

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 496 OF 2016

Lalji S/o. Dhanji Patel,
Age. 58 yrs., Occ. Trade,
R/o. 'Parishram', Kargaon Road,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Tulsiram Karamsi Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 497 OF 2016

Meghji S/o. Mulji Patel,
Age. 61 yrs., Occ. Trade,
R/o. Ganesh Road, Umiya Sadan,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Shantilal Mulji Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 499 OF 2016

Kesarbai Ratansi Patel (Deceased)
Through L.R.'s

1. Ratansibhai Kesra Ramani (Patel)
Age. 95 yrs., Occ. Retd.,

2. Pradbhai s/o. Ratansibhai Ramani (Deceased)
Through L.R.'s
 - A. Gomatiben W/o. Parbhabhai Ramani (Patel)
Age. 68 yrs., Occ. Household,
 - B. Hiralal S/o. Parbhatbhai Ramani (Patel)
Through L.R.s.
 1. Jayshri W/o. Hiralal Ramani (Patel),
Age. 46 yrs., Occ. Household,
 2. Vipul S/o. Hiralal Ramani (Patel),
Age. 26 yrs., Occ. Business,
 3. Yesh S/o. Hiralal Ramani (Patel),
Age. 19 yrs., Occ. Education,
 4. Aarti D/o. Hiralal Ramani (Patel),
Age. 21 yrs., Occ. Education,
 - C. Sou. Mangala W/o. Chandrakant Patel,
Age. 45 yrs., Occ. Household,
R/o. Gernal Vaidya Nagar, Nasardi,
Nasik, Tq. & Dist. Nasik.
3. Arjunbhai S/o. Ratansi Ramani (Patel),
Age. 65 yrs., Occ. Business,
4. Narayanbhai S/o. Ratansi Ramani (Patel),
Age. 62 yrs., Occ. Business,
5. Nanjibhai S/o. Ratansi Ramani (Patel),
Age. 54 yrs., Occ. Business,
6. Sou. Jayaben W/o. Ramjibhai Patel
Age. 60 yrs., Occ. Household,
R/o. Vishal Society, Bhatar, Surat,
Gujrath.

Except 2 C. & 6 All above R/o. Kargaon
Road, Chalisgaon, Dist. Jalgaon.
Through GPA holder
Dinesh S/o. Narayanbhai Patel.

...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 500 OF 2016

Kesarbai Ratansi Patel (Deceased)
Through L.R.'s

1. Ratansibhai Kesra Ramani (Patel)
Age. 95 yrs., Occ. Retd.,
2. Pratbhai s/o. Ratansibhai Ramani (Deceased)
Through L.R.'s
 - A. Gomatiben W/o. Parbhabhai Ramani (Patel)
Age. 68 yrs., Occ. Household,
 - B. Hiralal S/o. Parbhatbhai Ramani (Patel)
Through L.R.s.
 1. Jayshri W/o. Hiralal Ramani (Patel),
Age. 46 yrs., Occ. Household,
 2. Vipul S/o. Hiralal Ramani (Patel),
Age. 26 yrs., Occ. Business,
 3. Yesh S/o. Hiralal Ramani (Patel),
Age. 19 yrs., Occ. Education,
 4. Aarti D/o. Hiralal Ramani (Patel),
Age. 21 yrs., Occ. Education,
 - C. Sou. Mangala W/o. Chandrakant Patel,
Age. 45 yrs., Occ. Household,
R/o. Gernal Vaidya Nagar, Nasardi,
Nasik, Tq. & Dist. Nasik.
3. Arjunbhai S/o. Ratansi Ramani (Patel),
Age. 65 yrs., Occ. Business,
4. Narayanbhai S/o. Ratansi Ramani (Patel),

Age. 62 yrs., Occ. Business,

5. Nanjibhai S/o. Ratansi Ramani (Patel),
Age. 54 yrs., Occ. Business,
6. Sou. Jayaben W/o. Ramjibhai Patel
Age. 60 yrs., Occ. Household,
R/o. Vishal Society, Bhatar, Surat,
Gujrath.

