IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.3799 OF 2014
(Ashok s/o Jairam Ambulkar and another ..vs.. Sau. Shantabai Pandurangji Chondake and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

None for the petitioners,
Shri R.D. Karode, Advocate for the respondent No.1,
Shri H.R. Dhumale, A.G.P. for the respondent No.3.

CORAM : Z.A. HAQ, J.
DATED : 05-08-2016

None appeared for the petitioners on 22-04-2016, the matter was adjourned. On 22-07-2016 again none appeared for the petitioners, matter was adjourned. On 29-07-2016 the matter was adjourned on request made on behalf of the petitioners. Today none appeared for the petitioners in the morning session when the matter was called out. In the afternoon session also none appears for the petitioners.

Heard Shri R.D. Karode, Advocate for the respondent No.1 and Shri H.R. Dhumale, Assistant Government Pleader for the respondent No.3. None appears for the respondent No.2 though served.

2. The petitioners and Jairam (father of the petitioner No.1) filed an application before the Sub-Divisional Officer praying that the mutation entry dated 01-01-2001 recording the name of the respondent No.1

in the record be cancelled. As, according to the petitioners and Jairam, there was delay in filing the application, they filed an application praying for condonation of delay. The Sub-Divisional Officer passed an order on 19-08-2005, condoned the delay and accepted the appeal/application. This order accepting the appeal/application was misconstrued by the respondent No.1 and under the wrong impression that the appeal/application filed by the petitioners and Jairam is allowed, the respondent No.1 filed revision before the Additional Collector under Section 257 of the Maharashtra Land Revenue Code, 1966. The Additional Collector allowed the revision and set aside the order passed by the Sub-Divisional Officer on 19-08-2005. The order passed by the Additional Collector was challenged by the petitioners in revision under Section 257 of the Maharashtra Land Revenue Code, 1966 before the Commissioner. The revision is dismissed by the impugned order.

3. After examining the contentions of the parties and the original record produced by the learned Assistant Government Pleader, I find that by the order dated 19-08-2005 the Sub-Divisional Officer had condoned the delay and had accepted the appeal/ application for hearing. By the order dated 19-08-2005, the appeal/application filed by the petitioners and Jairam was not allowed. Challenge raised by the

respondent No.1 before the Additional Collector on the ground that the appeal/application was allowed, was misconceived and the learned Additional Collector committed an error in setting aside the order passed by the Sub-Divisional Officer considering that the appeal/application filed by the petitioners and Jairam was allowed by the Sub-Divisional Officer. The learned Commissioner has also failed to consider the above aspects.

4. In the facts of the case, following order will sub-serve the ends of justice.

(i) The order passed by the Additional Collector on 17-04-2006 and the order passed by the learned Commissioner on 04-02-2014 are set aside.

(ii) The matter is remitted to the Sub-Divisional Officer for deciding the appeal/application filed by the petitioners, on merits after hearing the parties.

The petition is allowed in the above terms. The parties to bear their own costs.

JUDGE

adgokar

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar. Uploaded on : 06-08-2016.
P.A. to Hon'ble Judge.