IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3776 OF 2014

Shri Rajan Gajanan Chavan .. Petitioner
vs.
Shri Sandip Pandit Chavan & Ors. .. Respondents

Mrs. Indrayani Koparkar for Petitioner.
Mr. Harshad B. for Respondent Nos. 1 to 5
Mrs. M.S. Bane, AGP for Respondent No.6.

CORAM : M. S. SONAK, J.
DATE: 19th OCTOBER 2016

P.C :

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

2] The challenge in this petition is to the order dated 18.12.2012 made by the State of Maharashtra (Principal Secretary-Revenue). The petitioner in the present case had complained about the illegal construction allegedly undertaken by the respondent No.1 to 5 herein. The Tahsildar by order dated 29.11.2004 upon recording that the respondent Nos.1 to 5 had undertaken illegal construction, imposed penalties upon them under Section 45 of the Maharashtra Land Revenue Code 1966 (MLRC). The petitioner, upon realising that there is some mistake in the mention of survey numbers, applied to the Tahsildar for modification of order dated 29.11.2004 and modification was carried out by Tahsildar by his subsequent order dated 28.07.2005.

3] Since, the respondent Nos.1 to 5 did not demolish their structure, Tahsildar took out proceedings seeking demolition.

4] At this stage, respondent Nos. 1 to 5 instituted an appeal before the Sub Divisional Officer (SDO). This appeal was dismissed on 11.07.2006. The respondent Nos. 1 to 5 thereafter preferred yet another appeal before the Additional Collector. This was allowed on 22.06.2007.

5] It is the case of the petitioner that the Collector by internal communication dated 11.03.2008 requested, the Additional Commissioner to consider whether Additional Collector's order dated 22.06.2007 is required to be revised as the same was not in accordance with law. The petitioner also preferred a revision petition before the Additional Commissioner. The Additional Commissioner sought to exercise *suo-moto* revision jurisdiction. But ultimately Additional Commissioner, by order dated 10.06.2009 dismissed both the *suo-moto* revision as well as revision instituted by the petitioner.

6] The petitioner instituted the review against the Additional Commissioner's decision dated 10.06.2009. This was partly allowed by order dated 12.01.2010 and the matter was remanded to the Additional Collector or to the Collector for fresh inquiry into the complaint of illegal construction undertaken by respondent nos. 1 to 5.

7] The order dated 12.01.2010 made on review, was challenged by respondent nos. 1 to 5 before the Minister (Revenue), who has made the impugned order dated 18.12.2012 and set aside the Additional Commissioner's order dated 12.01.2010.

8] Upon consideration of the submissions made by the learned counsel for the parties and perusing the record, in my opinion, there is really no case made out to interfere with the Additional Commissioner's order dated 12.01.2010. The Additional Commissioner on the basis of material before him had only directed the Collector to re-examine the matter. There was no error of jurisdiction in making such an order particularly because the Tahsildar way back in 2004 had already held that respondent nos.1 to 5 had undertaken unauthorised construction. The order of the Tahsildar on its modification had been specifically upheld by the Sub-Divisional Officer. If all these circumstances are taken into consideration then it is only appropriate for the Collector to re-examine the matter. That is, precisely what the Additional Commissioner's order dated 12.01.2010 had directed.

9] For the aforesaid reasons, the impugned order dated 18.10.2012 is set aside. The Collector, in compliance with the Additional Commissioner's order dated 12.01.2010 to re-inquire into the matter to complete such inquiry within a period of six months from today. It is made clear that this court has not examined the merits of the matter. Therefore, nothing in this order may be construed as expression of any opinion on the merits of the matter. All contentions of all parties including the contentions of Respondent No.1 to 5 are specifically left open. The parties to appear before the Collector, Ratnagiri on 21st November, 2016 at 3 p.m and submit authenticated copy of this order.

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

(M. S. SONAK, J.)