Except 2 C. & 6 All above R/o. Kargaon Road,
Chalisgaon, Dist. Jalgaon.

Through GPA holder

Dinesh S/o. Narayanbhai Patel. ...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH

WRIT PETITION NO. 501 OF 2016

Shri Ramani Sawmill Prop.

Arjunbhai Ratansi Patel,

Age. 61 yrs., Occ. Trade,

R/o. Shri Ramani Sawmill, Ganesh Road,

Chalisgaon, Dist. Jalgaon.

Through GPA holder

Dinesh Narayanbhai Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH

WRIT PETITION NO. 502 OF 2016

Karamsi S/o. Dhanji Patel,

Age. 56 yrs., Occ. Trade,

R/o. 'Parishram', Kargaon Road,
Chalisgaon, Dist. Jalgaon.

...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 503 OF 2016

1. Meghji S/o. Mulji Patel,
Age. 61 yrs., Occ. Trade,
2. Shantilal S/o. Mulji Patel,
Age. 50 yrs., Occ. Trade,
3. Kunal S/o. Amrutlal Patel,
Age. 27 yrs., Occ. Trade,
4. Rohit S/o. Amrutlal Patel,
Age. 24 yrs., Occ. Trade,
5. Rukhmini W/o. Amrutlal Patel,
Age. 51 yrs., Occ. Trade,

All R/o. Ganesh Road, Umiya Sadan,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Shantilal Mulji Patel for
Petitioner Nos. 1, 3 to 5.

...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 504 OF 2016

Damayanti W/o. Raoji Ramani,

Age. 54 yrs., Occ. Household,
 R/o. Ratnadeep, Phoole Colony,
 Chalisgaon, Dist. Jalgaon.
 Through GPA holder
 Dinesh Narayanbhai Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
 Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
 WRIT PETITION NO. 505 OF 2016

Shri Shankar Vijay Sawmill Prop.
 Narayanbhai Ratansi Patel,
 Age. 62 yrs., Occ. Trade,
 R/o. Station Road,
 Chalisgaon, Dist. Jalgaon.
 Through GPA holder
 Dinesh Narayanbhai Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
 Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
 WRIT PETITION NO. 506 OF 2016

Shri Ramani Sawmill Prop.
 Arjunbhai Ratansi Patel,
 Age. 61 yrs., Occ. Trade,
 R/o. Shri Ramani Sawmill, Ganesh Road,
 Chalisgaon, Dist. Jalgaon.
 Through GPA holder
 Dinesh Narayanbhai Patel. ...Petitioner.

Versus

1. State of Maharashtra.

2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 507 OF 2016

Shri Shankar Vijay Sawmill Prop.
Narayanbhai Ratansi Patel,
Age. 62 yrs., Occ. Trade,
R/o. Station Road,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Dinesh Narayanbhai Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 508 OF 2016

Bhimji S/o. Dhanji Patel,
Age. 54 yrs., Occ. Trade,
R/o. 'Parishram', Kargaon Road,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Tulsidas S/o. Karamsi Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 509 OF 2016

Ramilaben W/o. Harilal Ramani,
Age. 61 yrs., Occ. Household,
R/o. C/o. Bhagwan Sawmill, Khandak Nala,

Kopargaon, Dist. Ahmednagar.
Through GPA holder
Dinesh Narayanbhai Patel.

...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 510 OF 2016

Shri Vishnu Sawmill Prop.
Haresh Lalji Patel,
Age. 41 yrs., Occ. Trade,
R/o. 'Parishram', Kargaon Road,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Tulsidas S/o. Karamsi Patel.

