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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12176 OF 2018

Kanchan Shamrao Pawar	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Umesh H. Pawar a/w Mr. Sarthak Diwan for the Petitioner.
Mr. Y.S. Khochare, AGP for the Respondent Nos.1 to 5.

CORAM : A.S.OKA AND
SANDEEP K. SHINDE, JJ.

DATE : 30th NOVEMBER 2018.

P.C. :

1 Heard the learned counsel appearing for the petitioner and the learned AGP for the first to fifth respondents. Considering the facts of the case, service of notice to the Respondent No.6 is not necessary.

2 The petitioner claims to be in possession of the land admeasuring about 200 square meters, more particularly described in paragraph 1 of the petition with structure thereon. The challenge in this petition is to the notice issued by the District Collector. We have perused the said notice. The notice records that the land bearing City Survey No.735 admeasuring 200 square meters which is claimed by the petitioner is a property vesting in the State as it was acquired by the State Government for the benefit of the Maharashtra State Road Transport

Corporation (MSRTC). By the said notice, the Collector informed the Tahsildar, Walwa to reject the application for regularisation made by the petitioner and to take action of removal of encroachment made by the petitioner in accordance with law. On 9th March 2018, the Tahsildar, Walwa addressed a letter to the Chief Officer of Islampur Municipal Council stating that the Chief Officer should serve a show cause notice to the persons who have carried out encroachment and after giving brief hearing, encroachments made by eligible persons should be removed.

3 Thus, in terms of notice dated 8th January 2018, the Tahsildar has informed the Chief Officer of the Municipal Council to take action of removal of encroachment after giving show cause notice and after giving hearing to the concerned persons. The effect of the notice dated 8th January 2018 is that the Collector has directed the Tahsildar to reject the application for regularisation made by the petitioner.

4 Thus, even according to the Collector, action of demolition will be taken by the Chief Officer of the Municipal Council after giving a notice to the petitioner and after giving a brief hearing to the petitioner. Therefore, as and when notice is issued by the Chief Officer, the petitioner can give reply to the notice.

5 As and when rejection of application for regularisation made by the petitioner is communicated to the petitioner, he can always challenge the same in accordance with law.

6 Even if the Collector or Tahsildar were to take action of removal of encroachment on Government land they would be required to do so only after following the procedure under section 50 of the Maharashtra Land Revenue Code, 1966 i.e. by giving show cause notice and giving opportunity to apply for regularisation.

7 In the light of the aforesaid position, we dispose of the petition by passing the following order :-

ORDER

- (i) We make it clear that the sixth respondent or Islampur Municipal Council desire to demolish the structure of the petitioner, the said respondent can do so only after issuing show cause notice to the petitioner and after giving opportunity of being heard to the petitioner;
- (ii) Even if first to fifth respondents desire to remove encroachment made by the petitioner, they will have to take recourse to section 50 of the Maharashtra Land Revenue Code, 1966 and therefore, no action can be taken without issuing show cause notice to the petitioner;
- (iii) In the event, the order communicating rejection of the regularisation application is served upon the petitioner, it will be always open for the petitioner to challenge the same in accordance with law.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)