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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7059 OF 1999  
WITH  
WRIT PETITION NO. 4817 OF 1999**

Ahmed Fakirsaheb Kokani, since deceased through his heirs

- 1) Rafique Ahmedsaheb Kokani,  
R/at 1327, Phalke Road, Nashik.
- 1A) Mudassar Mohammad Rafique Kokni,  
Residing at House No. 1327, Fakir Mansion,  
Phalke Road, Lokhand Bazar, Nasik-422  
001.
- 1B) Mohammed Shoeb Mohammad Rafique  
Kokni,  
Residing at House No. 1327, Fakir Mansion,  
Phalke Road, Lokhand Bazar, Nasik- 422  
001.
- 1C) Fatema Farhan Kokni,  
Residing at House No. 1327, Fakir Mansion,  
Phalke Road, Lokhand Bazar, Nasik-  
422001.
- 2) Fariduddin Ahmedsaheb Kokani,  
Residing at as above.
- 3) Gulam Mohammed Ahmedsaheb Kokani,  
R/at as above.
- 4) Khudeja Asif Kokani,  
R/at 2770, Kokanipura,  
Razak Monzil, Nasik.

... Petitioners

Vs.

- 1) Shri Mohammedsaheb Hasansaheb  
Khatib(deceased) by heirs

Note : This is the corrected Judgment as per speaking to minutes order dated 21<sup>st</sup> August 2024.

- 2) Smt. Mehra Mohammedsaheb Khatib  
since deceased through her heirs and legal  
representatives.
- 3) Shri. Zaid Mohammedsaheb Khatib
- 4) Shri. Anwar Mohammedsaheb Khatib
- 5) Shri. Zakir Mohammedsaheb Khatib
- 6) Shri. Farukh Mohammedsaheb Khatib
- 7) Shri Nasir Mohammedsaheb Khatib No. (2)  
to (6) all r/o. Jahangir Masjid, Chowk  
Mandai, Nashik.
- 8) Smt. Sherbano Mustak Khatib
- 9) Smt. Narsin Shabir Khatib  
No.(B) & (9) r/o. Sharda Circle,  
Mumbai Naka, Nashik.
- 10) Smt. Shakila Jilani Khatib  
r/o. Manohar Market, Sharda Circle,  
Mumbai Naka, Nasik.
- 11) The Collector of Nashik,  
Collector Office, Nashik.
- 12) Secretary and Officer on Special Duty(Appeals),  
Revenue and Forests Department, Maharashtra  
State, Sachivalaya, Mumbai.

... Respondents

Mr. Nikhil Sakhardande, Senior Advocate a/w. Ms. Shubhra, Swami Paranjape, Ms. Gauri Bhosale and Ms. Kinnari Mehra i/b. Veer Kankaria, for Petitioners in both the Petitions.

Mr. S. S. Patwardhan i/b. Minal Shelar, for Respondent Nos. 2 to 10 in both the petitions.

Ms. S.S. Bhende, AGP for respondent nos. 11 and 12-State.

Note : This is the corrected Judgment as per speaking to minutes order dated 21<sup>st</sup> August 2024.

CORAM : GAURI GODSE, J.  
RESERVED ON : 25<sup>th</sup> APRIL 2024  
PRONOUNCED ON : 25<sup>th</sup> JULY 2024

**JUDGMENT:-**

1. These petitions arise out of the orders passed regarding a land bearing CTS No. 3762 at Nashik, granted to Shri Ahmedsaheb Kadarsaheb Kokani under the Sanad dated 31<sup>st</sup> October 1920, issued by the then Government.

**Facts in brief:**

2. The brief facts, according to the petitioners, concerning the dispute between the parties are as under:

3. Shri Ahmedsaheb Kadarsaheb Kokani, on 7<sup>th</sup> April 1910, purchased a superstructure (old post office structure) standing on CTS No. 3762 at Nashik. On 13<sup>th</sup> October 1920, the then Government granted a Sanad in favour of Ahmedsaheb Kadarsaheb Kokani ("original Sanad holder") for the land below the said superstructure ("land"). The document of Sanad, dated 13<sup>th</sup> October

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1920, specified that the grant was heritable and transferable. It was a lease in perpetuity with fixed rent for fifty years from 1910-1911 to 1960-61, subject to renewal of the rate of revenue after fifty years. The deceased petitioner (“petitioner”) is the grandson of the original Sanad holder. The name of the petitioner was mutated in the City Survey revenue record as the heir and legal representative of the original Sanad holder. In 1928, the deceased respondent no.1(“respondent”) was inducted as a tenant of the structure standing on CTS No. 3762. On 30<sup>th</sup> November 1971, the respondent made an application for a permanent grant of the land in his favour. On 23<sup>rd</sup> March 1972, respondent no. 11-Collector informed the petitioner that the lease of the land had expired and hence called upon the petitioner to show his ownership rights, failing which the land would stand resumed in favour of the Government. On 4<sup>th</sup> September 1972, the learned Collector dismissed the respondent’s application dated 30<sup>th</sup> November 1971 on the ground that the land was not available for distribution.

4. Learned Collector issued a show cause notice dated 13<sup>th</sup> April 1987 to the petitioner on the ground that the lease period had expired, and the land was liable to be resumed to the Government.

**Note :** This is the corrected Judgment as per speaking to minutes order dated 21<sup>st</sup> August 2024.

The show cause notice stated that the structure standing on the said land was given on rent without prior permission from the government, and hence, the same was in breach of the terms of the original Sanad. The petitioner replied to the show cause notice and contended that the superstructure on the said land was purchased in 1910 for a sum of Rs. 606/- in auction proceedings. The said superstructure was given on rent to one Ziauddin Yasin Khatib for the purpose of use of Godown, and the respondent was residing as a sub-tenant. The learned Collector passed an order on 4<sup>th</sup> May 1988, directing the resumption of the land in the Government on the ground that the period of the lease had expired and there was a breach of the terms and conditions of the Sanad. Learned Collector observed that the land was granted to the original Sanad holder on conditions and as per clause (B) of the Rules of 1921 framed under the then Bombay Land Revenue Code, 1879 (“BLRC”); hence, the same was not transferable without prior permission of the Government. The learned Collector further observed that the land was to be used only for the purpose for which it was granted. Hence, according to the learned Collector, the Sanad holder had given land on rent by committing a breach of the terms and conditions of the Sanad.

