

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

WRIT PETITION NO. 4814 OF 2015

Dr. Rajkaran Amrej Singh	..Petitioner
Versus	
The District Collector & Ors.	..Respondents

Gauri Godse i/b. Rohit D. Joshi, for Petitioner.
Dr. Kirti Kulkarni, A.G.P. for Respondent Nos.1 to 3.

CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 31st JANUARY, 2020.

PC :

1. Heard the learned counsel for the parties.
2. By consent of both the parties, matter is taken for final hearing at the stage of admission.
3. By this Writ Petition under Article 226 of the Constitution of India, the petitioner is challenging the Judgment and order dated 21/04/2015 passed by the Respondent No.1 in Appeal filed by the him U/s.24 of the Bombay Highways Act, 1955 against the notice dated 12/04/2013 served U/s.23(1) thereof and for quashing the notice dated 12/04/2013 issued by the Respondent No.2.
4. During the course of argument, it is noticed that main grievance of the petitioner is that, the learned Collector

has passed the impugned order dated 21/04/2015 without hearing to him. In support of this contention, learned advocate for the petitioner relied on a letter dated 08/05/2015 (Exh-I). She further submits that even as per S.24 of the said Act it is mandatory on the part of the Collector to hear the petitioner and then to decide the Appeal on its own merit.

Section 24 reads thus:

“24. Where the person, on whom notice to remove an encroachment has been served under sub-section (1) of section 23 lays claim that the land in respect of which encroachment has been alleged, is his property or that he has acquired a right over it by virtue of adverse possession or otherwise he shall within the time-limit prescribed in the notice for the removal of the encroachment, file an appeal before the Collector under intimation to the Highway Authority or the Officer authorized under sub-section (1) of section 21, as the case may be. The Collector shall after due enquiry record his decision in writing and communicate the same to the appellant and the Highway Authority or such officer. The Highway Authority or such officer shall till then desist from taking further action in the matter.”

5. Considering the submissions made by the learned counsel for the petitioner, the impugned order dated

21/04/2015 and the letter dated 08/05/2015, we are satisfied that the petitioner has made out a case for setting aside said order and remanding the matter for hearing before the Collector.

6. Learned AGP appearing on behalf of the respondents submits that she has received instructions from officer that, the Collector is ready and willing to hear the petitioner on 10/02/2020 at 12.00noon in his office and then decide the matter on its own merits.

7. The learned counsel appearing on behalf of the petitioner submits that all relevant documents are already filed with the Collector, therefore, there is no question of filing additional documents. The statement is accepted.

8. In view of these facts, following order is passed:

- a) The order dated 21/04/2015 passed by the Collector, dismissing the petitioner's Appeal U/s.24 of the Bombay Highways Act, 1955 against the notice dated 12/04/2013 served U/s.23(1) of the said Act, is set aside.
- b) The matter is remanded to the Collector.
- c) The learned Collector to decide the Appeal preferred by the petitioner U/s.24 of the Bombay Highways Act on its own merits after hearing the petitioner on

10/02/2020 at 12.00 noon.

- d) The petitioner to remain present on 10/02/2020 before the learned Collector at 12.00 noon.
- e) If it remained on the part of the petitioner to remain present before the learned Collector on 10/02/2020, then the authority can pass appropriate order.
- f) If the order goes against the petitioner, then the respondents are directed, not to take any coercive action against the petitioner for two weeks from the date of providing copy of that order.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)