...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 511 OF 2016

Kesarbai Ratansi Patel (Deceased)
Through L.R.'s

1. Ratansibhai Kesra Ramani (Patel)
Age. 95 yrs., Occ. Retd.,
2. Pratbhai s/o. Ratansibhai Ramani (Deceased)
Through L.R.'s

A. Gomatiben W/o. Parbhabhai Ramani (Patel)
Age. 68 yrs., Occ. Household,

B. Hiralal S/o. Parbhatbhai Ramani (Patel)

Through L.R.s.

1. Jayshri W/o. Hiralal Ramani (Patel),
Age. 46 yrs., Occ. Household,
2. Vipul S/o. Hiralal Ramani (Patel),
Age. 26 yrs., Occ. Business,
3. Yesh S/o. Hiralal Ramani (Patel),
Age. 19 yrs., Occ. Education,
4. Aarti D/o. Hiralal Ramani (Patel),
Age. 21 yrs., Occ. Education,
- C. Sou. Mangala W/o. Chandrakant Patel,
Age. 45 yrs., Occ. Household,
R/o. Gernal Vaidya Nagar, Nasardi,
Nasik, Tq. & Dist. Nasik.
3. Arjunbhai S/o. Ratansi Ramani (Patel),
Age. 65 yrs., Occ. Business,
4. Narayanbhai S/o. Ratansi Ramani (Patel),
Age. 62 yrs., Occ. Business,
5. Nanjibhai S/o. Ratansi Ramani (Patel),
Age. 54 yrs., Occ. Business,
6. Sou. Jayaben W/o. Ramjibhai Patel
Age. 60 yrs., Occ. Household,
R/o. Vishal Society, Bhatar, Surat,
Gujrath.

Except 2 C. & 6 All above R/o.
Kargaon Road, Chalisgaon, Dist. Jalgaon.
Through GPA holder
Dinesh S/o. Narayanbhai Patel. ...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 512 OF 2016

Shantilal S/o. Mulji Patel,
Age. 50 yrs., Occ. Trade,
R/o. Ganesh Road, Umiya Sadan,
Chalisgaon, Dist. Jalgaon. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 514 OF 2016

Shri Vishnu Sawmill Prop.
Haresh Lalji Patel,
Age. 41 yrs., Occ. Trade,
R/o. 'Parishram', Kargaon Road,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Tulsidas S/o. Karamsi Patel. ...Petitioner.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 515 OF 2016

Kesarbai Ratansi Patel (Deceased)
Through L.R.'s

1. Ratansibhai Kesra Ramani (Patel)
Age. 95 yrs., Occ. Retd.,
2. Prabhatbhai s/o. Ratansibhai Ramani (Deceased)
Through L.R.'s

A. Gomatiben W/o. Parbhabhai Ramani (Patel)

Age. 68 yrs., Occ. Household,

B. Hiralal S/o. Parbhatbhai Ramani (Patel)
Through L.R.s.

1. Jayshri W/o. Hiralal Ramani (Patel),
Age. 46 yrs., Occ. Household,

2. Vipul S/o. Hiralal Ramani (Patel),
Age. 26 yrs., Occ. Business,

3. Yesh S/o. Hiralal Ramani (Patel),
Age. 19 yrs., Occ. Education,

4. Aarti D/o. Hiralal Ramani (Patel),
Age. 21 yrs., Occ. Education,

C. Sou. Mangala W/o. Chandrakant Patel,
Age. 45 yrs., Occ. Household,
R/o. Gernal Vaidya Nagar, Nasardi,
Nasik, Tq. & Dist. Nasik.

3. Arjunbhai S/o. Ratansi Ramani (Patel),
Age. 65 yrs., Occ. Business,

4. Narayanbhai S/o. Ratansi Ramani (Patel),
Age. 62 yrs., Occ. Business,

5. Nanjibhai S/o. Ratansi Ramani (Patel),
Age. 54 yrs., Occ. Business,

6. Sou. Jayaben W/o. Ramjibhai Patel
Age. 60 yrs., Occ. Household,
R/o. Vishal Society, Bhatar, Surat,
Gujrath.

Except 2 C. & 6 All above R/o. Kargaon Road,
Chaligaon, Dist. Jalgaon.

