

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

WRIT PETITION NO. 7375 OF 2015

Mohammed Saeed Shafi Ahmed	}	
Noori	}	Petitioner
versus		
The Collector and District	}	
Magistrate, Mumbai City	}	Respondent

Mr. Rizwan Merchant with Mr. Sultan A. Khan and Mr. Shabbir A. Shara for the petitioner.

Mr. A. I. Patel-Additional Government Pleader for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.**

DATED :- MARCH 21, 2018

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges an order passed on 17th April, 2014 by the respondent and a demand notice issued in pursuance thereof.

2. The grievance of the petitioner is that the petitioner resides at Mumbai. He is a citizen of India. He is engaged in social activities. A notice to show cause was issued to the petitioner calling upon him to show cause as to why an amount stipulated in

the notice be not recovered from him for having caused the alleged destruction of public properties as also other acts, which would enable the Collector to proceed in terms of the powers conferred in him.

3. The notice refers to these acts and according to the Collector, they are attributable to the petitioner. However, the petitioner says in his reply that one Ahemad Raza Shaikh of Madina Tulam Foundation, Kurla sought permission of Azad Maidan Police Station for holding a meeting on the relevant date and time to condemn killings of 30000 Muslims in Burma. The petitioner says that he was not aware of any of these activities. The petitioner says that he is not liable for the damage caused to the public properties as alleged. He has set out his version in the reply to this show cause notice.

4. The grievance in the present petition is that the impugned order proceeds on the footing that the show cause notice was issued after a public interest litigation was filed in this court being Public Interest Litigation No. 24 of 2012. Based on the directions therein, the show cause notice has been issued. The show cause notice refers to the Maharashtra Police Act, 1951 and several provisions thereof.

5. Mr. Merchant appearing for the petitioner would submit that the impugned order is nothing but a replica or a complete copy of the show cause notice without in any manner adverting to version of the petitioner. The petitioner, while denying the allegations as also now by an additional affidavit, points out that the criminal public interest litigation, which is referred to in the order, is not a proceeding, but there was a Criminal Public Interest Litigation No. 40 of 2013. The then Collector of Mumbai and one Resident Deputy Collector and District Magistrate R. N. Garud filed their affidavits in Criminal Public Interest Litigation No. 40 of 2013. After inviting our attention to an order passed in that public interest litigation, copy of which is placed before us and dated 20th March, 2014, it is stated in this additional affidavit of the present petitioner and filed in this petition that the acts and which resulted in destruction of public property are not at all attributed to the petitioner. The petitioner's name does not figure in the list persons responsible for these acts. Mr. Merchant would submit that the incident was reported very widely. After all the documents concerning the incident were received by the Collector on 23rd April, 2013, based on which the notice dated 6th June, 2013 was issued to one of the organisers, namely, Ahemad Raza Shaikh of Madina Tulam Foundation, Kurla for the recovery of damages and losses, resulted in that notice being returned back

with remarks "not known". There are 77 persons involved in the crime, but the petitioner's name has not figured therein. It is in these circumstances that Mr. Merchant would submit that we should quash and set aside the impugned order and direct that the proceedings be dropped altogether.

6. There are no denials of these statements either made in the writ petition or in this additional affidavit. On the earlier occasion, we have directed production of original records. After they were produced, Mr. Merchant has duly inspected them. Mr. Merchant submits that in the records, there is no reference and to be found of any affidavit filed in Public Interest Litigation No. 40 of 2013 (supra). In fact, the affidavit, details of which are mentioned in the additional affidavit of the petitioner in the present petition, is also not traceable in the original records. Thus, the show cause notice proceeds, according to Mr. Merchant, on a complete misconception and misreading of the orders of this court and with reference to some other matters.

7. As stated above, the learned Additional Government Pleader Mr. Patel, having not filed any affidavit, has left the matter to the court.

8. We are of the firm opinion that if those causing destruction and damage to public properties in the garb of holding peaceful agitation and march have to be proceeded against and for civil wrongs together with criminal prosecution, then, the law postulates a recovery, by following a summary procedure, of monetary sums. The damage/destruction is then assessed in terms of money. Once it is so assessed and the amount is crystallised, then, the expectation is that it should be recovered so that the State sends a strong message to these wrong doers and equally those who claim that they have organised these agitations peacefully. Together with the organisers, their office bearers and the members of the public indulging in riotous behaviour causing destruction to even tempo of life, indulging in and damaging to the public property should be visited with severe consequences. If there is a real attempt to discourage such activities, then, such matters should be properly adjudicated and demand confirmed, but in accordance with law.

9. In the instant case, we do not find that the requirements of the principles of natural justice, which include the passing of a speaking order, are satisfied. There is absolutely no record referred to in the impugned order. There is nothing by which we can deduce that the petitioner was amongst others involved in

such acts as have resulted in damage and destruction of public property. His role is not referred, much less properly described and dealt with. In these circumstances, the impugned order cannot be sustained. We proceed to quash and set aside the same.

10. At the same time and not to allow the acts of the wrong doers to go unpunished, we direct the Collector, Mumbai City to adjudicate this show cause notice afresh and after considering the version of the petitioner as set out in his affidavit in reply to the show cause notice, the memo of this writ petition and the additional affidavit so also after giving an opportunity of personal hearing to him. A speaking order shall be passed and as expeditiously as possible and within a period of three months from today. We clarify that we have not expressed any opinion insofar as the rival contentions. All of them are kept open and for being raised before the Collector.

11. With the aforesaid directions, the writ petition is disposed of. The original record shall be returned to the learned Additional Government Pleader.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)