Note : This is the corrected Judgment as per speaking to minutes order dated 21<sup>st</sup> August 2024.

5. Being aggrieved by the order passed by the learned Collector, the respondent filed a revision application before the Revenue Minister. In the meantime, the petitioners had challenged the said order dated 4<sup>th</sup> May 1988 before the Additional Commissioner by filing an Appeal No. 16 of 1994. By order dated 29<sup>th</sup> April 1991, the learned Minister allowed the revision filed by the respondent, and the order passed by the learned Collector was quashed and set aside, further directing the learned Collector to treat the respondent as a class-II occupant. In view of the order passed by the learned Minister, the respondent was declared a class-II occupant by the subsequent order dated 6<sup>th</sup> June 1992, passed by the learned Collector.

6. On 8<sup>th</sup> March 1994, Appeal No. 16 of 1994 was filed by the petitioner before the Divisional Commissioner, challenging the order of resumption dated 4<sup>th</sup> May 1988. On 16<sup>th</sup> October 1996, petitioners filed a review application before the State Government challenging the order passed by the learned Minister on 29<sup>th</sup> April 1991. In the meantime, the petitioners had filed an Appeal No. 17 of 1994 for challenging the order dated 6<sup>th</sup> June 1992, declaring the respondent as a class-II occupant. However, in view of the pendency of the

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review application before the State Government, Appeal No. 17 of 1994 was withdrawn on 5<sup>th</sup> April 1997. Thereafter, by order dated 28<sup>th</sup> April 1997, the learned Divisional Commissioner dismissed Appeal No. 16 of 1994 on the ground that the order passed by the learned Minister was already executed on 6<sup>th</sup> June 1992 in favour of the respondent. Hence, the petitioners challenged the order dated 28<sup>th</sup> April 1997 before the State Government.

7. Since, there was delay in filing the review application before the State Government, the petitioner filed an additional affidavit explaining the delay. However, the State Government dismissed the review application on 1<sup>st</sup> March 1999 on the ground of delay. Aggrieved by the dismissal of the review application, the petitioner filed Writ Petition No. 4817 of 1999.

8. On 13<sup>th</sup> April 1999, the State Government dismissed the appeal of the petitioner, filed to challenge the order dated 28<sup>th</sup> April 1997 by the Divisional Commissioner. Hence, the petitioner filed a separate Writ Petition No. 7059 of 1999. During the pendency of the petitions, the heirs and legal representatives of the deceased petitioner were brought on record.

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**Submissions on behalf of the petitioners:**

9. Learned senior counsel for the petitioners submitted that the order dated 29<sup>th</sup> April 1991, passed by the learned Minister, is in breach of the principles of natural justice as the petitioner, though was an interested party, he was not made a party and was not heard before passing the order, which directly affected the petitioner. He submitted that the review petition was erroneously dismissed on the ground of delay, though the delay was explained by way of an additional affidavit filed on 19<sup>th</sup> December 1998. He further submitted that the contention raised in the affidavit was not disputed by filing any reply by the respondent. With reference to the order of resumption dated 4<sup>th</sup> May 1988, learned senior counsel for the petitioners submitted that the learned Collector's main reasoning that the sanad's tenure in favour of the original sanad holder was for the term of fifty years is erroneous. He submitted that the sanad is in perpetuity, and the period of fifty years is only for revising the rate of revenue payable in terms of the Sanad. The second reasoning regarding breach of conditions, as stated in the order dated 4<sup>th</sup> May 1988, is also erroneous and was factually incorrect. The show cause notice issued to the petitioners alleged that the building

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standing on the land was given on rent and was not used by the petitioner. Learned senior counsel for the petitioners further submitted that even otherwise, the Sanad had no restriction on the transfer and, the same was transferable and heritable and that it was not for a fixed tenure. The only condition mentioned in the Sanad was that there would be a fresh assessment of the rate of revenue after fifty years. Thus, the learned senior counsel for the petitioners submitted that the original petitioner was a class-I occupant, as is evident from the perusal of Section 29 of the Maharashtra Land Revenue Code 1966 ("MLRC").

10. In support of the submissions, learned senior counsel for the petitioners relied upon the decisions of this Court in the case of *Ulawappa Basawanappa Hugar and Ors Vs Gadigewa Hugar and Others*<sup>1</sup> and in the case of *M/s. Sea Enterprises Vs The Collector, District Raigad and Another*<sup>2</sup>, to contend that the issue with regard to the nature of the document styled as Sanad was considered by this Court in the said decisions by referring to Sections 133 and 131 of BLRC. He submitted that this Court has taken a view that a Sanad granted under Section 133 to the holder of a building site by

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1 AIR 1925 Bom 477

2 Writ Petition No. 4453 of 1988, dated 28<sup>th</sup> July 2006.

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the Collector in the form prescribed by Schedule-H is a document recognising the rights of the holder, including the right to transfer the occupancy and inherit the occupancy. He, thus, submitted that the observations of this Court with regard to the nature of the document styled as Sanad squarely apply to the facts of the present case.

