IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4408 OF 2019

1. Derive Trading and Resorts Private Limted (formerly known as Derive Trading Private Limited) A company incorporated under the provisions of the Companies Act, 1956 having its registered office at 903, Dalamal House, 206, J. B. Marg, Nariman Point, Mumbai – 400 021 **...Petitioner**

Versus

1. The State of Maharashtra to be served through the Public Prosecutor, High Court, Mumbai 400 023
2. The Tahasildar, having his address at office of the Tahasildar, Alibaug, District - Raigad. **...Respondents**

Mr. Sanjay Jain, a/w Mr. Bhavin Gada, Mr. Shashank Shah, I/b L. D. Shah & Co., for the Petitioner.
Mrs. P. N. Diwan, AGP for the Respondents/State.

CORAM: R. M. BORDE &
N. J. JAMADAR, JJ
DATED: 11th APRIL, 2019

ORAL JUDGMENT:- (Per R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.

2. The Petitioner is aggrieved by the order passed by the Tahsildar, Alibag, on 15th March, 2019, directing him to pay the amount of Rs.12,27,85,902/- towards 50% unearned income in respect of the property bearing CTS No.28/B situated at Gondhalpada, Taluka Alibag, District Raigad.

3. The Petitioner contends that the order has been issued by the Tahsildar without extending an opportunity of hearing to the Petitioner. Secondly, it is contended that the order is unsustainable for the reason that the Tahsildar has not applied his mind to the record independently and has issued a direction to pay the amount merely on the basis of the objection raised by the Auditor General in his Report. Apart from aforesaid two grounds, the Petitioner has also not been extended an opportunity of hearing before issuance of order impugned in this petition. The Petitioner denies his liability to pay the amount. It is contended that he has deposited the amount earlier in accordance with relevant rules and that there is no question of deficient payment. The reliance placed by the Tahasildar on the Audit Report, is also misplaced. The Tahsildar ought to have independently applied his mind and arrived at appropriate decision as regards liability of the Petitioner towards revenue dues. We have considered the issue of applicability or admissibility of observations and objections recorded in audit report, while directing revenue recovery while daling with Writ Petition No.1463 of 2019 and Writ Petition No.3858 of 2007 and the reasons set out therein need not be reproduced. In the facts and circumstances of this petition, and considering grievance of the Petitioner that adverse order has been issued without extending an opportunity of hearing to the Petitioner, it is desirable to remit the matter back to the Tahsildar for reconsideration.

4. The order impugned in this petition dated 15th March, 2019, shall be construed as notice of demand and the Tahsildar, Alibag, shall after extending an opportunity of hearing to the Petitioner pass appropriate order in accordance with the provisions of law. The Tahasildar, while passing order, shall consider the issue of liability of the Petitioner independent of observations made by Auditor in his report.

The Petitioner shall appear before the Tahsildar on 2nd May, 2019 and, as such, no separate notice for securing his presence before the Tahasildar shall be necessary.

5. The Tahsildar, Alibag shall pass appropriate order after perusing the record as well as after extending an opportunity of hearing to the Petitioner as expeditiously as possible, preferably within three months from today.

6. Rule is accordingly made absolute. No costs.

[N. J. JAMADAR, J.] **[R. M. BORDE, J.]**