IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9845 OF 2015

D. A. Pingale & Ors. .. Petitioners

Versus

P. S. Potinde & Ors. .. Respondents

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Mr. Pratik B. Rahade i/b. Mr. Pramod N. Joshi, Advocate for the Petitioners.
Mr.Sanjay P. Shinde, Advocate for Respondent Nos.1, 3, 4(a) to 4(e).
Mr. V. P. Malvankar, AGP "A" Panel for Respondent Nos. 5 to 8.

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CORAM : A.S. OKA AND C.V. BHADANG, JJ.

DATED : FEBRUARY 17, 2016.

P.C.

On the earlier date, parties were put to notice that Writ Petition will be forthwith taken up for final disposal. On 10th September, 2014, the Tahasildar, Nashik on application made by the 1st to 4th respondents in exercise of the powers under Section 36A and 36C of the Maharashtra Land Revenue Code, 1966 (for short "the said Code"), recorded a finding that the 1st to 4th respondents are tribals and there was an illegal transfer by the said tribals in favour of the said respondents who are non tribals after coming into force of the provisions of the Maharashtra Land Revenue Code and the Tenancy Laws (Amendment) Act, 1974.

He, therefore, purportedly passed an order of restoration of the lands subject matter of the said order in favour of the 1st to 4th respondents. Being aggrieved by the said order, the petitioners preferred an Appeal under Section 247 of the said Code before the Sub-Divisional Officer, Nashik. By order dated 25th February, 2015, the Sub-Divisional officer directed the parties to maintain status-quo. The said Appeal was dismissed by an order dated 5th May, 2015 by the Sub-Divisional Officer by observing that he had no jurisdiction to entertain the said Appeal. A Second Appeal under Section 247 of the said Code was preferred by the petitioners before the Additional Collector, Nashik. By order dated 16th July, 2015, the said Second Appeal was dismissed on the ground that the Additional Collector did not have jurisdiction to entertain the Appeal. It is contended that the petitioners tried to move a Revision Application before the Additional Commissioner, Nashik under Section 257 of the said Code. It is alleged that the Additional Commissioner informed the petitioners that the Revision was not maintainable. We must state here that it is the contention of the 1st to 4th respondents in this petition that the impugned order of the Tahasildar was implemented and on 30th September, 2015, the petitioners were dispossessed and the 1st to 4th respondents were placed in possession. The contention of the petitioners is that the purported action of taking over possession is illegal as the same was without notice to the petitioners.

2 The only issue which arises for consideration in this Writ Petition is about the statutory remedy which is available to the petitioners to challenge the order dated 10th September, 2014 passed by the Tahsildar, Nashik in purported exercise of powers under Section 36A of the said Code. On plain reading of Section 36A of the said Code, the power to take action thereunder is conferred on the Collector and not on the Tahsildar. However, the Collector has purportedly delegated his powers under Section 36A to the Tahsildar and it is alleged that Tahsildar has exercised the delegated powers.

3 Chapter XIII of the said Code deals with Appeals, Revision and Review. Section 247 of the said Code reads thus :

> *“ **247. Appeal and appellate authorities**.*
>
> *(1)In the absence of any express provisions of this Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of the Schedule E under this Code or any other law for the time being in force to*

the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision of order of the officer specified in column 1 of the said Schedule.

Provided that, in no case the number of appeals shall exceed two.

(2)When on account of promotion of change of designation, an appeal against any decision or order lies under this section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code."

There is one more provision of Appeal under the said Code which is under Section 315. Sub-section (1) of Section 315 reads thus:

"***315. Jurisdiction of Tribunal***.

(1) Notwithstanding anything contained in Chapter XIII of this Code or any other law for the time being in force, but subject to the provisions of this section, in cases arising under the provisions of the enactments specified in Schedule J,

> *(a) an appeal shall lie to the Tribunal from original orders or decisions made or passed by the Collector ; and*
>
> *(b) an application for revision shall lie to the Tribunal from an order or decision made or passed by the Collector in appeal, against an order to decision made or passed by any subordinate officer or authority."*

The Tribunal being the Maharashtra Revenue Tribunal constituted under Section 309 of the said Code is conferred with the jurisdiction of entertaining an Appeal from the original orders or decisions of the Collector under the provisions of the enactments specified in Schedule-J. We have perused Schedule-J. Schedule-J does not include Section 36A of the said Code. Section 315 operates as an exception to the general provisions of Appeals and Revisions in Chapter XIII and, therefore, in the present case, Appeal will lie under Section 247. Schedule-E provides for the forum of Appeal under Section 247. In the present case, the Tahasildar has exercised the powers of the Collector and, therefore, a Appeal under Sub-section (1) of Section 247 of the said Code will lie before the Divisional Commissioner as provided in Schedule-E. Today, the learned counsel Shri Malwankar ("A" panel counsel) for the State Government has tendered a letter dated 16th February, 2016 addressed by the Desk Officer of the Revenue and Forest Department. In paragraph (3) it is stated that the Appeals against the order of the Tahasildar under Section 36A will be governed by Chapter XIII of the said Code.

3 Hence, in the present case, the remedy of the petitioners is to prefer an Appeal under Sub-section (1) of Section 247 of the said Code before the Divisional Commissioner, Nashik.

4 In view of the averments made in the petition and in view of filing of the earlier proceedings by the petitioners, it is obvious that if the petitioners prefer an Appeal within the time stipulated by this order, the case of the petitioners for condonation of delay will have to be favourably considered by the Divisional Commissioner. As far as the alleged dispossession of the petitioners is concerned, it is always open for the petitioners to urge the appropriate contentions before the Appellate Authority, if necessary, by filing appropriate application for interim relief.

4 Before disposing of the petition, we must observe that to avoid the situation which is created in the present case, it will be advisable if the Revenue and Forest Department issues a circular for guidance of the Appellate Authorities regarding maintainability of Appeals against the orders passed under Section 36A of the said Code.

5 Hence, we dispose of the petition by passing the following order:

:: <u>O R D E R</u> ::

(i) It will be open for the petitioner to prefer an Appeal against the order dated 10th September, 2014 passed by the Tahsildar, Nashik before the Divisional Commissioner, Nashik within a period of six weeks from today;

(ii) if the Appeal is preferred by the petitioners within a period of six weeks from today, the application for condonation of delay shall be considered by the Divisional Commissioner in the light of the observations made in this Judgment and order;

(iii) all contentions of the parties on merits are kept open. It will be open for the petitioners to file an application for interim relief claiming appropriate interim reliefs;

(iv) to enable the petitioners to file application for interim relief before the Divisional Commissioner, we direct that the order of status-quo passed on 6th October, 2015 shall continue to operate for a period of three months from today;

(v) we make it clear that the Divisional Commissioner shall decide the application for interim relief without being influenced by the order of status-quo passed by this Court and the continuation thereof for a limited period;

(vi) The petition is disposed of in the above terms.

(C. V. BHADANG, J.) **(A.S. OKA, J.)**