11. By way of an additional affidavit dated 6<sup>th</sup> February 2024 and a rejoinder compilation, the petitioners have placed on record the memo of Appeal No. 16 of 1994, filed before the Divisional Commissioner, challenging the Order dated 4<sup>th</sup> May 1988, copy of Appeal No. 17 of 1994, filed before the Divisional Commissioner challenging the order dated 6<sup>th</sup> June 1992, copy of review application filed before the State Government seeking review of order dated 29<sup>th</sup> April 1991 passed by the Revenue Minister, the copy of appeal filed before the State Government to challenge the order dated 28<sup>th</sup> April 1997 passed by the Divisional Commissioner and copy of respondent's letter dated 15<sup>th</sup> December 1989, which was treated as a revision for passing the order dated 29<sup>th</sup> April 1991. Learned senior counsel for the petitioners by relying upon the grounds of challenge in the aforesaid proceedings submitted that the petitioner was a necessary party to the proceedings before the

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Revenue Minister and the revision filed by the respondent suffers from non-joinder of the necessary party. Learned senior counsel further submitted that though the petitioner had filed his reply to the show cause notice issued by the learned Collector, the order of resumption was passed without hearing the petitioner. The learned senior counsel for the petitioners, thus, submitted that the petitioners are entitled to an adjudication on the merits of the petitioner's challenge to the resumption order dated 4<sup>th</sup> May 1988 passed by the learned Collector and order 29<sup>th</sup> April 1991 passed by the learned Minister. He submits that in view of the order passed by the Revenue Minister, the petitioner's challenge to the said order made before the Divisional Commissioner was not entertained on merits. Learned senior counsel submitted that the petitioner's appeal before the State Government to challenge the order dated 28<sup>th</sup> April 1997 is also erroneously dismissed only on the ground that a subordinate court cannot sit in appeal against the order of a superior court and that the petitioner should have approached the Government seeking review of the Minister's order, though the petitioner's review was pending before the State Government. Hence, the learned senior counsel submitted that the petitioners are deprived of hearing on merits causing serious prejudice to their

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rights.

**Submissions on behalf of the respondents:**

12. Learned counsel for the respondents submitted that the source of title, as pleaded by the petitioner, is of the year 1920 and not the Sanad as sought to be argued on behalf of the petitioners. The respondent was a tenant of the land and the structure. Hence, the petitioner also filed a suit for possession of the land and structure. In the said suit, the petitioner admitted that the respondent is a tenant of the petitioner. Though the source of the title of the petitioner was the document of the year 1910, no document of title was produced showing the source of the year 1910. Learned counsel for the respondents relied upon the affidavit of the State Government contending that the lease granted to the petitioner was in the year 1910 and was given in an auction. To support the contentions raised by the respondents, learned counsel for the respondents relied upon the provisions of BLRC and the Rules of 1921 and the forms prescribed under the said Rules. According to the respondents, Rule 43 and Form-F of Rule 43 are relied upon by the learned Collector while passing the order of resumption. He, therefore, submitted that

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the learned Collector has rightly held that the petitioner had committed a breach in view of these Rules. Learned counsel for the respondents further relied upon Section 68 of the BLRC to contend that the source of the power of the Collector to resume land emanates from Section 68.

13. Learned counsel for the respondents further contended that the petitioners had never made any application for change of use or permission for transfer of the land to any third party. However, simply gave it away on lease to the person who had migrated from Pakistan and then to the deceased respondent. Hence, considering the breach of condition as prescribed under Section 68 read with Rule 43, the learned Collector was correct in issuing the order of resumption.

14. Learned counsel for the respondents relied upon the application for renewal of the lease, which, according to the learned counsel for the respondents, was rejected by the Collector by his order dated 4<sup>th</sup> May 1988. Learned counsel for the respondents further relied upon the respondent's application dated 30<sup>th</sup> November 1971 for a grant of the land. According to the learned

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counsel for the respondents, this application was filed under the Rules of 1971 and framed under MLRC. He submitted that this application was also rejected by the learned Collector by order dated 4<sup>th</sup> May 1988. Thus, by referring to Section 20 of MLRC, he submitted that on resumption of the land, the Government should become the dominant owner. Hence, on the expiry of the term of the lease, the land automatically reverted to the Government in the year 1962, and therefore, the subsequent order of 4<sup>th</sup> May 1988 is only a formal order of resumption. He, thus, submitted that respondents rightly approached the State Government by filing a revision application and requested a grant of land in his favour. He, therefore, supported the order of the learned Revenue Minister by contending that once the land was resumed, the State Government was authorised to issue a fresh allotment/grant in favour of the respondent. Thus, according to the learned counsel for the respondents, no fault can be found in the subsequent order dated 6<sup>th</sup> June 1992, passed by the learned Collector in favour of the respondents. He submitted that the order, dated 6<sup>th</sup> June 1992, was never challenged by the petitioners. Hence, the said order of allotment under Rule 42(1)(b) of the 1971 Rules stands confirmed in favour of the respondents.

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15. Learned counsel for the respondents submitted that the document of Sanad of the year 1920 relied upon by the petitioners is not a source of title, as the petitioners claim leasehold rights from the year 1910. To support his contention, learned counsel for the respondents relied upon the provisions of the Government Grants Act, 1895 and the decision of the Hon'ble Supreme Court in the case of *Hajee S.V.M. Mohamed Jamaludeen Bros and Co. Vs. Government of T.N.*<sup>3</sup>. Learned counsel for the respondents thus submitted that the review application filed by the petitioner before the learned Revenue Minister was not maintainable in view of Section 258(i)(iv) of MLRC. He submitted that the petitioner was not a party to the original proceedings for the grant of land to the respondents. Hence, the petitioner was not necessary party to the revision filed before the learned Minister. In support of his contentions, learned counsel for the respondents relied upon the decision of this Court in the case of *Syed Afzal Hussain Hussaini Vs. Hon'ble Minister, Revenue and Forest Department, Bombay and Others*<sup>4</sup>

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<sup>3</sup> (1997) 3SCC 466

<sup>4</sup> 2000(1) Mh. L.J 685

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16. Learned counsel for the respondents thus submitted that the review application filed by the petitioner was not maintainable and was rightly rejected. To support the contention that the petitioner was not necessary party in the revision before the learned Minister, the learned counsel for respondents relied upon the decisions of the Apex Court in the cases of *Deputy Commissioner, Hardoi Vs Rama Krishna Narain and Others*<sup>5</sup> and *New Kenilworth Hotesls (P) Ltd Vs. Ashoka Industries Ltd and Others*<sup>6</sup>

17. Learned counsel for the respondents thus submitted that the learned Collector has rightly passed an order declaring the respondents as Class-II occupants based on the order passed by the Revenue Minister. He submitted that the petitioners are not entitled to claim absolute rights. Hence, both petitions are devoid of any merits and do not call for any interference under Articles 226 and 227 of the Constitution of India.

