

JPP

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

***SECOND APPEAL NO.921 OF 2017
WITH
CIVIL APPLICATION NO. 1928 OF 2017***

Shekhar Narayan Choudhari
(through POA) Mr. Ranjan
Narayan Choudhari.

..Appellant/Applicant.

V/s.

Authorised Office @ Sub-Divisional
Forest Officer & ors.

.. Respondents.

Mr. Uday P. Warunjikar for the Appellant.
Mr. A. R. Patil, AGP for Respondent No.1.
Mr. Kunal Damle for Respondent No.2.
Mr. Sachin Kand, Sub-Divisional Officer, Mandavi at Thane.

CORAM : N.M. Jamdar, J.

DATE : 17 January, 2018.

Oral Order :-

The Appellant had filed a Civil Suit seeking to question the notices issued by the State Government through the Forest Department under Section 53 of the Maharashtra Land Revenue Code, 1966 for eviction. Both the Courts have concurrently held that the Appellant is not entitled to the relief sought for.

2. Heard learned Counsel for the parties.

3. The arguments advanced by the Appellant are on the merits of the claim of the Appellant. Nothing is shown as to why the notices themselves cannot be issued. The argument of the Appellant that he is not occupying the Government land or that he has legal right in the same, can always be advanced in response to the notices. The Collector is supposed to consider the reply under Section 53, before passing an order. Therefore, it cannot be said that the notice issued have been *ab initio* void. After any order is passed under Section 53 of the Code, further remedy is also provided and therefore, the scheme under the Code is a self-contained scheme.

4. The learned Counsel for the Appellant accepted that, the Suit was not maintainable and Appellant will show cause to the notice, but submitted that the findings given in both the impugned decisions on merits will come in the way of the Appellant. Considering the facts and circumstances of the case, if the Appellant shows cause to the impugned notice and appears before the Collector, the Collector would decide the proceedings independently, on its own merits, uninfluenced by the findings rendered by both the Courts, since it is the contentions of the Appellant that the suit instituted by him was not maintainable. The learned Counsel for the Respondents have not been able to show anything to the contrary. Nothing further therefore is requires to be adjudicated in the Second Appeal.

5. The Appellant will appear before the Collector, Palghar or an Officer authorized by him, on 1 February 2018 at 11.00 a.m. The Collector will thereupon follow the methodology laid down under the Code. The learned AGP states that the concerned Officer is present in the Court and states that since the Appellant will file reply to the notices, further proceedings would be as per the provisions of the Code, and the eviction if any, would be after hearing the Appellant, as contemplated under Section 53 of the Code.

6. The Second Appeal is disposed of. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)