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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.167 OF 2016

Shri M.V. Shah s/o V.J. Shah & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Rampal Singh Kohli for the Petitioners.

Ms. Geeta Shastri, Additional Government Pleader for the Respondent
Nos.1 to 4.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 15th DECEMBER, 2016

PC.

1 Heard the learned counsel appearing for the Petitioners and the learned Additional Government Pleader for the Respondent Nos.1 to 4. The challenge in this Petition under Article 226 of the Constitution of India is firstly to the Judgment and Order dated 27th December, 2013 (Exhibit – T to the Petition). The said order is made by the District Collector of Mumbai Suburban District. The second challenge in this Petition is to the order dated 22nd May, 2015 (Exhibit – AA to the Petition). Again the said order is made by the Collector of Mumbai Suburban District. There is a challenge to the consequential demand made by the State Government on the basis of the aforesaid two orders.

2 A preliminary objection was raised by the learned Additional Government Pleader that a remedy of Appeal before the Divisional Commissioner is available to the Petitioners. In fact, it is pointed out that the fifth Respondent has already preferred an Appeal.

3 The learned counsel appearing for the Petitioners invited our attention to the Judgment and Order dated 3rd November 2014 (Exhibit – X to the Petition) passed by the Additional Commissioner, Kokan Division in the earlier round of litigation. By the said order, the Additional Commissioner decided the Appeal preferred by the present Petitioners as well as a separate Appeal preferred by the Respondent No.5 for challenging the order dated 27th December, 2013 made by the Additional Collector. An order of remand to the Additional Collector was passed under the said order. The said order dated 27th December, 2013 is Exhibit – T to the Petition which is challenged in this Writ Petition. The learned counsel after inviting our attention to the aforesaid order dated 3rd November, 2014 submitted that while passing order of remand, the Additional Commissioner, Kokan Division has observed that the Collector will have to proceed on the footing that the Government order/Resolution dated 12th December, 2012 of the Revenue and Forest Department is applicable to the facts of the case. We may note here that the second impugned order of the District

Collector which is the subject matter of challenge in this Petition is passed pursuant to the order of remand dated 3rd November, 2014 passed by the Additional Commissioner, Kokan Division.

4 We have perused the original Marathi version of the Judgment and Order dated 3rd November, 2014. Perusal of the last paragraph of the said Judgment and Order shows that there is no direction issued by the Additional Commissioner that the Collector shall decide the matter on the footing that the Government Resolution dated 12th December, 2012 will apply to the facts of the case. All that the Additional Commissioner has observed is that if the said Government Resolution dated 12th December, 2012 is applicable, the same will have to be considered by the District Collector. Therefore, we do not agree with the submission of the learned counsel appearing for the Petitioners that the issue of applicability of the Government decision dated 12th December, 2012 has been concluded by the Additional Commissioner. In fact, the said issue has not been at all concluded and if an Appeal is preferred by the Petitioners against the second impugned order, the question whether the said decision is applicable or not can be always decided in accordance with law by the Collector.

5 In view of what is observed above and in view of availability of an efficacious remedy, we decline to entertain this

Petition under Article 226 of the Constitution of India. Accordingly, Writ Petition is disposed of. Remedy of the Petitioners is kept open. If Appeal is preferred by the Petitioners before the Additional Commissioner, Konkan Division, the Appellate Authority is bound to note that present Writ Petition was lodged by the Petitioners on 6th August, 2015 and the same remained pending till today. This aspect shall be taken into consideration while deciding the application for condonation of delay.

6 Needless to add that the Appeal which may be preferred by the Petitioners shall be heard along with the Appeal already preferred by the fifth Respondent.

7 All contentions on merits are kept open.

8 On the prayer made by the learned counsel appearing for the Petitioners, we direct that on the basis of the impugned orders, coercive action shall not be taken against the Petitioners for a period of four weeks from today to enable the Petitioners to move the Appellate Authority and seek appropriate interim relief.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)