18. The learned AGP supported the impugned Orders, by relying upon the affidavit-in-reply.

**Submissions in rejoinder on behalf of the petitioners:**

5 (1953) 2 SCC 319

6 (1995) 1 SCC 161

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**19.** In response to the submissions made on behalf of the respondents, learned senior counsel for the petitioners submitted that the source of the title of the petitioners is the Sanad of the year 1920, which is effective from 1910-1911. The petitioners' predecessor purchased the old post office structure under auction on 9<sup>th</sup> April 1910. Hence, based on the same, after holding the necessary inquiry, instructions were prepared on 23<sup>rd</sup> June 1917 for issuing Sanad in favour of the petitioners' predecessor. Accordingly, on 13<sup>th</sup> October 1920, a Sanad was granted under Section 133 of the BLRC. Learned senior counsel for the petitioners submitted that the Sanad of the year 1920 clearly refers to Section 133 of the BLRC. Learned senior counsel for the petitioners, thus, submitted that the Sanad of 1920 is in a prescribed form-H as contemplated under the provisions of Section 133 of BLRC, which is granted in perpetuity and only reassessment of the revenue is provided after fifty years. Thus, the Sanad is in conformity with Form-H, read with Section 133 of BLRC. Learned senior counsel for the petitioners further submitted that, in any event, the respondents never challenged the petitioners' predecessor's title on the land and the structure. On the contrary, in the application dated 30<sup>th</sup> November 1971 and in the application dated 15<sup>th</sup> December 1989, filed before

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the learned Minister, the respondent, in terms, accepted the lawful title of the petitioners' predecessor. Learned senior counsel for the petitioners thus submitted that the expression "lease" referred to in the order is sought to be misinterpreted by the learned counsel for the respondents to create an impression that there was a lease document that was not produced. Learned senior counsel for the petitioners thus submitted that the reference to the word "lease" would necessarily mean the reference to the Sanad as contemplated within the meaning of Section 133 of the BLRC. To support his contentions that the Sanad is a document of title between the crown and the party concerned, learned senior counsel for the petitioners relied upon the decision in the case of ***Ulawappa Basawanappa Hugar and Others.***

20. With reference to the reliance placed by the learned counsel for the respondents on the application dated 30<sup>th</sup> November 1971, the learned senior counsel for the petitioners submitted that the said contention is erroneous as the application was rejected on 4<sup>th</sup> September 1972, and the respondents never challenged the rejection. He thus submitted that the order dated 4<sup>th</sup> May 1988 does not even refer to the application dated 30<sup>th</sup> November 1971 as

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sought to be contended by the learned counsel for the respondents. Learned senior counsel for the petitioners further submitted that pursuant to the enquiry held on 23<sup>rd</sup> October 1971, a report was filed holding that the land was purchased by the petitioners. Thus, the respondent's contention that there has been a breach of two conditions of the Sanad and that there is a change in the use of the land without prior permission has no meaning. He submitted that there is no breach of the conditions and that the Sanad is a heritable and transferrable right. Hence, the provisions of sub-section 3 of Section 29 of MLRC are clear that the petitioners could not have lost any rights in view of the order passed by the learned Revenue Minister in the revision filed by the respondent. Learned senior counsel for the petitioners thus submitted that the documents on record would show that the petitioner had purchased the structure in an auction proceedings, and pursuant to the petitioner being in possession of the structure and after holding the necessary inquiry, the Sanad was issued in the name of the petitioners' predecessor in terms of scheduled-H read with Section 133 of the BLRC. Hence, according to the learned senior counsel for the petitioners, there is no substance in the arguments raised to support the impugned orders.

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**Analysis:**

21. I have considered the submissions made on behalf of both the parties. I have perused the record. Writ Petition No. 7059 of 1999 is filed to challenge the Order dated 13<sup>th</sup> April 1999 passed by the State Government dismissing the Appeal filed by the petitioner to challenge the Order dated 28<sup>th</sup> April 1997. By Order dated 28<sup>th</sup> April 1997, the learned Additional Commissioner dismissed the petitioner's appeal filed to challenge the Order dated 4<sup>th</sup> May 1988 passed by the learned Collector. The reasons recorded by the learned Additional Commissioner indicate that he has not decided the appeal on merits but dismissed it on the ground that he was not competent to decide the same.

22. It is pertinent to note that the appeal before the learned Additional Commissioner was an appeal under Section 247 of the MLRC to challenge the Order passed by the learned Collector. Apart from the arguments on the merits of the said Order, the petitioner's main contention was that the said Order was passed without giving notice to him. However, the learned Additional Commissioner refused to examine the appeal on merits only on the ground that the

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learned Minister set aside the Collector's Order, and the respondent is declared a Class II occupant within the meaning of Section 29(3) (c) of the MLRC. Further, he held that pursuant to the learned Minister's Order, the learned Collector has passed an Order dated 6<sup>th</sup> June 1992 and regularized the respondent's possession; hence, the petitioner's appeal needs no interference as he is not competent to entertain the appeal against the directions of the learned Minister.

23. It is, thus, necessary to examine the learned Minister's Order. By Order dated 7<sup>th</sup> March 2024, I had issued directions calling for the record and proceedings. Accordingly, the original record was produced before this Court from the office of the Learned Collector. The advocates appearing for the respective parties were permitted to take inspection of the record. A rejoinder compilation of documents was filed on behalf of petitioners on 25<sup>th</sup> April 2024, which contains the respondent's application dated 15<sup>th</sup> December 1989 filed before the learned Minister. A perusal of the respondent's letter dated 15<sup>th</sup> December 1989 indicates that he has made a grievance that, in view of the Collector's order, if he is dispossessed, he will suffer grave hardship as he has been residing in the property for almost 42 years. Respondent contended that Ahmedsaheb Kadir

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purchased the land in the auction, and he constructed the house and gave it to the respondent for residence, being a close relative of the petitioner, i.e. Ahmedsaheb Kadir. The respondent also contended that the land was given on rent for 50 years, and in view of the breach of lease conditions, the learned Collector has ordered the resumption of land in the Government. The respondent further showed his willingness to deposit the land value as permissible in law. Thus, the respondent prayed that either the land be sold to him or the lease period be extended to 99 years. The respondent also prayed that, considering his long standing possession, he may be allotted the land on a permanent basis. It appears that by treating the said letter as a revision application, the learned Minister has passed the order dated 29<sup>th</sup> April 1991. It is not disputed that this letter was treated as a revision application by the learned Minister.

