

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12577 OF 2015

Shri Yadav Yashwant Nikam.] ... Petitioner

Versus

The State of Maharashtra,]
Through the Department of Forest and]
Revenue, and Ors.] ... Respondents

Mr. P. M. Arjunwadkar for Petitioner.

Mrs. Vaishali Nimbalkar, A.G.P., for Respondent Nos.1 to 4.

CORAM :- M. S. SONAK, J.

DATE :- JANUARY 07, 2016

P. C. :-

1. Heard the learned Counsel for parties.

2. The challenge in this petition is to the order dated 14/10/2015 made by the Deputy Director of Land Records, Nashik Division, who is a Settlement Officer for the purposes of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the Act'). Upon perusal of the impugned order, it is clear that the same relates to exercise of powers under Section 32 (3) of the said Act.

3. Mrs. Vaishali Nimbalkar, learned A.G.P. for Respondent Nos.1 to 4, has submitted that the petitioner has alternate remedy by way of instituting a revision petition under Section 35 of the said Act and therefore, the present petition may not be entertained.

4. On the other hand, Mr. P. M. Arjunwadkar, learned Counsel for petitioner, has submitted that since the impugned order has been made under Section 32 of the said Act, which is a provision contained in Chapter IV of the said Act, neither the appeal nor a revision will lie against the impugned order. For this purpose, he placed reliance upon the provisions contained in Section 36 of the said Act.

5. As noted earlier, it is quite clear that the impugned order has been made under Section 32 (3) of the said Act. It is also clear that Section 32 of the said Act is a provision which is contained in Chapter IV of the said Act. In this regard, reference is required to be made to the provisions contained in Sections 35 and 36 of the said Act which read thus :-

“35. The [State] Government [or the Commissioner in respect of such matters as the State Government may by general or special order specify in this behalf] may at any time for the purpose of satisfying itself [or himself as the case may be,] as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and

may pass such order in reference thereto as it [for he, as the case may be,] thinks fit :

[Provided that no order shall be varied or revised until the parties interested have been given a reasonable opportunity of showing cause against the proposed variation or revision of the order.]

(Emphasis Supplied)

36. *Except as provided in this Act,* *no appeal or revision application shall lie from any order passed under Chapter II, III or IV of this Act.”*

(Emphasis Supplied)

6. Section 35 of the said Act confers revisional powers, *inter alia*, upon the State Government in the matters of any order passed by any officer under the said Act. This would obviously include orders made by the Settlement Commissioner, who is an officer under the said Act. Section 36 of the said Act is no bar to the entertainment of a revision petition. Section 36 of the said Act, as noted earlier, begins with the expression '*Except as provided in this Act*' and thereafter proceeds to state that no appeal or revision application shall lie from any order passed under Chapter II, III or IV of the said Act. This means that except as provided under the said Act, no appeal or revision application shall lie from any order passed under Chapter II, III and IV of the said Act. The provision contained in Section 36 of the said Act does not mean that no appeal or revision application shall lie

from any order passed under Chapter II, III and IV of the said Act. Section 35, is undoubtedly a provision contained in the said Act and therefore, in terms thereof, a revision application will lie against the order made under Chapter IV of the said Act to the State Government.

7. The interpretation suggested by Mr. Arjunwadkar upon provisions contained in Section 36 of the said Act would virtually render otiose or redundant the expression '*Except as provided in this Act*'. It is settled principle of interpretation of statutes that a construction which attribute redundancy to the legislature will not be accepted except for compelling reason. It is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application¹. In the interpretation of statutes, the Court always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain². Accordingly, the objection raised by Mrs.Nimbalkar as to the availability of alternate remedy is required to be upheld and is hereby upheld.

8. In view of the aforesaid, there is no necessity to entertain the present petition. However, the petitioner shall be at liberty to institute revision application under Section 35 of the said Act before the State Government. In case such revision application under Section

¹ Rao Shiv Bahadur Singh v. State of U.P., AIR 1953 SC 394

² Quebec Railway, Light, Heat & Power Co. v. Vandry, AIR 1920 PC 181

35 of the said Act is instituted within four weeks from today, the State Government shall consider and decide the same on its own merits without advertng to the issue of limitation, if any. It is made clear that this Court has not examined the merits of the matter and therefore all contentions of all parties are left open to be decided by the revisional authority.

9. The petition is disposed of in the aforesaid terms.

10. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)