

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2871 OF 2014

Manoj Vishnu Naik and ors. .. Petitioners
vs.
Smt. Kushibai K. Patil and ors. .. Respondents

Mr. A.V. Anturkar, Sr. Advocate a/w. Mr. Amol Gatne i/b Mr. S.B. Deshmukh for the Petitioners.

Mr. K.S. Dewal a/w. Mr. Jayesh Joshi for Respondent No.31.

Ms Vaishali Nimbalkar, AGP for Respondent No.42.

CORAM : M. S. SONAK, J.

Date of Reserving the Order : 11 February 2015.

Date of Pronouncing the Order : 13 February 2015.

ORDER:-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against the orders dated 28 May 2013 made by the Additional Commissioner, Konkan Division, Mumbai in Petitioners' Revision Application No.629 of 2011 and the order dated 12 December 2013 in Review Petition No.406 of 2013, both of which shall hereinafter referred to as the impugned orders.

3] For the order, which is proposed to made, there is no necessity of reference to the entire gamut of facts. Suffice to note that as against the Mutation Entry effected on 29 April 2008 (No.17042), the petitioners' preferred a Revision Petition before the Deputy

Collector which came to be dismissed by the order dated 29 April 2008. The petitioners, relying upon the decision of this Court in *Gurudassing Nawoosing Panjwani Vs. State of Maharashtra*¹, preferred a second Revision Petition under Section 257 of the Maharashtra Land Revenue Code, 1966 (said Code) before the Additional Commissioner. The Additional Commissioner, by the impugned order has declined to entertain the second Revision Application, on the sole ground that the same would lie to the State Government.

4] The decision in the case of *Gurudassing Nawoosing Panjwani* (*supra*) is an authority for the proposition that a second Revision Application is maintainable under Section 257 of the Code. In the fact situation of the said case, the second Revision Application lay before the State Government. That however, does not mean and imply that in every case a second Revision Application would lie only before the State Government. The authority before whom the second Revision Application would lie, would obviously depend upon the circumstance as to which authority has made the order, of which Revision Application is applied. Section 257(1) of the Code provides that the State Government and any Revenue or Survey Officer, not inferior in rank to Assistant or Deputy Collector or a Superintendent of Land Records, in their respective Departments, may call for

1 Letters Paten Appeal No.55 of 2003 in Writ Petition No.7477 of 2002 decided on 13 July 2005

examine and record of any inquiry or the proceedings of any subordinate Revenue or Survey Officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such Officer.

5] In the present case, there is no dispute that the order impugned in the second Revision Application was made by an Officer, subordinate to the Additional Commissioner, Konkan Division. In such circumstances, Revision Application clearly lay before the Additional Commissioner, Konkan Division. The decision in the case of *Gurudassing Nawoosing Panjwani (supra)* has been misread and misinterpreted by the Additional Commissioner and on the said basis there is failure to exercise jurisdiction which is vested in law in the Additional Commissioner. Upon this short ground, it is necessary to set aside the impugned orders and to remand the Revision Application before the Additional Commissioner, Konkan Division, Mumbai for purposes of fresh decision on merits and in accordance with law.

6] Accordingly, the impugned orders are set aside. The petitioners' Revision Application is restored to the file of Additional

Commissioner, Konkan Division, Mumbai for fresh decision on merits and in accordance with law.

7] The Additional Commissioner, Konkan Division, Mumbai is directed to dispose of the Revision Application within a period of one year from today.

8] For the said purpose, the parties to appear before the Additional Commissioner, Konkan Division, on 5 March 2015 at 11.00 a.m., alongwith an authenticated copy of this order.

9] It is made clear that this Court has not expressed any opinion on the merits of the matter. All issues and contentions of both the parties are specifically kept open.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)