24. Thus, the learned Minister's Order is to be examined, keeping in mind the prayers made by the respondent before the learned Minister. The sum and substance of the arguments made by the learned counsel for the respondents are that (i) the learned Collector rightly passed the order of resumption of land in the Government on the ground of breach of lease conditions, (ii) once

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there was a resumption of land in government, then government becomes dominant owner, (iii) on expiry of lease in 1962, land automatically reverted to government and the order of resumption passed by the learned Collector is only a formal order recording resumption, (iv) therefore learned counsel for the respondent supported learned Minister's Order to mean that government was authorized to issue fresh allotment. Thus, learned counsel for the respondents supports the Order of Resumption and says that the respondent's application dated 6<sup>th</sup> September 1971 for a grant of land was rejected by the learned Collector; hence, the learned Minister has rightly allotted the land to the respondent.

25. Thus, even as per the respondent, if the Collector's Order was never challenged before the learned Minister and the learned Minister allotted the land to the respondent on the premise of resumption of land in the government, then, the question arises that, how can the learned Minister's Order be a ground to dismiss petitioner's appeal filed before the State Government to challenge the Order dated 28<sup>th</sup> April 1997. By Order dated 28<sup>th</sup> April 1997, the learned Additional Commissioner dismissed the petitioner's appeal filed to challenge the Order dated 4<sup>th</sup> May 1988 passed by the

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learned Collector. A perusal of the Order dated 13<sup>th</sup> April 1999 passed by the State Government indicates that the admission given by the advocate for the petitioner was recorded that a subordinate court cannot sit in appeal over a higher court's order, which means that in view of learned Minister's Order, the Additional Commissioner could not have entertained an appeal against the Collector's Order. Another reason recorded is that the petitioner ought to have filed a review of the learned Minister's Order. Here, it is pertinent to note that when this Order was passed on 13<sup>th</sup> April 1999, the petitioner's review application filed on 16<sup>th</sup> October 1996 was already rejected by the same officer on 1<sup>st</sup> March 1999. Hence, the petitioner has filed the Writ Petition No. 4817 of 1999. It is pertinent to note that the same Officer of the State Government passed both the Orders dated 13<sup>th</sup> April 1999 and 1<sup>st</sup> March 1999. Thus, in my view, the Officer arbitrarily and illegally dismissed the petitioner's review application and on a subsequent date dismissed the appeal filed under Section 248 of the MLRC.

26. The Petitioner had filed Appeal No. 16 of 1994 before the Divisional Commissioner to challenge the order of resumption dated 4<sup>th</sup> May 1988. The petitioner had filed another Appeal No. 17 of 1994

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before the Divisional Commissioner on 8<sup>th</sup> March 1994 to challenge the order dated 6<sup>th</sup> June 1992 passed by the Collector declaring the respondent as a Class II occupant in view of the learned Minister's Order. However, as the review was filed against the Minister's Order, the Appeal No. 17 of 1994 was withdrawn. But, the petitioner continued with the challenge to the resumption order in Appeal No. 16 of 1994, which was dismissed on 28<sup>th</sup> April 1997. It was the petitioner's grievance that he was not made a party to the revision before the learned Minister, and thus, he was unaware of the order. It was further the case of the petitioner that after he learnt about the order, he filed Appeal No. 17 of 1994 to challenge the subsequent order of the learned Collector passed in view of the learned Minister's order. However, as per legal advice, he filed the review before the learned Minister on 16<sup>th</sup> October 1996. The learned Officer of the State Government decided the review application and dismissed it on the ground of delay. The learned Officer held that once the petitioner learnt about the order in 1994, he could not raise a ground of legal advice to file the review at a belated stage.

27. The same learned Officer of the Government of Maharashtra passed the order dated 13<sup>th</sup> April 1999 dismissing the petitioner's

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appeal filed under Section 248 of the MLRC on the ground that the petitioner should have filed a review against the learned Minister's Order, though the petitioner's review was dismissed by him on the ground of delay on 1<sup>st</sup> March 1999.

28. Thus, the end result is that the learned Collector passed an order of resumption of land in government without hearing the petitioner, the learned Minister decided the respondent's revision application without hearing the petitioner and the appeals filed by the petitioner before the Additional Commissioner and the State Government are not decided on merits only on the ground of learned Minister's Order and the review against the learned Minister's order is dismissed on the ground of delay. So, inspite of taking appropriate steps at every stage, the petitioner was deprived of a hearing on merits.

29. So far as the merits of the petitioner's case are concerned, the issuance of the document dated 13<sup>th</sup> October 1920, styled as 'Sanad', is not in dispute. The question to be decided is whether the document is an absolute grant in perpetuity on payment of revenue to be revised after fifty years or whether it was a conditional lease

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for a limited period of fifty years.

