

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

WRIT PETITION NO. 15156 OF 2022

Harbell Hotels Private Limited

..Petitioner

V/s.

The State of Maharashtra and Ors.

..Respondents

Mr. Girish Godbole with Mr. Pramod Patil and Ms. Komal Mestry i/b PNP and Associates for the Petitioner.

Mr. A.P. Vanarase for the Respondent Nos. 1 to 5.

Ms. Sushma Chaudhari Patil, Tahsildar present.

**CORAM : R.D.DHANUKA, AND
M.M.SATHAYE, JJ.**

DATE : 8 DECEMBER 2022

P.C.

. Rule. The learned AGP waives service for Respondents.

Rule is made returnable forthwith.

2. This petition is filed under Articles 226 and 227 of the Constitution of India for writ of certiorari for the impugned order dated 02.12.2022 passed by Respondent No.2 District Collector, Satara and also seeks an order and direction against Respondent Nos. 2 to 5 to restore the writ property described in prayer clauses (b) of the petition. The Petitioner received notice dated 30.09.2022 issued by Respondent No.2 along with others for hearing proposed to be held at 12.00 noon of 03.10.2022 along

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with documents. The said notice was received by the Petitioner at 18.42 hrs on 03.10.2022.

3. The learned Counsel for the Petitioner relied upon the post consignment report issued by the concerned post office showing that item was delivered to the Petitioner at 18.42 hrs of 03.10.2022.

4. The Petitioner immediately on 04.10.2022 informed the learned Collector that the notice was received after a time of meeting fixed by Respondent No.2 Collector. The Petitioner requested the Respondent No.2 Collector not to pass any adverse orders against the Petitioner and to issue a fresh notice well in advance prior to the date of hearing.

5. Respondent No.2 Collector however, passed an *ex-parte* order on 02.12.2022 without issuing a fresh notice and threatened to take possession of the writ property.

6. Our attention is invited to the photographs produced by the Petitioner. The learned Counsel for the Petitioner states that pursuant to the said *ex-parte* order, the Respondent No.2 Collector took forcible possession of the land and sealed the premises.

7. It is submitted by the learned counsel that the entire procedure followed by the Respondent No.2 Collector is in gross violation of principles of nature justice. Though the Petitioner has asked for reasonable notice before passing the order, instead of issuing a fresh notice, the Collector passed an *ex-parte* order that also after two months period.

8. Mr. Vanarase, the learned AGP for the State on instructions states that Respondent No.2 Collector has followed the requisite procedure and has rightly taken possession of the writ property. There are serious disputes between the Petitioner and various other parties in writ property. It is submitted that the Respondents propose to bring this issue on record by filing affidavit at this stage.

9. A perusal of the notice issued by Respondent No.2 Collector dated 30.09.2022 clearly indicates that the said notice was not for resumption of writ property. Though by the said notice, Respondent No.2 Collector had fixed the meeting at 12 noon on 03.10.2022, the said notice was received by the Petitioner only in the evening on same day and much after the said meeting was alleged to have been held by Respondent No.2.

10. Though by email dated 04.10.2022, the Petitioner had requested the Respondent No.2 Collector after appraising the fact that the notice was received after the said meeting was held and

requested for fresh date with advance notice, the Collector did not fix the fresh date of hearing and proceeded to pass an order *ex-parte* after about two months of the meeting alleged to have been held.

11. Not only the Respondent No.2 Collector passed *ex-parte* order, but he has taken forcible possession of the writ property and has sealed the premises. The copies of the photographs annexed to the petition indicates that the Collector has also taken assistance of the local police station while taking forcible possession of the writ property.

12. Whether there is any dispute between the Petitioner and other noticees, who have received notice on the same day, we do not propose to make any observations at this stage. The notice was received by the Petitioner after such meeting was alleged to have been held. The entire procedure followed by the Collector is in gross violation of the principles of natural justice.

13. The Respondent No.2 Collector ought to have issued another notice for holding a meeting in view of the Petitioner having brought to the notice of Respondent No.2 that the notice was received after the time fixed by Respondent No.2 for holding a meeting. Instead of fixing the fresh date of hearing, Respondent No.2 proceeded with passing of the impugned order and has taken forcible possession.

14. The learned AGP invited our attention to Section 53 of the Maharashtra Land Revenue Code, 1966 and vehemently urged that Respondent No.2 Collector was justified in exercising the powers under Section 53 for evicting the Petitioner from writ property considering the circumstances prevailing on the date of taking possession.

15. A perusal of Section 53 of the Maharashtra Land Revenue Code, 1966 clearly indicates that before evicting a person who according to the Collector is in unauthorised occupation or wrongfully in possession of any land or foreshore vesting in the State Government, a reasonable opportunity of being heard has to be given to such person by the Collector and only thereafter the Collector after making summary inquiry and after recording reasons can take possession.

16. Upon raising a query by us as to whether any such notice was issued by the Collector before taking forcible possession of the writ property, the learned AGP stated that no such notice was issued under Section 53 of the Maharashtra Land Revenue Code to the Petitioner. Statement is accepted.

17. In our view, the impugned action is also in gross violation of the Section 53 of the Maharashtra Land Revenue Code, 1966. We are thus directing Respondent No.2 to handover the possession of the writ property to the Petitioner at this stage.

18. Since, this Court is of the view that the entire action on the part of the Respondent No.2 is highhanded and arbitrary and without following the due process of law, we permit the Petitioner to make application for personal hearing through any other Collector appointed by the State Government by invoking the powers under Section 225 of the Maharashtra Land Revenue Code by making an application to the State Government. The conduct of the Respondent No.2 is deprecated.

19. If any such application is made by the Petitioner to the State Government, the State Government may assign this case to any other collector as the State Government may think fit.

20. It is made clear that this case shall not be heard by Respondent No.2 Collector, who has passed the impugned order.

21. We accordingly, pass following order:

(i) The impugned order dated 02.12.2022 passed by the Respondent No.2 is quashed and set aside.

(ii) The proceedings initiated by the Respondent No.2 pursuant to the notice dated 30.09.2022 are restored. Petitioner would be at liberty to file reply to the said notice within four weeks from today.

(iii) Respondent No.2 Collector (appointed by the State Government as aforesaid) shall pass a fresh order after hearing the

Petitioner and after considering the documents as well as submissions that would be made by the Petitioner, without being influenced by the observations made in the impugned order and conclusion made in the impugned order.

(iv) The order that would be passed shall be communicated to the Petitioner within one week from the date of passing such order. If the order passed is adverse against the Petitioner, no coercive steps shall be taken against the Petitioner for a period of four weeks from the date of communication of such order.

(v) The Respondent No.2 is directed to handover physical possession of the land of the writ property to the Petitioner described in the prayer clause (b) of the petition within two days from today without fail.

(vi) Rule is made absolute. Writ Petition is allowed in aforesaid terms with no order as to costs.

(vii) Parties to act on an authenticated copy of this order.

M.M.SATHAYE, J.

R.D.DHANUKA, J.