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

WRIT PETITION NO. 2009 OF 2023

Sadashiv Shankar Kanade

...Petitioner

Versus

The State of Maharashtra
The Addl. Chief Secretary
Revenue and Forest Department
& Ors.

...Respondents

Mr Umesh H Pawar, for the Petitioner.

Mr R S Pawar, Addl. GP for the Respondent/state.

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 20 February 2025**

PC (Per M.S.Sonak, J.):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The petitioner challenges the order dated 20 July 2022 in terms of which the petitioner's request for allotment of land admeasuring 80 R under Gat No.359/1B and 359/3 was rejected, and the petitioner was permitted to retain the land admeasuring 40 R in Gat No.261.

4. Mr. Umesh Pawar learned counsel for the petitioner, invited our attention to the show cause notice dated 7 August 2015 (Exhibit-A at page No.26) and submitted that in terms of this show cause notice, the petitioner was called upon to show cause as to why the allotment to him should not be restricted to land admeasuring 80 R. He submitted that, accordingly the petitioner did show cause. He further submitted that now the authorities could not reduce the allotment to less than 80 R. He submitted that by this, the final decision has travelled beyond the show cause notice.

5. Mr. R.S.Pawar learned Addl. GP submits that on merits the petitioner was entitled to retain the land admeasuring only 40 R. He invited our attention to the Co-ordinate Bench order dated 17 March 2022 disposing of the Writ Petition No.5486 of 2021 instituted by the petitioner in which it was recorded that there was no dispute about the allotment of 40 R to the petitioner. Accordingly, he submitted that there was no infirmity in the impugned order.

6. The rival contentions now fall for our determination.

7. In this matter, we are concerned with the decision-making process, not the primary decision itself.

8. The show cause notice issued to the petitioner nowhere stated that the petitioner's retention was proposed to be reduced below 80 R. Therefore, the petitioner filed his response accepting that he should be permitted to retain the land of 80 R. However, the impugned order has now reduced his land holding to 40 R. This means that the petitioner did not have an opportunity to show cause and satisfy the

authorities on how his holding could have been reduced to 40 R or not maintained at 80 R. Mr. Umesh Pawar, learned counsel for the petitioner, is justified in contending that the impugned order went beyond the show-cause notice. To that extent, this is a case of failure of natural justice.

9. We propose to interfere with the impugned order dated 20 July 2022 on the above short ground. However, we grant the respondents the opportunity to issue the petitioner a fresh show-cause notice so that the petitioner can explain why his allotment should not be restricted to 40 R.

10. Mr. R. S. Pawar, the learned Addl. GP states that such a show-cause notice would be issued within a month from today. Mr. Umesh Pawar states that the reply will be filed to this show cause notice within 15 days of receipt. Upon receiving such reply, the respondent can dispose of the show cause notice within 3 months. An opportunity of hearing must be granted to the petitioner, and all petitioner's contentions must be duly addressed.

11. Since we have not examined the merits of the matter, we clarify that all contentions on merit are left open to be decided in the show-cause notice that will now be issued to the petitioner.

12. As noted earlier, there is no dispute about the petitioner being entitled to land measuring 40 R. As regards the balance portion of 40 R, the petitioner claims to be in possession.

13. Learned Addl. GP states that 40 R of additional land has already been allotted to one of the project's affected persons, respondent No.3. Despite being served, respondent No.3 has

not appeared in court. Therefore, we direct that all parties maintain the status quo regarding the additional 40 R land. If any adverse order is passed and communicated to the petitioner, then the status quo, which we have now ordered, should not be disturbed for four weeks from the date of communication of the adverse order to the petitioner.

14. The rule is made absolute in the above terms. There shall be no order as to costs. All concerned are to act upon the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)