IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.921 OF 2013

Ganesh Sahadeo Garje,
Age 33 years, Occup. Agri.,
R/o Dule-Chandgaon,
Tq. Pathardi Dist.Ahmednagar. ...Petitioner

Versus

1) The State of Maharashtra
Through Secretary,
Revenue and Forest Department
Mantralaya Mumbai.

2) Babasaheb Gangaram Gawade,
Age 49 years, Occup. Agri.,
R/o Dule-Chandgaon Tq.Pathardi
Dist. Ahmednagar.

3) Uttam Gangaram Gawade,
Age 73 years, Occup. Agri.,
R/o Dule-Chandgaon Tq.Pathardi
Dist. Ahmadnagar. ...Respondents

Mr. K. D. Bade Patil, Advocate for petitioner
Mr. A. R. Kle, AGP for respondent No.1/ State
Mr. V. S. Badakh, Advocate for respondents No.2 and 3.

CORAM : R. M. BORDE, J.
DATE : 17-11-2017

PER COURT :

1. The learned counsel appearing for respondents has raised objection in respect of failure of the petitioner to avail of the alternate remedy of presenting a revision application to the State Government as contemplated under Section 257 (3) of the Maharashtra Land Revenue Code, 1966.

2. It is contended that an order passed by the officer referred to in column 1 of Schedule “E” under the Code is appealable and the appeal lies to the officers specified in column 2 of that Schedule in view of Section 247 (1) of the Maharashtra Land Revenue Code. It is further contended by the petitioner, placing reliance on sub section (8) Section 49 of the Code, that the decision of the Tahsildar is final and no appeal can lie against such decision. The Collector, however, may call for and examine record of any case if he considers that the order passed by the Tahsildar is illegal or improper and he may, after due notice to the parties, pass such order, as he deems fit. It is further contended that the orders passed by the Tahsildar or the Collector, under Section 49, shall not be called in question in any Court. The term, “Court” has not been defined in the Land Revenue Code. The State Government, exercising revisional jurisdiction, would not come within the purview of definition of term “Court”, as specified in

Maharashtra Civil Courts Act. The officers, exercising revisional and appellate jurisdiction, under the Maharashtra Land Revenue Code, essentially perform administrative functions.

3. The arguments advanced by the learned counsel appearing for petitioner, placing reliance on sub-section 9 of Section 49 of the Land Revenue Code in respect of concerning bar of jurisdiction of the State Government to entertain the revision application does not appear to be proper.

4. In this view of this matter, it would be open for the petitioner to avail of the remedy as provided under Section 257 (3) of the Maharashtra Land Revenue Code.

5. The counsel appearing for petitioner contends that, his client has already laid the pipeline and his interest deserves to be protected. This Court while issuing notice on 04-02-2013 directed the parties to maintain status-quo. The interim order is thus operating since more than four years. The ends of justice would be met if the interim order passed on 04-02-2013 is directed to be continued for a period of until disposal of the revision aplication before the State Government.

6. It would be open for the petitioner to file revision application to the State Government within period of three (3) months from today.

7. If the petitioner tenders the revision application within the time stipulated above, the State Government is directed to consider the same on its own merits and in accordance with law.

8. The State Government while considering the application seeking condonation of delay, that may be presented by the petitioner along with revision application, shall consider the aspect of the pendency of instant writ petition in this Court and shall make an endeavour to decide the revision application on its own merits. In view of above writ petition is disposed of.

[R. M. BORDE]
JUDGE

vjg/-.