being influenced by the observations made and conclusion drawn in the impugned order dated 8th November 2017. The petitioner is directed to remain present before the learned Additional Collector on 2nd April 2018 at 3.00 p.m. without fail.

6. The respondent no.2 shall decide the appeal filed by the petitioner within four weeks from the date of the next meeting. If any portion of the structure of the petitioner is not at present demolished by the respondent no.2, the same shall not be demolished till the fresh order is passed by the respondent no.2. The respondent no.2 shall upon receipt of this order, depute his officer to make an enquiry whether any part of the structure is still not demolished by the respondent no.2 or not.

7. Rule is made absolute in aforesaid terms. No order as to costs. The petitioner as well as the learned AGP to convey this order to the respondent no.2 for compliance.

R.D. DHANUKA, J.