Through GPA holder

Dinesh S/o. Narayanbhai Patel.

...Petitioners.

Versus

1. State of Maharashtra.

2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 674 OF 2016

1. Rukhmini W/o. Amrutlal Patel,
Age. 51 yrs., Occ. Trade,
2. Kunal S/o. Amrutlal Patel,
Age. 27 yrs., Occ. Trade,
3. Rohit S/o. Amrutlal Patel,
Age. 24 yrs., Occ. Trade,

All R/o. Ganesh Road, Umiya Sadan,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Shantilal Mulji Patel.

...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

WITH
WRIT PETITION NO. 675 OF 2016

1. Meghji S/o. Mulji Patel,
Age. 61 yrs., Occ. Trade,
2. Shantilal S/o. Mulji Patel,
Age. 50 yrs., Occ. Trade,
3. Kunal S/o. Amrutlal Patel,
Age. 27 yrs., Occ. Trade,
4. Rohit S/o. Amrutlal Patel,
Age. 24 yrs., Occ. Trade,
5. Rukhmini W/o. Amrutlal Patel,
Age. 51 yrs., Occ. Trade,

All R/o. Ganesh Road, Umiya Sadan,
Chalisgaon, Dist. Jalgaon.
Through GPA holder
Shantilal Mulji Patel for
Petitioner Nos. 1, 3 to 5.

...Petitioners.

Versus

1. State of Maharashtra.
2. The Additional Divisional Commissioner,
Nasik, At Nasik Road, Nasik. ...Respondents.

...
Advocate for Petitioners : Shri Gholap Ajit M.
AGP for Respondents: Shri Tambe S.K.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2017

...

ORAL JUDGMENT :-

1. Since all these petitions are identical and have been filed by identically placed petitioners, all these petitions are heard together.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.

4. The substantive prayer putforth by the petitioners, while

challenging the impugned orders, is in paragraph No.15(B), which reads as under:-

“(B) The impugned order communicated to the petitioners vide communication dated 13.7.2015 issued by the Public Information Officer and Nayab Tahsildar in respect of the proceeding of Additional Commissioner, Nasik Division, about unnumbered Appeal of the petitioners filed before the Divisional Commissioner, Nasik challenging the order in relation to plot No.3 of S.No.198-A-2 of village Kargaon passed by the S.D.O. Chalisgaon, may kindly be quashed and set aside by remitting the matter back to the office of the Divisional Commissioner, Nasik for disposal according to law.”

5. It be noted that the plot numbers in the same S.No.198/A-2 of village Kargaon are different in relation to each of these petitioners. Since prayer clause 15(B) is identical, except the Plot Numbers, the same has been reproduced above for the sake of clarity and for reference.

6. The petitioners are aggrieved by the order dated 13.7.2015, identically passed against these petitioners by the Public Information Officer-cum-Naib Tahsildar. By the impugned order, the statutory appeals preferred by the petitioners under

Section 247 of the Maharashtra Land Revenue Code, 1966 (“MLR Code”) have been rejected for the reason that the appeals have not been filed before the appropriate forum as is prescribed in Schedule “E” under the Act and that the impugned order of the Sub Divisional Officer, Chalisgaon (“SDO”) dated 7.4.1989 with regard to the *pher phar* entry No.4062, is not annexed to the memo of the appeals.

7. The issue in all these matters is that land S. No.198/A-2 in village Kargaon, Tq. Chalisgaon was originally an agricultural land, which was in the possession and cultivation of the landlord Shankar Gulab Wanjari. By a permission No. NA/SR/2/87 dated 1.4.1987 granted under Section 42 of the MLR Code, the user of the land was permitted to utilize the land for non-agricultural purposes. Based on such permission a lay out of 28 plots, along with the roads, drainage and open space was sanctioned by the concerned department. The revised lay out for 20 plots was thereafter sanctioned and the mutation entry and the entries in the 7/12 extract were accordingly brought into effect on 27.6.1987. By various sale deeds, dated 22.3.1988, these 20 plots were sold to these petitioners by the original landlord.

