

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2380 OF 2018

Dayashankar Devideen Yadav

...Petitioner

vs

The Deputy Collector (Enc/Remo) &
The Competent Authority & Ors.

...Respondents

Mr.Ashutosh Kaushik I/b. Kaushik & Co. for Petitioner.

Mr.Manish Upadhye, AGP with Himanshu Takke, AGP for Respondent
No.3.

Ms.Poonam P. Madhwani for Respondent No.5.

CORAM : S.C.GUPTE, J.

DATE : 3 APRIL 2019

P.C. :

Rule. Rule taken up for hearing forthwith, by consent of
counsel.

2 This writ petition challenges an order passed by Respondent
No.1 under Section 22(1) of Maharashtra Slum Areas (Improvement,
Clearance and Redevelopment) Act, 1971 ('Slum Act') denying permission
to the Petitioner to prosecute Respondent Nos.2 to 5 in an eviction
proceeding before the Court of Small Causes at Bandra, Mumbai.

3 It is the grievance of the Petitioner that Section 22(3) of the
Slum Act *inter alia* requires the competent authority to grant or refuse
permission to prosecute any suit or proceeding for eviction of an occupier
of any building or land in a slum area only after giving opportunity to the
parties of being heard and after making such inquiry as it deems fit. The

grievance of the Petitioner is that no such opportunity was granted to him before the impugned order refusing to grant him permission was passed. When this matter was on board on the last occasion, learned AGP appearing on behalf of the State was asked to make the State's position clear as to the identity of the officers, who heard the inquiry and who passed the order.

4 Learned AGP today tenders an affidavit affirmed by Nayab Tahsildar, which makes it clear that the officer of the State, who had heard the parties and who finally closed the case for orders, was not the one who passed the order; another Deputy Collector and Competent Authority, who came in his place, passed the impugned order. This obviously cannot be permitted. There is a clear breach not only of principles of natural justice generally but of the specific mandate of Sub-section (3) of Section 22, which requires the competent authority, on receipt of any application for permission, to give an opportunity to the parties of being heard and pass an order in writing only after making such inquiry into the circumstances of the case as it thinks fit. The impugned order, accordingly, cannot be sustained and will have to be set aside.

5 Learned Counsel for Respondent No.5 submits that the impugned order has been passed after taking into account pleadings and submissions of the parties as also the material placed on record by them. Learned Counsel submits that it is a reasoned order indicating application of mind. That is quite beside the point. Rule of law in the very least requires observance of principles of natural justice. When a party approaches a court or a tribunal, adequate opportunity is required to be

afforded to the party to prosecute his application or show cause, as the case may be. What opportunity would be adequate in a given case may be a matter of debate and would have to be resolved having regard to individual facts and circumstances of the case. But at least this much can be said in every case that wherever an opportunity of hearing is to be given to a party, such hearing as well as order based on such hearing must be by the same court or tribunal. It is not in dispute that in the present case, oral submissions were made by the parties before the competent authority which was presided over by an officer who did not, in fact, decide the applications; the application was decided by another officer who came in his place after the case was closed for orders. There is, accordingly, a clear breach of principles of natural justice and as also of the express mandate of law contained in Sub-section (3) of Section 22 of the Slum Act. The impugned order, accordingly, cannot be sustained.

6 The petition, accordingly, is allowed and Rule is made absolute by quashing and setting aside the impugned orders dated 26 September 2017 and 19 April 2018 (the latter order passed in a review application from the former) of Respondent No.1-Deputy Collector and Competent Authority. The application of the Petitioner under Section 22(1) of the Slum Act is remanded to the Deputy Collector and Competent Authority for a fresh hearing in accordance with law.

7 The parties may appear before the Deputy Collector and Competent Authority on 15 April 2019 at 11.00 a.m. and produce an authenticated copy of this order, whereafter a schedule of hearings may be fixed by the latter. The competent authority shall dispose of the application

as expeditiously as possible and preferably within a period of four months from 15 April 2019.

(S.C. GUPTE, J.)