

Anand

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

WRIT PETITION NO. 5094 OF 2018

Ved Prakash Gupta

.Petitioner

Vs.

Shahajan Abdul Majid Hawaldar & ors.

.Respondents

Mr. S. D. Patil a/w Mr. P. S. Patil, Advocate, for the Petitioner

Mr. R. Sathye i/b. Mr. A. Marathe, Advocate, for the Respondent
No. 1

Mr. P. G. Lad a/w Ms Aparna Murlidharan, Advocate, for the
Respondent Nos. 2, 4 & 5

CORAM : REVATI MOHITE DERE, J.

DATE : 18.09.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 16.01.2018 passed by the Appellate officer in Appeal No. 5 of 2017, by which the Respondent No. 1's Appeal was partly allowed and the matter was remanded back to the Competent Authority for fresh hearing.

3. Learned counsel for the Petitioner submits that there

was no justification for the Appellate officer to remand the matter back for fresh hearing, considering the fact, that all submissions advanced by the parties were considered by the Competent Authority. He further submitted that there was no haste in deciding the case before the Competent Authority. According to the learned counsel for the Petitioner, the observations made by the Appellate officer in paras 26 to 28 are factually incorrect and contrary to the record.

4. Learned counsel for the Respondent No. 1 opposes the Petition and submits that no interference is warranted in the impugned order.

5. Perused the papers, in particular, the impugned Order dated 16.01.2018 passed by the Appellate officer in Appeal No. 5 of 2017. The Appellate officer was pleased to pass the following order in Appeal No. 5 of 2017 which reads thus :-

“ O r d e r

1. The present appeal is partly allowed.

2. The Ld. competent Authority's order dated 02.03.2017 is quashed and set aside.

3. The matter is remanded back to the Ld. competent authority for fresh hearing.

4. The record and proceedings of this appeal shall be returned to the office of competent authority – I. No order as to costs.”

The said Appeal was filed by the Respondent No. 1 against the Judgment & Order dated 02.03.2017 delivered in Case No. 10 of 2016 by the Competent Authority – I, MHADA.

6. It appears that the Appellate officer has essentially remanded the matter back for fresh hearing, as the Appellate officer was of the opinion, that the Competent Authority had passed the Eviction order against the Respondent No. 1 herein, hastily. The same is reflected in para 29 of the impugned order. A perusal of the roznama of the proceeding bearing No. 10 of 2016 of the Competent Authority which commences from Page No. 130 of the Petition shows that evidence was led during the period from 30.01.2017 to 01.03.2017. It is not in dispute that the

evidence was closed on 01.03.2017 and the Respondent No. 1 concluded his arguments on the said date i. e. 01.03.2017 and thereafter, the impugned order was passed on 02.03.2017. According to the learned counsel for the Respondent No. 1, the Respondent No. 1 was not given any time and was asked to conclude the arguments on the same day the evidence was closed i. e. 01.03.2017. It is in this background, that the Appellate officer had remanded the matter back to the Competent Authority for fresh hearing. In this light of the matter, no fault can be found in the impugned order dated 16.01.2018 quashing & setting aside the Order dated 02.03.2017 passed by the Competent Authority and remanding the matter back to the Competent Authority for fresh hearing. As far as paras 26 to 28 of the impugned order are concerned, learned counsel for the Petitioner submits that, the observations made in the said paras are factually incorrect. Since the Appellate officer was remanding the matter back to the Competent Authority on the ground that the Competent Authority had hastily concluded the matter, there was no reason for the Appellate officer to make any observation on the merits of the case in particular paras 26 to 28 of the impugned order.

Accordingly, the Competent Authority shall ignore the observations made by the Appellate officer in paras 26 to 28 and proceed with the case No. 10 of 2016 on its own merits uninfluenced by the observations made on the merits of the case. Accordingly, the Competent Authority shall decide Case No. 10 of 2016 on its own merits uninfluenced by the observations made in the said Appeal by the Appellate officer. All contentions of all parties are kept open.

7. Since the evidence has already concluded and only arguments are to be addressed before the Competent Authority, it would be appropriate to expedite the hearing before the Competent Authority. All parties to appear before the Competent Authority on 26.09.2018 at 11.00 a. m. after which the Competent Authority will give dates convenient to him. The Competent Authority shall however pass appropriate orders in Case No. 10 of 2016, after hearing the parties before 15.12.2018.

8. The Petition is dismissed in the aforesaid terms.

All concerned to act on the authenticated copy of this
order.

(REVATI MOHITE DERE, J.)