8. As each of these petitioners have purchased different

plots, whose numbers are mentioned in the petition, the mutation entries were accordingly effected in the revenue records. The contention of the petitioners is that it was only on 17.4.2015, when they obtained copies of the 7/12 extract of the plots, that they were surprised to note that the mutation entries indicated that the non-agriculture permission has been cancelled on 7.4.1989 by the SDO, Chalisgaon, exercising his powers upon delegation of authority by the District Collector.

9. Being aggrieved by the above order dated 7.4.1989, which purportedly came to the knowledge of the petitioners on 17.4.2015, they preferred their appeals under Section 247 before the Divisional Commissioner, Nasik on 6.6.2015. By the impugned order dated 13.7.2015, the Naib Tahsildar, from the office of the Divisional Commissioner, Nasik informed the petitioners that their appeals had not been entertained for the reasons mentioned therein.

10. Shri Tambe, learned AGP has strenuously opposed these petitions and has prayed for their dismissal with costs. He relies upon the affidavit-in-reply, filed in the first petition on 25.2.2016 and contends that unless the appeals are filed before the appropriate forum as per Schedule "E" and unless the impugned

order is not annexed to the appeal, they cannot be entertained and have rightly been disposed off. He specifically indicates from paragraph No.4 of the affidavit that the said appeals also suffer from delay of 26 years.

11. Schedule "E" under Section 247 of the MLR Code, provides the list of Appellate authorities as under:-

SCHEDULE E
(See section 247)

REVENUE OFFICER

APPELLATE AUTHORITY

- | | |
|--|--|
| 1. All Officer in a Sub-Division, Sub-Divisional Officer or such Subordinate to the Sub-Divisional Officer. | Assistant or Deputy Collector as may be specified by the Collector in this behalf. |
| 2. Sub-Divisional Officer, Assistant or Deputy Collector. | Collector or such Assistant or Deputy Collector who may be invested with powers of the Collector by the State Government in this behalf. |
| 3. Collector [including the Collector of Bombay] or Assistant/Deputy Collector invested with the appellate power of the Collector. | Divisional Commissioner. |
| 4. A person exercising powers conferred by section [15]. | Such officer as may be specified by the State Government in this behalf. |

12. Rule 24 of the Maharashtra Land Revenue (Conversion of Use of Land and Non-agricultural Assessment) Rules, 1969 (“Rules of 1969”) reads as under:-

“ 24. Delegation of powers. - The powers conferred upon the Collector under these Rules may also be exercised by a Sub Divisional Officer.”

13. It is the contention of the petitioner that the conversion of agricultural land to non-agricultural purpose and for which such a permission is to be acquired by the landlord, could alone be granted by the Collector under Section 42 of the MLR Code. Section 42 reads as under:-

“ Section 42 - Permission for non-agricultural use.

No land used for agriculture shall be used for any non-agricultural purpose; and no land assessed for one non-agricultural purpose shall be used for any other non-agricultural purpose or for the same non-agricultural purpose but in relaxation of any of the conditions imposed at the time of the grant or permission for non-agricultural purpose, except with the permission of the Collector.”

14. It is the case of the respondents that considering the volume of the workload, the powers of the Collector have been delegated to the SDO Chalisgaon and he has accordingly

exercised jurisdiction on delegated authority. It, however, appears that the respondents have taken a stand that the revision should have been filed before the District Collector, Jalgaon and not before the Divisional Commissioner, Nasik, keeping in view the authorities prescribed under Schedule “E” below Section 247 of the MLR Code.

