

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.14427 OF 2018**

MARATHWADA MITRA MANDAL, MUMBAI.	]	Petitioner
Vs.		
THE STATE OF MAHARASHTRA & OTHERS.	]	Respondents

.....

Mr. S.M. Sabrad, for Petitioner.
Mr. P.P. Pujari, for Respondents-State.

.....

CORAM : R.G. KETKAR, J.

DATE : 19th DECEMBER, 2018.

P.C.

Not on board. At the request of Mr. Sabrad, taken up in the production board.

2. Heard Mr. Sabrad, learned Counsel for the petitioner and Mr. Pujari, learned A.G.P, for respondents-State.

3. This Petition takes exception to the order dated 10th December, 2018 passed by Additional Commissioner, Konkan Division, Mumbai. By that order, Additional Commissioner dismissed the application filed by the petitioner for restoration of Appeal No.194 of 2018.

4. By order dated 15th September, 2018, the Additional Commissioner dismissed the appeal preferred by the petitioner under section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') challenging the order dated 26th February, 2018 passed by Collector, Mumbai Suburbs District. The Additional Commissioner dismissed the appeal on the

ground that the petitioner herein was not interested in pursuing the appeal. Accordingly, in exercise of powers under section 232 (2) of the Code, the Additional Commissioner dismissed the appeal.

5. Aggrieved by that decision, the petitioner filed restoration application which was dismissed by the impugned order. In support of this Petition, Mr. Sabrad submitted that while dismissing application for restoration of appeal, Additional Commissioner did not give any reason. Mr. Pujari was not in a position to controvert the submission.

6. The matter was heard on 17th December, 2018 and learned A.G.P was directed to take instructions as to within what time, restoration application will be decided after it's restoration. Mr. Pujari, on instructions states that restoration application will be decided within two months from the date of appearance of the parties. Mr. Sabrad states that the petitioner will appear before the Additional Commissioner on 21st December, 2018.

8. A perusal of the impugned orders shows that no reasons are given by the Additional Commissioner while rejecting the application for restoration of the appeal. On this ground alone, the impugned order is liable to be set aside, thereby, restoring the application for restoration of the appeal on the file of the Additional Commissioner. The Additional Commissioner shall pass a reasoned order in accordance with law. The Petition is disposed of in the following terms;

- [1] Impugned order dated 10th December, 2018 is set aside.
- [2] Application made by the petitioner for restoration of the appeal is restored to the file of the Additional Commissioner.

- [3] The parties shall appear before the Additional Commissioner on 21st December, 2018 and for that purpose, no fresh notice be issued to them.
- [4] Additional Commissioner will fix a suitable date and within 2 months from fixing the suitable date decide the application for restoration of the appeal.
- [5] Additional Commissioner shall pass a reasoned order while deciding the restoration application.
- [6] All contentions of the parties are expressly kept open.
- [7] Rule is made absolute with no order as to costs.

9. All the parties including the Additional Commissioner to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]