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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2242 OF 2016

Umakant Ramchandra Kasbe	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Yuvraj D. Patil for the Petitioner.
Mr. Sukanta Karmakar, AGP for Respondent – State.
Ms. Pallavi Thakar for the Respondent – BMC.

CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.

DATE : 9th FEBRUARY, 2018

PC.

1 In this Petition under Article 226 of the Constitution of India, the challenge by the petitioner is to the orders dated 30th April, 2015 and 27th August, 2015 passed by the first and second Appellate Authorities constituted by the Mumbai Municipal Corporation for deciding the eligibility of the petitioner for grant of alternate accommodation. The petitioner's structure was demolished being falling within the distance of 10 meters from Tansa Pipeline as per the order passed in PIL No.140 of 2006. However, the petitioner was held to be ineligible for grant of alternate accommodation. Both the Appellate Authorities have dismissed the claim of the appellant.

2 Perusal of the order dated 30th April, 2015 show that the same is in a pre-conceived format and only details such as name of the appellant and date of hearing have been filled in by hand. There is no discussion about any specific document produced by the petitioner. There is a mere observation in the pre-conceived format that the petitioner could not produce a single document showing existence of the structure as on 1st January, 2000.

3 As far as the practice of passing orders in pre-conceived format is concerned, this Court has already dealt with the same in Judgment and Order dated 19th October, 2015 in Writ Petition (L) No.2831 of 2015 (Sushila Ramesh Kharat Vs. State of Maharashtra and Ors.). In paragraphs 6 to 8 of the said order, the Division Bench of this Court has held thus :-

6. We have perused the orders passed by both the Assistant Commissioner as well as the Deputy Commissioner. Both the orders have been passed in a pre-conceived format in which the only details filled in are the name of the appellant, the appeal number, the date of hearing of the appeal and the date of decision of the appeal. No reasons have been assigned and it is merely mentioned that documents produced by the petitioner have been examined.
7. The fact that a pre-concieved format of the order was kept ready by both the officers and only the aforesaid details are filled show complete non application of mind on the part of the said municipal officers. The issue was

of entitlement of the petitioner to the allotment of premises by way of re-settlement. The petitioner's hut was removed for creation of 10 meters wide open corridor on both sides of Tansa pipeline as per the order of this Court in Public Interest Litigation No.140 of 2006. Both the officers were under an obligation to consider each and every document produced by the petitioner and to record a finding on the entitlement of the petitioner. The officers were under an obligation to record brief reasons.

8. As far as the petitioner is concerned, it is a very important question of making an accommodation available to her in lieu of her residential accommodation which has been taken away. The eligibility of the petitioner to secure an alternate accommodation could not have been decided in such a casual manner by the Assistant Commissioner as well as the Deputy Commissioner. Hence, both the orders stand vitiated. Accordingly, we pass the following order:-

(i) Both the impugned orders dated 30th April, 2015 and 17th April, 2015 are quashed and set aside;

(ii) The first appeal of the petitioner is restored to the file of the Assistant Commissioner, T-ward;

(iii) We direct the petitioner to appear before the Assistant Commissioner, T-ward on 2nd November, 2015 at 11.00 a.m. for fixing the schedule for hearing;

(iv) After giving an opportunity of being heard to the petitioner and after considering the documents produced by the petitioner, the Assistant Commissioner shall pass a reasoned order by recording reasons in brief;

(v) While deciding the appeal, the Assistant Commissioner shall keep in mind the observations made by this Court in this order;

(vi) In the event, there is an occasion for the petitioner to prefer a second appeal, it is obvious that the second appellate authority shall also decide the appeal after considering all the documents and by recording findings in brief;

- (vii) The petition is made absolute on the above terms;
- (viii) All concerned to act upon authenticated copy of this order.”

4 Passing orders by the appellate authorities in such a pre-conceived format shows complete non-application of mind to the documents produced by the petitioner. Hence, the orders cannot be sustained. The second appellate authority has not recorded any reasons. Accordingly, we pass the following order :-

ORDER

- (i) Both the impugned orders dated 30th April, 2015 and 27th August, 2015 are hereby quashed and set aside. We direct the petitioner to appear before the first Appellate Authority (Assistant Commissioner of T ward) on 15th March, 2018 at 11.00 am;
- (ii) We direct the Appellate Authority to consider each and every document produced by the petitioner and to decide the Appeal afresh;
- (iii) Needless to add that the Appeal shall be disposed of by passing a speaking order after considering all the relevant documents produced by the petitioner;

(iv) Appropriate order shall be passed by the Appropriate Authority within a period of three months from 15th March, 2018;

(v) All contentions on merits are kept open;

(vi) The Petition is partly allowed on above terms.

(PN. DESHMUKH, J)

(A.S. OKA, J)