15. The issue, therefore, would be as to what would be the effect of the delegation of powers and whether any subordinate authority, upon being delegated the powers, would be exercising its inherent authority, vested in it by law or would it tantamount to exercising the authority of the delegator only upon delegation. There can be no dispute that the powers once delegated cannot be further delegated in view of the law delegatus non potest delegare (means “No delegated powers can be further delegated”).

16. There is no dispute that if the authority is exercised by the SDO or Assistant or Deputy Collector, the Collector or such Assistant or Deputy Collector, who may be invested with powers of the Collector by the State Government would be the appellate authority under Schedule “E”. The Collector, upon exercising such powers and upon passing an order, would entitle the

aggrieved parties to approach the Divisional Commissioner, which shall then be the appellate authority under Schedule “E”.

17. The contention that such permission necessarily has to be granted only by the Collector in the light of the wordings, “*Except with the permission of the Collector*”, is not disputed by the respondents, except that the said authority of the Collector has been delegated to the SDO and hence the SDO has passed the impugned order dated 7.4.1989.

18. Section 44 prescribes the procedure for conversion of the use of land from agriculture to non-agriculture. Section 44 reads as under:-

“ Section 44 - Procedure for conversion of use of land from one purpose to another.

(1) If an occupant of un-alienated land or a superior holder of alienated land or a tenant of such land-

(a) which is assessed or held for the purpose of agriculture, wishes to use it for a non-agricultural purpose, or

(b) if land is assessed or held for a particular non-agricultural purpose, wishes to use it for another non-agricultural purpose, or

(c) desires to use it for the same non-agricultural purpose for which it is assessed but in relaxation of any of the conditions imposed at the time of grant of land or permission for such non-agricultural purpose,

such occupant or superior holder or tenant shall, with the consent of the tenant, or as the case may be, of the occupant or superior holder, apply to the Collector for permission in accordance with the form prescribed.

(2) The Collector, on receipt of an application, -

(a) shall acknowledge the application within seven days;

(b) may, unless the Collector directs otherwise, return the application if it is not made by the occupant or superior holder or as the case may be, the tenant or if the consent of the tenant, or as the case may be, of the occupant or superior holder has not been obtained, or if it is not in accordance with the form prescribed;

(c) may, after due enquiry, either grant the permission on such terms and conditions as he may specify subject to any rules made in this behalf by the State Government; or refuse the permission applied for, if it is necessary to do so to secure the public health, safety and convenience or if such use is contrary to any scheme for the planned development of a village, town or city in force under any law for the time being in force and in the case of land which is to be used as building sites in order to secure in

addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of the occupiers or are suitable to the locality; where an application is rejected, the Collector shall state the reasons in writing of such rejection.

(3) If the Collector fails to inform the applicant of his decision within ninety days from the date of acknowledgment of the application, or from the date of receipt of the application - if the application is not acknowledged, or within fifteen days from the date of receipt of application for a temporary change of user or where an application has been duly returned for the purposes mentioned in clause (b) of subsection (2), then within ninety days [or as the case may be, within fifteen days] from the date on which it is again presented duly complied with, the permission applied for shall be deemed to have been granted, but subject to any conditions prescribed in the rules made by the State Government in respect of such user.

(4) The person to whom permission is granted or deemed to have been granted under this Section shall inform the Tahsildar in writing through the village officers the date on which the change of user of land commenced, within thirty days from such date.

(5) If the person fails to inform the Tahsildar within the period specified in subsection (4), he shall be liable to pay in

addition to the non-agricultural assessment such fine as the Collector may, subject to rules made in this behalf, direct but not exceeding five hundred rupees.

(6) When the land is permitted to be used for a non-agricultural purpose, a sanad shall be granted to the holder thereof in the form prescribed under the rules.

It shall be lawful for the Collector either of his own motion or on the application of a person affected by the error, to direct at any time the correction of any clerical or arithmetical error in the sanad arising from any accidental slip or omission.”

