

APPEAL FROM ORDER NO. 361 OF 2013
with
CIVIL APPLICATION NO. 441 OF 2013

interim relief on 21.3.2013. The Plaintiff has been in possession of the premises even prior to 1987 as a tenant and paying the rent regularly to the landlord/owner.

3 To the show cause notice, being tenant in occupation, the Appellant filed reply dated 27.2.2013 and reference is also made to the various documents including ration card, electricity bill and rent receipts. The averments are specifically made that no such notice was issued and/or received by the owner/landlord of the property. It is neither the case of the Respondent-Corporation that they have served the show cause notice to the owner separately and/or individually.

4 The question of sanction plan and/or necessary documents in support of alleged construction certainly need opportunity. The Assistant Commissioner, in my view, just cannot pass single line order without giving an opportunity of hearing. If the documents are filed on record and when nothing to show that the show cause notice was also issued to the owner, therefore reasoning so given by the learned Judge though not recorded in the order passed by the Assistant Commissioner on 11.3.2013, in my view, is unacceptable. The situation is that the reasoned order need to be passed by the Assistant Commissioner first and then the Court can note the said order and reasoning so mentioned. The learned Court cannot give reasons for the first time which were

provided and/or given by the Assistant Commissioner confirming the show cause notice in issue. This, in my view, is relevant factor to quash and set aside impugned order dated 21.3.2013.

5 The Appellant makes statement that the property is in their possession since long time. They are in occupation and in a given case the owner and/or the tenant or occupier could have applied for regularisation of the same also and are in occupation prior to 1987. The request was also made by the Applicant in the reply to give personal hearing before passing any order in the matter. The submission is that there is no personal hearing or person is required as contended by the learned Counsel for the Respondent-Corporation, is also of no assistance specifically when the Assistant Commissioner passed unreasoned order by overlooking the submission so raised in the reply to the show cause notice. There is nothing to show that any such notice was served upon the owner prior to the show cause notice in question. The submission is made that let an opportunity be given to the occupant to file additional documents and additional reply before the Assistant Commissioner. This, in my view, will also curtail further litigation as well as resolve the dispute at the earliest. Additional documents to be filed within three weeks.

6 In view of above, it is made clear that the Defendant not to take further action based upon the impugned show cause notice till the Assistant

Commissioner decide the issue again after giving an opportunity to the Plaintiff and/or landlord. The Assistant Commissioner to dispose of the issue, as expeditiously as possible. The Trial Judge to reconsider everything again including grant of protection as granted by this Court pending the decision of the Assistant Commissioner.

7 This order of stay to continue two weeks thereafter if the adverse order is passed by the Assistant Commissioner against the Plaintiff. The Respondent-Corporation to file reply accordingly after the decision of the Assistant Commissioner to the Notice of Motion, which is still pending.

8 The Appeal from Order as well as Civil Application stand disposed of accordingly. Rule made absolute in the aforesaid terms. No costs.

(ANOOP V. MOHTA, J.)