

Vidya Amin

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

WRIT PETITION NO. 3619 OF 2017

Naeem Mohammed Malik

... Petitioner

V/s.

Dy. Collector (Encroachment/Removal)
and Competent Authority & Ors.

... Respondents

Mr. Ranvir Shekhawat i/b. Raj Legal for the petitioner.
Mr. S.H. Kankal, AGP for the State.
Ms. Savita M. Yadav for the respondent no. 4.

**CORAM : G.S.KULKARNI, J.
DATE : 14 December, 2021**

P.C.:

1. The petitioner is before the Court being aggrieved by an order dated 2 December, 2016 passed by the Additional Collector (Encroachment/Removal), Western Suburbs. The primary contention of the petitioner is that though the impugned order specifically refers that the appeal of the petitioner was listed on 29 June, 2016, 3 August, 2016, 6 September, 2016, 10 October, 2016 and 22 November, 2016, as also when it categorically records in the reasoning that the petitioner was given notice of the matter being listed on the said dates, however, no such notice was issued to the petitioner. Therefore, such observations which are made are completely not borne out by the record. The impugned order has been passed without granting an opportunity of being heard to the

petitioner and that too eviction proceedings initiated against the petitioner under the provisions of Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

2. Mr. Kankal, learned AGP, on instructions as also referring to the affidavit as filed on behalf of the State, would fairly submit that there is no record that such notice were issued to the petitioner and same was received.

3. In these circumstances, the observation as made by the learned Additional Collector in the impugned order is required to be held to be perverse. The impugned order is certainly passed in breach of principles of natural justice. It is, accordingly, required to be set aside. Hence, the following order:

(i) The Additional Collector (Encroachment/Removal), Western Suburbs is directed to grant an opportunity of being heard to the petitioner as also to the respondent and after considering all the contentions of the parties pass a reasoned order. Let this exercise be undertaken within a period of six weeks from today;

(ii) At the first instance, the parties are directed to appear before the Additional Collector with the

impugned order on 27 December, 2021 at 11 a.m. Learned Additional Collector shall accordingly fix an appropriate date of hearing and thereafter pass appropriate order deciding the appeal of the petitioner;

(iii) All contentions of the parties on merits are expressly kept open.

4. Needless to observe that till the appeal of the petitioner is decided by the Additional Collector, no coercive action be taken against the premises of the petitioner.

5. Writ Petition is disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)

corrected as per speaking to minutes order dated 13.01.2022