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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1449 OF 2020

Jairamdas Shamumal Valecha ... Petitioner
Vs.
Managing Cum Sub-Divisional Officer,
Ulhasnagar Sub-division & Anr. ... Respondents

Mr. S. P. Kanuga a/w Sapna N. Nath, for the Petitioner.

Mr. N. C. Walimbe, AGP for Respondent Nos. 1 and 2.

CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 11, 2020

PC :

1. Rule. Rule made returnable forthwith. The learned AGP waives notice on behalf of the Respondents. Heard finally, by consent of parties.

2. The challenge in this petition is to the communication / order dated 16th December, 2019 passed by the Administrator cum Sub-Divisional Officer, Ulhasnagar. By the impugned communication, the Petitioner has been directed to approach the competent authority in accordance with the order dated 28th February, 1964 passed by the Managing Officer of the Regional Settlement Commissioner, Mumbai.

3. The only contention raised on behalf of the Petitioner is

that the said order has been passed without hearing him. The learned counsel for the Petitioner points out that had the Petitioner been heard, he would have been in a position to point out to the authority about the powers to entertain the application filed by the Petitioner under the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

4. The learned AGP has pointed that all that impugned communication directs the Petitioner is to approach the competent authority. On behalf of the Respondents, reliance is placed on a notification dated 27th November, 2017, which is under S. 6(1) of the Administration of Evacuee Property Act, 1950. He also submits that the Petitioner has an alternate remedy of an appeal under S. 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which the Petitioner has not availed of. The learned AGP, on instructions, submits that the application is filed prior to the cut off date i.e. 5th September, 2005.

5. On hearing the learned counsel for the parties, I find that in a group of similar petitions, being Writ Petition No. 8381 of 2019, this Court (Coram : Ujjal Bhuyan, J.) by judgment and order dated 16th October, 2019 and others, has remitted the matters back for deciding the application afresh after hearing the Petitioner/s. Normally, availability of an alternate remedy is not an absolute bar, particularly

when it is found that the impugned order is passed without hearing the party concerned, which is in breach of principles of natural justice. In view of the fact that in similar matters, this Court (Coram : Ujjal Bhuyan, J.) has found it fit to remit the matters back, I do not find that it would be appropriate to take a different view. Needless to mention that it will be open to the first Respondent to pass an appropriate order on its own merits, and in accordance with law, after hearing the Petitioner. In the result, following order is passed.

ORDER

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application filed by the Petitioner is remitted back to the first Respondent for deciding it afresh after hearing the Petitioner, on its own merits and in accordance with law, within a period of six weeks from the date of receipt hereof.
- (iv) Rule is made absolute in the aforesaid terms, with no order as to costs.

Vinayak
P.
Halemath

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by Vinayak P.
Halemath
Date: 2020.02.17
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Sd/-
C. V. BHADANG, J.