**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 2936 OF 2015

Kondabai w/o Vikram Jamadar
age 32 years, occ. Household
r/o Pathardi, Tq. Kallam,
Dist. Osmanabad. .. **PETITIONER**

VERSUS

1. The State of Maharashtra
through Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 32.

2. District Collector,
Osmanabad, Dist. Osmanabad.

3. Sub Divisional Officer,
Kallam, Dist. Osmanabad.

4. Tahsildar, Kallam
Dist. Osmanabad.

5. Mukund Manikrao Ghate,
age 36 years, occ. Service,
r/o near Z.P. Girl's High School
(North Side), Osmanabad,
Dist. Osmanabad. .. **RESPONDENTS**

Mr. M.S. Deshmukh, advocate for petitioner.
Mrs. A.V. Gondhalekar, AGP for the State.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.**
DATE : 15th JUNE, 2015

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the

parties, petition is taken up for final disposal at admission stage.

3. Petitioner is seeking exception to order dated 09.07.2014 passed by the Sub-Divisional Officer, Kallam, thereby dismissing the appeal presented by him whereunder challenge was raised to the residence and domicile certificate issued in favour of respondent no. 5. Appeal is not entertained solely on the ground that the appellant has invoked provisions of section 247 of the Maharashtra Land Revenue code for presentation of appeal. It is observed by the Sub-Divisional Officer that residence certificate cannot be issued under the provisions of Land Revenue Code nor there is power to direct cancellation of such certificate.

4. Learned AGP for the State has pointed out Circular issued on 26.06.1990 by the State Government whereunder powers have been invested with the Sub-Divisional Officer to consider the challenge raised to the certificates issued by the Tahsildar or the Naib Tahsildar. Merely the fact that petitioner has filed the appeal under the provisions of Maharashtra Land Revenue Code does not make him disentitle to raise challenge to the residence and domicile certificate issued by the revenue authorities by taking recourse to appellate remedies. The Sub-Divisional Officer has committed an error in refusing to deal with the challenge on its own merit. Order dated 09.07.2014 passed by the Sub-Divisional Officer dismissing the appeal presented by petitioner is therefore quashed and set aside and the matter stands remitted back to the Sub-Divisional Officer for rendering decision in accordance with law. The Sub-Divisional Officer shall decide the

matter as expeditiously as possible, preferably within a period of three months from today, after extending an opportunity of hearing to all the parties. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

dyb