

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Friends Bahu Uddeshiya Sevabhavi Sanstha PETITIONER
Through its President,
Kedari Basit Ali A. Latif
Age - 40 years, Occ - President
R/o Mohammadi Park
K. G. N. Colony, Shahada,
Taluka - Shahada, District - Nandurbar

	RESPONDENTS
1.	The State of Maharashtra Through the Collector, Nandurbar, District - Nandurbar
2.	Sanjari Bahu Uddeshiya Sevakbahi Sanstha, Through its President Shaikh Mahmood Shaikh Ahmed Age - Major, Occ - Business Through Superintendent of Jail Prisoner in Crime No. 267 & 268 of 2017 registered at Shahada Police Station, Shahada Nandurbar District Central Jail, Nandurbar, District - Nandurbar R/o Garib Nawaj Colony, Near Misbah Masjid, Shahada Taluka - Shahada, District - Nandurbar
3.	The Chief Officer, Shahada Municipal Council, Taluka - Shahada, District - Nandurbar

Mr. Amit S. Savale, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for respondent - State
Mrs. S. T. Kazi, Advocate for respondent No. 2

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th JANUARY, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. There is no particular dispute in respect of that respondent No. 3 Shahada Municipal Council had passed a resolution No. 19 on 18th April, 2016 to allot open land from survey No. 5/A-1+2+3 to petitioner for the purpose of plantation and maintenance on the condition that no construction shall be carried on, on the same and an agreement in respect of the same be entered into. Said resolution dated 18th April, 2016 had been taken by respondent No. 2 to Collector, Nandurbar purportedly pursuant to section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.
3. The Collector, pursuant to powers under section 308 (1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, had purportedly allowed the application filed by respondent No.2 and suspended resolution dated 18th April, 2016 passed by respondent No. 3.
4. Learned advocate for the petitioner purports to point out

that the petitioner had not been heard in the proceedings which were conducted by the Collector and it is only respondents No. 2 and 3, who were parties before the Collector. It further appears that with reference to report dated 23rd December, 2016, impugned order came to be passed. Learned advocate further purports to point out that besides reiterating provision, the impugned order does not depict any application of mind and is a non speaking order.

5. Learned advocate Mrs. Kazi appearing for respondent No. 2 submits that report dated 23rd December, 2016 submitted by Chief Officer, Municipal Council Shahada to District Collector and application by respondent No. 2 eloquently reveal that terms of resolution dated 18th April, 2016 have been breached under the actions of the petitioner and in the circumstances for technical reasons the request made under the writ petition may not be indulged into.

6. Learned AGP purports to contend that an appellate remedy may be available to the petitioner having regard to section 308 (3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act and submits that parties before the authority appear to have been given notice and have been

accordingly heard.

7. Although submissions have been advanced on behalf of the respondents, as aforesaid, parties are not particularly at loggerhead about that the petitioner was not a party before the Collector in the proceedings and had no opportunity to put up its case and make submissions on its behalf. In the circumstances, while the Collector appears to have acted as *quasi* judicial authority, it would be incumbent to hear the petitioner as well, since decision by the Collector is affecting the petitioner and not others.

8. In view of the same, since the order depicts that principles of natural justice have not been properly followed and further that the order tends to be non speaking, it would be expedient that the same is set aside and the matter is remitted to the Collector to have hearing afresh by granting opportunity to the parties concerned, including the petitioner.

9 In the circumstances, writ petition is allowed. Impugned order dated 27th April, 2017 passed by Collector, Nandurbar is set aside, making it further clear that resolution dated 18th April, 2016 passed by respondent No. 3 may not be put in operation until decision is taken by the Collector on the application filed by

respondent No.2, after affording opportunity of being heard to all the concerned including the petitioner. It would further be incumbent that Collector proceeds with the remitted matter as expeditiously as possible and dispose of the same preferably within a period of four months from the date of receipt of writ of this order. In order to obviate consumption of time on technicality of issuing notice, parties, including the petitioner to appear before the Collector on 6th February, 2019. Learned advocate for the petitioner undertakes to intimate this order to respondent No. 3. Rule is made absolute in aforesaid terms.

**[SUNIL P. DESHMUKH]
JUDGE**