30. The learned Collector had issued a show cause notice to the petitioner, to which the petitioner replied. However, it is the petitioner's case that without giving any notice of hearing, the learned Collector passed the order of resumption on the ground of breach of conditions of lease granted in favour of the petitioner. Nothing is produced on record to show that the order dated 4<sup>th</sup> May 1988 resuming the land to the Government was passed after hearing the petitioner. The said Order refers to the respondent's application dated 20<sup>th</sup> December 1985, notice dated 13<sup>th</sup> April 1987 and petitioner's reply dated 20<sup>th</sup> April 1987. The learned senior counsel for the petitioners argued that the application dated 20<sup>th</sup> December 1985 is not found in the record. Nothing was shown to me on behalf of the respondents that the said application is on record. Notice dated 13<sup>th</sup> April 1987 is the show cause notice issued to the petitioner, and the reply submitted on 20<sup>th</sup> April 1987 is the petitioner's reply dated 20<sup>th</sup> June 1987 to the show cause notice. The show cause notice called upon the petitioner to explain why the land should not be resumed as the period of lease had expired and that the building on the land was given on rent without prior

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permission. In the reply dated 20<sup>th</sup> June 1987, submitted on 20<sup>th</sup> April 1987 to the show cause notice, the petitioner contended that the structure was purchased by Ahmedsaheb Kadirsaheb in the auction on 7<sup>th</sup> April 1910 and the structure is owned by the petitioner. It was further contended that the land is not on lease and that the petitioner is paying the non-agricultural assessment. Petitioner also contended that Mohmed Saheb Hassan Saheb Khatib (respondent) had applied on 30<sup>th</sup> November 1971 to grant the land to him; however, the said application was rejected by the learned Collector on 4<sup>th</sup> September 1972. Thus, it was contended that the structure was initially given on rent to Jauddin Yasin Khatib, and the respondent was a sub-tenant, and there is a pending dispute with respect to the same.

31. A perusal of the Order of Resumption dated 4<sup>th</sup> May 1988 indicates that the learned Collector made an inquiry on an application dated 20<sup>th</sup> December 1985 purportedly filed by the respondent for grant of the land on the ground that it is government land and the lease period has expired. The learned Collector in the said order held that (i) there was an old post office on CTS No. 3762, and in the auction in the year 1912, it was given on lease for

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fifty years from 1<sup>st</sup> August 1912 to 31<sup>st</sup> July 1962 to Mohmad Saheb Kadir Saheb (petitioner), (ii) building is constructed on the said land and is in possession of the respondent, (iii) said building is given on rent to the respondent in the year 1928, (iv) petitioner was holding land on Class 'B' tenure and thus committed a breach of lease conditions by giving it on rent, (v) as per the then provisions of BLRC and Rule 43 of the Rules framed thereunder, the land is to be used for the purpose it was granted, and since third party right was created in 1928, there was a breach of lease conditions, (vi) the land was given on rent for fifty years and the period expired on 31<sup>st</sup> July 1962, (vii) the land is not in possession of petitioner, (viii) claim of the petitioner appears to be of extension of lease from 1<sup>st</sup> August 1962 to 31<sup>st</sup> July 1971 and 1 August 1971 to 31<sup>st</sup> July 1991 on payment of non-agricultural assessment made by Sub-Divisional-Officer (SDO) under Section 116 of MLRC; however, SDO is not empowered to extend lease without permission of Collector, (ix) since third party right was created in 1928 and the third party is in possession, lease period cannot be extended and (x) hence, there is no other option, but to resume the land in government for further disposal/allotment. Thus, the learned Collector, by Order dated 4<sup>th</sup> May 1988, directed that the land and structure be resumed in

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government on the grounds of breach of lease condition and expiry of the lease period. However, the reasons recorded by the learned Collector to hold that the land was granted on lease are baseless and the conclusions drawn for resumption of land are absurd.

32. The petitioner's contentions are supported by the aforesaid findings recorded by the learned Collector that the petitioner purchased the old post office structure in an auction and that the respondent was occupying the structure as the petitioner's tenant. However, nothing is shown on record to support the learned Collector's finding that the land was given on lease for fifty years.

33. Even otherwise, the respondent never challenged the petitioner's title. By application dated 30<sup>th</sup> November 1971, filed before the learned Collector, the respondent prayed for allotment of the land on the ground that the lease of fifty years in favour of the petitioner has expired. In the said application, the respondent contended that the old structure standing on the land was purchased in an auction and was leased out to the respondent. Thus, the respondent admitted the petitioner's ownership over the structure, and he claimed to be the petitioner's tenant. It is pertinent

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to note that the respondent's application for a grant of the land was rejected by the learned Collector on 4<sup>th</sup> September 1972 on the ground that the land was not available for allotment. Thus, it is obvious that on 4<sup>th</sup> September 1972, even the learned Collector had not treated the grant in favour of the petitioner as a lease for a limited period. However, on 4<sup>th</sup> May 1988, while passing the resumption order, the learned Collector treated the grant in favour of the petitioner as a lease for fifty years.

34. It is not in dispute that the petitioner purchased the old post office structure at an auction, and the respondent was the petitioner's tenant with respect to the structure. The issuance of Sanad in favour of the petitioner is also not in dispute. It is the petitioner's case that after holding an inquiry, the land beneath the old post office structure was granted to the petitioner on a permanent basis by issuing the Sanad. The Sanad document clearly records that it was issued under Section 133 of BLRC. The terms and conditions recorded in the document of Sanad indicate that the grant is transferable and heritable and that it is granted on a permanent basis on payment of land revenue assessed as per BLRC or the applicable Rules at the relevant time, with the condition

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that the assessment for land revenue would be revisable after completion of fifty years with effect from 1910-11 to 1960-61. The conditions further recorded that in breach of payment of land revenue, the rights granted under the Sanad may be cancelled, and the land would be liable for resumption. Thus, even in the event of failure to pay revenue, cancellation of the grant is not automatic, and it would be the discretion of the authority concerned to cancel the grant as permissible in law. Thus, it is clear that the Sanad was granted in perpetuity, and only revenue was to be reassessed after fifty years. Thus, the period of fifty years mentioned in the Sanad cannot be read to mean that it was a lease for fifty years.

