

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2137 OF 2021

Satish Jamnadas Dattani

.. Petitioner

Versus

Tahsildar, Vasai Division, Tal. Vasai, Dist.

Palghar and Ors.

.. Respondents

.....

- Mr. Rajiv Narula a/w. Mr. Tarang Jagtiani and Mr. Milind Mane i/by Jhangiani Narula & Associates, Advocates for Petitioner
- Mrs. M. S. Bane, AGP for Respondent-State
- Mr. S.G.Mishra, Advocate for Respondent No.3

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 17, 2023.

P.C.:

1. Heard Mr. Narula, learned Advocate for Petitioner; Mrs. Bane, learned AGP for Respondent-State and Mr. Mishra, learned Advocate for Respondent No.3 for some time and perused the record and pleadings of the case.

2. At the outset it needs to be stated that on 27.05.2021 this Court had recorded that the impugned order was passed by the Tahsildar i.e. Respondent No.1 who had in fact not given the statutory hearing as required under the show cause notice issued to the Petitioner. Paragraph No.3 of the order dated 27.05.2021 reads thus:

“3. Shri. Narula pointed out that the Petitioner had received notice of the proceedings before Tahsildar. The Petitioner was heard and Tahsildar after hearing the matter, closed the matter for orders. Before the final order could be passed, the erstwhile Tahsildar was transferred. It is the contention of Shri Narula

that in breach of principles of natural justice, the present Tahsildar passed the impugned order without hearing the Petitioner.”

3. Pursuant thereto this Court had heard the matter on 31.08.2021 when time was granted to the parties to place the Roznama / order sheet on record.

4. Today when the matter reached before me today, Mrs. Bane after taking appropriate instructions from the concerned Tahsildar confirms that the impugned order has been passed by the Tahsildar who had in fact not heard the Petitioner as the Tahsildar who had heard the matter was transferred before he could pass the order.

5. It is not the Petitioner's case that he was not heard by the Tahsildar but the Tahsildar who had actually heard the proceedings pursuant to the show cause notice was transferred and after his transfer the impugned order was passed by the incumbent Tahsildar who came in his place.

6. Be that as it may, in view of the violation of the fundamental principles of natural justice, the impugned order dated 03.05.2021 is unsustainable and therefore quashed and set aside.

7. In view of the above, hearing of the show cause notice dated 16.01.2020 shall be granted afresh to the Petitioner by the present incumbent Tahsildar in accordance with law. Mr. Narula would submit that the Petitioner has filed reply dated 01.02.2020 as also written submissions before the Tahsildar which shall be considered by

the present Tahsildar giving hearing to the Petitioner while deciding the matter afresh.

8. That apart, Petitioner is also permitted to refer to and rely upon any additional submissions which he desires to file before the present Tahsildar. Mr. Narula has also urged the Court to issue a direction to the Tahsildar to consider the decision of this Court in the case of *M/s. Royal Urbanspace and Ors. Vs. State of Maharashtra and Anr.* dated 01.03.2022 passed in Writ Petition No. 197 of 2022 with regard to the validity of the show cause notice as also the jurisdiction of the Tahsildar to issue such a show cause notice in view of the facts and circumstances of the present case being absolutely identical to the facts and circumstances of the case as decided by this Court in the case of *M/s. Royal Urbanspace and Ors. (supra)*. It is clarified that all such contentions of the Petitioner as well as other parties are expressly kept open and Petitioner is at liberty to place the said decision in the case of *M/s. Royal Urbanspace and Ors. (supra)* in his additional submissions before the Tahsildar, which shall be considered by the Tahsildar strictly in accordance with law.

9. The Tahsildar is directed to give a hearing to the Petitioner, pursuant thereto pass a reasoned order strictly in accordance with law within a period of four weeks from today. While passing the fresh order, the Tahsildar shall not be influenced by any findings and observations given in the impugned order.

10. If the Tahsildar desires to refer to and rely upon any document/documents, *inter-alia*, pertaining to the Petitioner's case, copies of the same shall be given to the Petitioner before the hearing. After the reasoned order is passed the Tahsildar shall convey the final order to the Petitioner. If the final order is adverse to the Petitioner then the same shall be held in abeyance and not be acted upon for a further period of 3 weeks from the date of receipt of the same by the Petitioner, so as to enable the Petitioner to take recourse to appropriate remedy.

11. With the above directions, Writ Petition is allowed.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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2023.02.20
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