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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.497 OF 2018

Kanya Khemaram Choudhary ...Petitioner
vs.
The Tahsildar, Borivali & Ors. ...Respondents

Mr.S.N.Gawde I/b M/s.Shree & Co. for the Petitioner
Mr.Amit Shastri, AGP for the respondent-State

CORAM : A.S.OKA, &
M.S.SANKLECHA, JJ.
DATE : MARCH 14, 2019

P.C.:

1 Rule. The learned AGP waives service for the
respondent. Forthwith taken up for disposal.

2 The challenge in this petition under Article
226 of the Constitution of India is to the order
made by the Additional Collector (Encroachment),
Western Suburbs by which the appeal preferred by the
petitioner against a public notice dated 30th May
2017 has been dismissed as not maintainable. The
Appeal was preferred under section 35 of the
Maharashtra Slum Areas (Improvement, Clearance and
Redevelopment) Act, 1971 (for short "the said Act of
1971"). The appeal is dismissed by the impugned
order on the ground that the impugned notice
challenged in the Appeal is not issued in exercise
of the powers under the said Act of 1971.

2 We have carefully perused the impugned notice. It clearly incorporates that it is issued in exercise of the powers under section 3(z)(2)(4) of the said Act of 1971.

3 Hence, the impugned order shows non application of mind. The Appeal was maintainable. Therefore, the impugned order deserves to be set aside.

4 Accordingly, we dispose of the petition by passing the following order:

- (I) The impugned order dated 29th September 2017 (Exhibit-I) is hereby quashed and set aside;
- (II) The appeal preferred by the petitioner is restored to the file of the Appellate Authority;
- (III) We direct the petitioner to appear before the Appellate Authority on 27th March 2019 at 11.00 a.m for fixing the schedule of hearing;
- (IV) Rule is made partly absolute on above terms;
- (V) All contentions on merits are kept open;
- (VI) All concerned to act upon an authenticated copy of this order.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)