35. Thus, a plain reading of the Sanad shows that it was issued under Section 133 of BLRC, and the terms and conditions are in conformity with Rule 43 of the Bombay Land Revenue Rules 1921, read with the prescribed "Form H". A perusal of Section 133 of BLRC supports the petitioner's case that the Sanad amounts to a grant of the land on a permanent basis, and it is a valid source of the petitioner's title. Section 133 of BLRC reads thus:

*" 133. Every holder of a building site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the*

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*form of Schedule H, [or to the like effect] specifying by plan and description the extent and conditions of his holding:*

*Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.*

*Every such sanad shall be executed on behalf of the [Crown] by such officer as may from time to time be lawfully empowered to execute the same.”*

36. The form of schedule ‘H’ is prescribed under Rule 43 of the BLRC Rules 1921. Rule 43 reads as under:

*“43. (1) Save in special cases in which the Collector with the sanction of the State Government otherwise directs, or in localities falling under Rule 44, land for building sites shall be granted in accordance with the following provisions:-*

*(a) The land shall be granted in perpetuity subject to the provisions one first paragraph of section 68 and shall be transferable.*

*(b) Where the land has already been, assessed for agriculture the assessment shall be altered under whichever of Rules 81 to 85 has been applied to the locality.*

*(c) Where the land has not been assessed the Collector shall fix the assessment in accordance with the principles laid down for alteration of assessment in Rules 81 to 86 and the*

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*provisions of the said rules shall as far as may be, apply.*

*(d) All such assessments shall be fixed for the period specified in Rule 87(a) and may be commuted when they do not exceed one rupee in accordance with the provisions of Rule 88.*

*(2) In the case of such grants and agreement in Form F or Form H, as the Collector may deem fit, shall ordinarily be taken from the person intending to become an occupant and in the case of land in Development schemes undertaken by the State Government in any district or in any special cases, an, agreement in Form HH shall be taken:*

*Provided that in the case of grant of lands situated within the limits of Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporation Act, 1949 an Agreement in Form F-2, H-1 or HH-1 shall be taken in lieu of agreement in, Form F, H or HH respectively. In the case of grants in which an agreement in Form H-H-1, HH or HH-1 is to be taken the Collector may, subject to any general or special orders of the State Government, annex such additional conditions to or omit or vary such of the conditions in the agreement as he thinks fit.*

*(3) When the land is granted on inalienable tenure, the clause specified in form I shall be added to the agreement.*

*(4) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village*

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*accountant of the village in which the land is situate.”*

37. As per clause (a) of the sub-rule (1) of Rule 43 the land shall be granted in perpetuity subject to the provisions of the first paragraph of section 68 and shall be transferable. Section 68 of the BLRC provides that if the period is unlimited an occupant is entitled to use and occupation of his land in perpetuity conditionally on the payment of the amounts due on account of land revenue for the same as per applicable laws and Rules. Thus, when grant is transferable and heritable and not limited for a specific period and is only on condition of payment of land revenue, the grant of sanad under Section 133 and in the prescribed Form ‘H’ under Rule 43, is a grant on permanent basis. Thus, such grant cannot be treated as a lease. Section 68 of BLRC reads as under:

*“68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his [tenure] is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms [or conditions] lawfully annexed to*

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*his [tenure]:*

*[Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [rules made by the [Provincial Government] in this behalf], prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.]”*

38. The learned senior counsel for the petitioner thus, rightly relied upon the decision of this Court in the case of **Ulawappa Hugar** to support his arguments that the Sanad in favour of the petitioner is a valid document of title. In the said case, the plaintiff's suit for possession based on title by way of a Sanad was decreed by the trial Court. However, the learned District Judge reversed the decree by holding that the Sanad registered in the Collector's books would indicate who would be liable for the payment of land assessment and would not indicate any title. This Court reversed the Appellate Court's decree and restored the trial Court's decree by holding that an entry in the Collector's books that a certain person is an occupant and liable to pay revenue would not afford much evidence

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on title, but when a Sanad is given under Section 133, after due inquiry, in the 'Form H' the Sanad itself is a document of title. The decision in the case of *Ulawappa Hugar* is followed by this Court in the case of *M/s. Sea Enterprises*, holding that the Sanad issued under Section 133 of BLRC recognising the right of the holder to transfer the occupancy and to inherit the occupancy, would be a lawful title and such document could not be taken as a lease deed. In the present case, the Sanad issued under Section 133 of the BLRC clearly recognises the right of the holder as transferable and heritable and, thus, is a valid document of title conferring a permanent grant in favour of the petitioner.

39. Thus, I do not find any substance in the arguments of learned counsel for the respondent that the document of Sanad is not the source of the petitioner's title. For the aforesaid reasons, it is clear that in the present case, the document of Sanad is not a lease document. Hence, there is no question of the land reverting to the government on the expiry of fifty years. As per the terms and conditions of the Sanad, the only condition is payment of land revenue. Hence, there is also no question of resuming the land in government for breach of any conditions of the grant. Hence, there

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is no question of dominant use by the government and making the land available for allotment.

40. The issuance of Sanad is not in dispute. The respondent's source of possession is through the petitioner. Thus, the petitioner was a directly affected party in any proceedings concerning the land subject matter of the Sanad. The learned Minister has treated the respondent's letter for allotment of land as a revision against the order of resumption passed by the learned Collector and, while deciding the revision, set aside the order of resumption on the ground that the Collector took no steps on expiry of the lease period. The learned Minister, without recording any reasons, assumed that the land was granted on lease to the petitioner and that the term had expired. The learned Minister erroneously held that since MLRC had come into force, by virtue of Section 29(3)(c), the lessee is entitled to be recognised as an occupant Class II. The learned Minister thus, by completely ignoring the nature of the document of Sanad and without issuing notice to the petitioner, erroneously held that the petitioner did not agitate his right, and that thus, it can be construed that from 1928, waived right, title and interest in the land. The learned Minister then set aside the order of

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resumption and held that the respondent be treated as an occupant Class II within the meaning of Section 29(3)(c) of the MLRC. Section 29 of the MLRC provides the types of Classes of persons holding land from the State. As per clause (c) of sub-section (3) of Section 29 of MLRC, Occupant Class II shall consist of persons holding a lease before the commencement of MLRC, as specified in the said clause. In the present case, neither there is any lease granted to any party with respect to the land, nor does the respondent claim that there is any lease in his favour granted by the government; hence, the said provision has no relevance.

