

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7992/2017

(SHEIKH BISMILLA SHEIKH REHMAN (DEAD) THROUGH LR's SHEIKH REHMAN SHEIKH BISMILLAH &
OTHERS **VERSUS** ADDITIONAL COMMISSIONER, AMRAVATI DIVISION, AMRAVATI & OTHERS)

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

Court's or Judge's orders

Shri Y.J. Maheshwari, counsel for petitioners.
Mrs. M. Naik, A.G.P. for R-1 to 4.

CORAM : A.S. CHANDURKAR, J.
DATE : MARCH 13, 2019.

Heard finally with consent of the learned counsel for the parties.

The order dated 29.07.2015 passed by the Additional Commissioner, Amravati Division, Amravati is under challenge in this writ petition. The said order has been passed in exercise of review jurisdiction under Section 258 of the Maharashtra Land Revenue Code, 1966.

Inter alia, it is submitted that the Additional Commissioner had fixed the proceedings for consideration of the preliminary objections raised by the present petitioners to the tenability of those proceedings that were filed by the respondent no.2 herein. According to the petitioners, the review petition was not maintainable for reasons stated in the application raising preliminary objections. Referring to the Roznama of the proceedings, it is submitted that on various dates, the proceedings were kept for hearing on the preliminary objections and for that purpose a report of the Tahsildar had been called. However,

subsequently on said report being submitted, the proceedings were heard on merits without any opportunity of hearing to the petitioner. By the impugned order, the review petition has been allowed and the earlier order passed by the Additional Commissioner stands reviewed.

In the reply filed on behalf of the respondent, said exercise is sought to be justified. It is submitted that since the proceedings were expedited in view of directions issued by this Court in a writ petition filed by another allottee, the Authority proceeded to decide the same on merits.

Perusal of the documents placed on record including the roznama of the proceedings indicates that on various dates, the proceedings were fixed for deciding the preliminary objections raised by the petitioners herein to the maintainability of the review petition. The response of the Tahsildar was received on 18.12.2014 and two days thereafter arguments of the review petitioner were heard. Though spot inspection was proposed there was no notice given to the petitioners and the final order was passed on 29.07.2015. As a result, the written arguments filed by the petitioners only on the aspect of tenability have been considered. The petitioners have not been heard on the merits of the review petition. It is found that the impugned order has been vitiated having been passed without grant of proper opportunity to the petitioners.

It is thus found that the impugned order dated 29.07.2015 is liable to be set aside on this count. A fresh hearing of the preliminary objections and thereafter of the review petition if the same is found to be tenable is warranted. Accordingly, the following order is passed:-

- I. The order dated 29.07.2015 passed by the Additional Commissioner, Amravati Division, Amravati on the review application is set aside. The proceedings are restored to file.
- II. The respondent no.1 shall hear the petitioners on the preliminary objections raised by them as well as on the merits of the review petition. If it is found that the review petition is not maintainable, orders to that effect can be passed by the Additional Commissioner. If an adjudication on merits is found necessary, same can be done by the Additional Commissioner.
- III. For said purpose, the petitioners shall appear before the Additional Commissioner on 01.04.2019.
- IV. The proceedings be decided within a period of two months from that date.
- V. All the respective contentions of parties are kept open.

The Writ Petition is allowed in aforesaid terms. No costs.

JUDGE