

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

WRIT PETITION NO. 7780 OF 2014

Rajesh Kachdey Pote

...Petitioner

Versus

Dy. Collector (Enc./Rem) & Competent
Authority, Bandra (W), Mumbai & ors.

...Respondents

Mr. Balasaheb R. Deshmukh for the petitioner.
Mr. P.P. Pujari, AGP for the respondent-State.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 8th NOVEMBER 2019.

ORAL ORDER :

Either the petitioner or his mother held Shop No.2 at Nirmal Nagar, Kherwadi Road, Bandra(E). It seems to have been allotted to them under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 read with the Development Control Regulations for Greater Mumbai, 1991.

2. In the course of time, the mother or the son or both were dispossessed from the property. Then they complained to the Authorities. In that context, the mother deposed that she had nothing to do with the shop; in fact, her son, that is the petitioner, possessed the shop. Then, on 30th August, 2011, the Appellate Authority-cum-the Administrator & Divisional Commissioner, Konkan Division, Mumbai, in Appeal/Desk/Slum-503/08, passed an order.

3. The order reveals that the Competent Authority has evicted the person in possession of Shop No.2 without following due process of law. Therefore, the Appellate Authority has directed the Competent Authority to hear “the mother” about her entitlement to the property. That apart, the Appellate Authority has also held that the petitioner’s name is not reflected in Annexure II; therefore, he is not eligible. That said, the Appellate Authority has also held that the petitioner must be evicted from Shop No.2 only after the authorities’ following the due process of law. Thus, the matter seems to have been remanded to the Competent Authority.

4. Initially, the petitioner filed Writ Petition No.9104 of 2011, questioning the order of the Appellate Authority, dated 30th August 2011. But this Court dismissed that writ petition with costs. At any rate, as the matter was remanded to the competent Authority, the petitioner went on representing to that Authority for an opportunity of hearing. But, it seems, there was no hearing; yet the Competent Authority reaffirmed the order of eviction. Further aggrieved, the petitioner has filed a statutory appeal. That was also dismissed. Under these circumstances, the petitioner has filed this writ petition.

5. Heard, the learned counsel for the petitioner and the learned AGP for the respondent-State.

6. Without adverting to the merits or the rival contentions, I may note that the Appellate Authority, through its order, dated 15th February 2013, directed the Competent Authority to hear the matter afresh. It was despite his concluding that the petitioner had no manner of right to possess the Shop No.2. At any rate, he has observed

that the authorities could evict him only by following due process of law.

7. In fact, the petitioner received a notice about the hearing of the matter on a particular date. But on that date, the Authority was said to be absent. Later, the petitioner went on representing to the Competent Authority for providing him an opportunity of hearing. Exhibits “F”, “G”, and “H” are a few of those representations. Eventually, the Competent Authority passed the order, dated 12th July 2013. The title of that order reads “notice”, which is in fact a direction that the petitioner must be evicted from Shop No.2.

8. The learned AGP has drawn my attention to the notice to show that the hearing was scheduled for 12th July 2013. Indeed, the Government’s reply just states that the petitioner was given an opportunity. Nothing more. The petitioner did assert that on 12th July 2013, the officer was absent. In the face of this assertion, the Government has produced no material that the hearing actually took place on that date. Barring the bald statement in the reply, nothing further emerges.

9. The fact, nevertheless, remains that the petitioner or his mother was dispossessed long ago. All that the petitioner wanted was an opportunity of hearing to establish his claim to Shop No.2. Indeed, the Appellate Authority, earlier, provided an opportunity of hearing to the petitioner’s mother. But in the face of her statement that she had nothing to do with Shop no.2, that opportunity remains a mere ritual that was never exercised. All through, the petitioner has been contending that he had been in possession and that the authorities

ought to have heard him before they dispossessed him.

10. Under these circumstances, the Appellate Authority's observation in order, dated 24th July 2014, in Appeal Des/Slum/-695/2013, also cannot be sustained.

11. I, therefore, set aside the impugned order and remand the matter to the Competent Authority. The competent Authority will put the petitioner on notice and hear him before passing appropriate orders.

The writ petition thus stands disposed of.

Vina A.
Khadpe

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signed by Vina
A. Khadpe
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[DAMA SESHADRI NAIDU, J.]