41. For the reasons recorded above, I have held that the document of Sanad is a valid document of the petitioner's title and that there is a valid grant in favour of the petitioner on a permanent basis. Hence, as per clause (a) of sub-section (2) of Section 29 of MLRC, the petitioner would be Occupant Class I as he holds unalienated land in perpetuity and without any restrictions on the right to transfer. Clause (a) of sub-section(2) of Section 29 of MLRC describes that occupants class I shall consist of persons who hold unalienated land in perpetuity and without any restrictions on the right to transfer. "Alienated" is defined under sub-section (20) of

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Section 3 of BLRC as “ ‘alienated’ means transferred in so far as the rights of [the Provincial Government] to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any persons;”. In the present case, it is nobody’s case that the land was alienated. Thus, the petitioner holding an unalienated land under the sanad is an occupants class I, in view of clause (a) of sub-section (2) of Section 29 of MLRC. Hence, the Order of Resumption passed by the learned Collector and confirmed by the learned Minister is illegal and deserves to be quashed and set aside. Thus, the land is not available with the government for allotment; hence, there is no question of allotting it to the respondent. Even otherwise, the learned Minister has directed the respondent to be treated as occupant Class II on the ground that a lessee is entitled to be recognized as an occupant Class II, in view of Section 29(3)(c) of the MLRC. Even this reason is illegal, as it is not even the respondent’s case that he was a lessee of the land at any point in time. In fact, the respondent claims to be the petitioner’s tenant with respect to the structure. Though the petitioner is directly affected by the order of resumption, he was not made a necessary party, and thus, the learned Minister’s order is liable to be quashed and set aside also on the grounds of breach of principles of natural justice.

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Thus, in view of the aforesaid reasons, the legal principles in the decisions of the Apex Court in the cases of *Ram Narain , Hajee SVM Mohamed Jamaludeen Bros and Co Vs Govt. of TN*<sup>7</sup> and *New Kenil Worth Hotels (P) Ltd. Vs Ashoka Industries Ltd and others*<sup>8</sup> and the decision of this Court in case of *Syed Afzal Hussain Hussaini Vs Hon'ble Minister, Revenue And Forest Department, Bombay*<sup>9</sup>, relied upon by the learned counsel for the respondents are not applicable to the facts of the present case.

42. The petitioner filed a review application against the learned Minister's Order. Since there was delay, the petitioner filed an Additional Affidavit on 18<sup>th</sup> December 1998 explaining the delay. The petitioner contended that since he was not made a party to the revision, he was not aware of the order. However, after he learnt about the order, he filed Appeal No. 17 of 1994 before the learned Additional Commissioner, as the name of the respondent was entered in the revenue record. However, his advocate showed inability to appear in the matter, hence, he engaged another advocate, who advised him to file the review. The petitioner has

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7 (1997) 3 SCC 466

8 (1995) 1 SCC 161

9 2000(1) Mh LJ 685

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explained in detail all the steps he took after gaining knowledge of the learned Minister's order. The reasons given in the said affidavit are not disputed. A perusal of the reasons given in the additional affidavit are acceptable, and the same justify the delay. This is not a case where the petitioner has not taken any steps to agitate his grievance. The dates and events of the present case, as narrated above, would show that the petitioner has diligently made efforts to agitate his grievance. Thus, in my view, the petitioner's application for review is wrongly rejected on the ground of delay. The petitioner had made out sufficient cause for condonation of delay. For the reasons recorded above, I find substance in the arguments of the learned senior counsel for the petitioners that for no fault on the part of the petitioner, he was deprived of a hearing on merits.

43. The petitioner's Appeal No. 16 of 1994 challenging the resumption order was dismissed by the learned Commissioner on 28<sup>th</sup> April 1997 on the ground that the learned Minister had already passed the Order; hence, the subordinate cannot sit in an appeal against the superior's order. The petitioner thus filed an appeal before the State Government challenging the Order dated 28<sup>th</sup> April 1997. However, the learned Officer of the State Government

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dismissed the appeal on the same grounds and held that the correct remedy would be a review of the learned Minister's order, completely ignoring that a review was already filed and he himself had dismissed it few days prior to deciding the appeal. Thus, I am satisfied that the petitioner's review application and the appeal filed before the State Government were dismissed arbitrarily.

44. Though, petitioner's review applicatoin was dismissed only on the ground of delay, all the parties have argued on merits of the proceedings. Hence, I have also recorded reasons on merits of the rival contentions of the parties. For the reasons recorded above, the resumption order passed by the learned Collector and the learned Minister's Order are not sustainable in law. Hence, both Writ Petitions are allowed by passing the following order:

- (i) The delay in filing the review application is condoned and the Order dated 1<sup>st</sup> March 1999 passed by the learned Secretary and Officer on Special Duty (Appeals), Revenue and Forests Department of Government of Maharashtra, dismissing the petitioners' Review Application No. S-30/3096/735/CR169/J6/CR6/98/A&R is quashed and set

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aside, and the Review Application is allowed.

- (ii) The Order dated 29<sup>th</sup> April 1991 passed by the learned Revenue Minister in Revision Application No. S-30/3090/407/CR-1080/J-6 is quashed and set aside, and the Revision Application is dismissed.
- (iii) The Order dated 13<sup>th</sup> April 1999 passed by the learned Secretary and Officer on Special Duty (Appeals), Revenue and Forests Department of Government of Maharashtra in Appeal No. S-30/3096/735/CR169(B)CR6/98/A&R and Order dated 28<sup>th</sup> April 1997 passed by the Additional Commissioner in Appeal No. 16 of 1994 are quashed and set aside.
- (iv) Appeal No. 16 of 1994 is allowed, and the Resumption Order dated 4<sup>th</sup> May 1988 bearing no. MS/Desk-3-8-848/88 passed by the learned Collector Nashik is quashed and set aside.

45. Writ Petition No. 4817 of 1999 and Writ Petition No. 7059 of 1999 are allowed in the above terms.

(GAURI GODSE, J.)

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46. After the judgment was pronounced, the learned counsel for the respondents prayed to stay the operation of this judgment for eight weeks to enable the respondents to approach the Apex Court.

47. Learned counsel for the petitioners objected to the grant of any stay.

48. However, I see no reason for not granting stay. Hence, the operation of this judgment and order is stayed for eight weeks from today.

(GAURI GODSE, J.)

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