

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2667 OF 2014

Zire Rushi Construction and anr. .. Petitioners
vs.
The State of Maharashtra and ors. .. Respondents

Mr. Rajiv Narula i/b Jhangiani Narula & Associates for Petitioners.
Mr. Milind More, Additional G.P. for Respondent Nos.1 to 3.
Mr. S.K. Jain i/b S.K. Jain & Associates for Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 3 FEBRUARY 2016.

P.C. :-

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

2] The challenge in this petition is to the orders dated 19 March 2012, 26 September 2012 and 30 January 2014 made by the District Collector, Additional Commissioner and Revenue Minister directing that an area of 721 square meters be indicated as holding of Respondent No.4-Society.

3] Mr. Narula, learned counsel for the Petitioners, has raised various contentions to the aforesaid orders. He has submitted that the District Collector, in making the order dated 19 March 2012, has purported to review the earlier order dated 23 December 2010 made by the Collector, MSD, on the same subject matter. He has submitted

that whilst the power of review may be available to the District Collector in terms of Section 258 of the Maharashtra Land Revenue Code, 1966 (Code), exercise of such power is circumscribed by the first proviso which states that where the Collector thinks it necessary to review any order which he has not himself passed, on the ground other than that of clerical mistake, the Collector shall first obtain the sanction of the Commissioner or the Settlement Commissioner, as the case may be. Mr. Narula points out that in the present case before the exercise of the review jurisdiction by the District Collector, no such sanction from the Commissioner was ever obtained and therefore, the impugned order dated 19 March 2012 is an exercise in excess of jurisdiction. Although, Mr. Narula had raised several other contentions, it is not necessary to advert to the same and this petition is required to be disposed of by adverting to the provisions contained in Section 258 of the Code itself.

4] Section 258 of the Code reads thus:

258. Review of orders

(1) The State Government and every Revenue of Survey Officer may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit:

Provided that, -

(i) if the Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, on the ground other than that of clerical mistake, he shall first obtain the sanction of the Commissioner or the Settlement Commissioner, as the case may be, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order on the ground other than that of clerical mistake, whether such order is passed by himself or his predecessor, he shall first obtain the sanction of the authority to whom he is immediately subordinate;

(ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;

(iii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed.

(iv) no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) No order shall be reviewed except on the following grounds, namely:

(i) discovery of new and important matter or evidence;

(ii) some mistake or error apparent on the face of the record;

(iii) any other sufficient reason.

(3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue or Survey Officer who has left the district or who has ceased to exercise powers as a Revenue or Survey Officer and to whom there is no successor in the district.

(4) An order which has been dealt with in appeal or on revision shall not be reviewed, by any Revenue or Survey Officer subordinate to the appellate or revisional authority.

(5) Order passed in review shall on no account be reviewed.

(emphasis supplied)

5] From the first proviso as aforesaid, it is quite clear that if the Collector thinks it necessary to review any order, which he has not himself passed, on the ground other than that of clerical mistake, the Collector shall first obtain the sanction from the Commissioner. From perusal of the order dated 19 March 2012, it is clear that the District Collector has purported to review the order dated 23 December 2010, which had not been passed by him, but the same was passed by his predecessor, the Collector, MSD. Further, it is quite clear that the District Collector has not chosen to review the earlier order dated 23 December 2010, only on the ground that there was any clerical mistake in the making of same. In such a situation, therefore, the District Collector was required to first obtain the sanction of the Commissioner before proceeding to review the order dated 23 December 2010. This having not been done, the impugned order dated 19 March 2012 is required to be set aside.

6] The Petitioners had raised this specific contention in the appeal and revision filed before the Additional Commissioner and the Revenue Minister. However, this contention does not appear to have been even adverted to, much-less, decided. This is therefore, a

case of failure to exercise jurisdiction by the appellate and revisional authorities as well.

7] On the aforesaid short ground and without going into either the other contentions raised by Mr. Narula or in particular, the merits of the respective contentions, the impugned orders dated 19 March 2012, 26 September 2012 and 30 January 2014 are required to be set aside and are hereby set aside.

8] Mr. S.K. Jain, the learned counsel appearing for Respondent No.4, has pointed out that the application of Respondent No.4 is liable to be considered on merits, since, it is the case of the Respondent No.4 that the reliefs applied for therein, could have been granted even without exercise of review jurisdiction. Mr. Jain points out that the dispute which the Petitioners have raised relates to mutation entry No. 1494, whereas, the claim of Respondent No.4 in its application before the District Collector can be decided, even *de hors* such dispute. Mr. Jain also points out that even if review jurisdiction is required to be exercised, the same can always be exercised after obtaining necessary permission from the Commissioner. Therefore, he has submitted that the District Collector should should be directed to decide the application of

Respondent No.4, on its own merits and in accordance with law. He submits that in case there is any ambiguity in the application made, Respondent No.4 should be permitted to file a fresh application or at least a supplementary application, which can be disposed of by the District Collector, in accordance with law and on its own merits. The request made by Mr. Jain, in the facts and circumstances of the present case, is quite reasonable and the same deserves to be allowed.

9] Therefore, Rule is made absolute in this petition and the impugned orders dated 19 March 2012, 26 September 2012 and 30 January 2014 are quashed and set aside. However, the District Collector is directed to decide and dispose of, on its own merits and in accordance with law, the application of Respondent No.4, which is now restored to his file. Respondent No.4 is granted further liberty to file a fresh application or a supplementary application and raise all available grounds therein. The District Collector to also grant all affected parties, including the Petitioners herein, opportunity of filing appropriate response. The District Collector shall dispose of such application within a period of six months from the date of such application is made, after afford of opportunity of hearing to all the parties. If the District Collector finds it necessary to do so, he may

also obtain the necessary sanction from the Commissioner. The parties shall also be entitled to apply to the Commissioner for grant of such sanction, if they are satisfied that the same is necessary, in the facts and circumstances of the present case.

10] It is once again clarified that this Court has not adverted to the merits of the matter and therefore all contentions of all parties are kept open.

11] Rule is disposed of, with liberty as aforesaid. There shall, however, be no order as to costs.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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