19. From the bare perusal of Section 44, it is undisputed that the impugned order dated 7.4.1989 has been passed by the SDO, Chalisgaon only upon being delegated with the power of the Collector as prescribed under Sections 42 and 44, considering Rule 24 of the Rules of 1969 and on behalf of the Collector, since he does not have inherent powers under Section 42 or 44.

20. The issue then would be, as regards the source of power of the SDO in passing the order and whether it would tantamount to the Collector being aloof, distinct and unconnected with that order. The Honourable Supreme Court

(Five Judges' Bench), in the matter of Roop Chand Vs. State of Punjab [AIR 1963 SC 1503], had the occasion to deal with the issue of delegation of powers. It would be appropriate to reproduce the facts of the said case, which are set out in paragraph Nos. 3 to 10 as under:-

“3. Shortly put, one of the objects of the Act appears to be to pool together the entire lands held by different persons in a village and redistribute the same among them on a more utilitarian basis in accordance with a scheme framed for the purpose. The final result that the Act achieves is that instead of his original holding a person is given some other holding. Section gives the State Government the power to declare by notification its intention to frame a scheme for the consolidation of holdings in any area and thereupon to appoint a Consolidation Officer who is to prepare the scheme. Section provided for the publication of the draft scheme prepared by the Consolidation Officer and for objections thereto being made by the persons likely to be affected. It also provided that the Consolidation Officer will submit the scheme with the objections and his suggestions with regard to them to the Settlement Officer and for republication of the scheme with such amendments as may have been made. Section empowers the State Government to appoint Settlement Officers (Consolidation), in this judgment referred to as Settlement Officers. It further provides that if no objections are received to the draft scheme when first published or to the amended scheme when

republished, the Settlement Officer shall confirm the scheme and if any objections are received, he may after considering the objections, confirm the scheme with or without modification. It lastly provides that upon confirmation the scheme shall be published again. Sub-section (1) of s.21 provides that the Consolidation Officer shall carry out a repartition in accordance with the scheme as confirmed under s. 20. Sub-section (2) provides that any person aggrieved by the repartition may file an objection before the Consolidation Officer. Sub-section (3) gives to the person aggrieved by the order of the Consolidation Officer made under sub-section (2), a right to file an appeal before the Settlement Officer. Sub-section (4) provides that "any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3) may within sixty days of that order appeal to the State Government." Section requires the Consolidation Officer to prepare a new record do rights giving effect to the repartition as finally sanctioned under s. 21.

4. A scheme under the Act had been framed for village Palrikalan where the petitioner held some lands. The petitioner had no objection to the scheme as such but he had taken objection to the repartition made under it by the Consolidation Officer on the ground that the repartition was not in accordance with the scheme. The petitioner contended that under the scheme he was entitled to retain plots Nos. 635 and 636 which originally belonged to him and to get some more land adjacent to them in exchange for other lands held by him in the village which under the repartition

made by the Consolidation Officer he was being deprived of those plots and was being given lands elsewhere. With the merits of this and the rival contention we are to concerned in this petition. The petitioner's contention was rejected by the Consolidation Officer and he filed an appeal under s. 21(3) before the Settlement Officer but that appeal also failed. The petitioner thereafter went up in appeal under s.21(4) against the order of the Settlement Officer.

5. *Now, s. 21(4) provided for an appeal to the State Government but the petitioner's appeal was heard by Shri Brar, Assistant Director, Consolidation of Holdings, Ambala to whom the Government's powers and functions concerning the apple had been delegated under s. 41(1) which is in theses terms :*

S. 41(1) : "The State Government may for the administration of this Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under this Act to any of its officers either by name or designation."

6. *Shri Brar allowed the petitioner's appeal. As a result of his decision the petitioner became entitled to retain plots Nos. 635 and 636 which he originally owned and Hari Singh, respondent No. 2, to this petition who had on the repartition been given by the Consolidation Officer those plots along with some more adjacent lands, was to be deprived to them. Hari Singh being dissatisfied with the order of Shri Brar moved the Government under s. 42 of the*

Act and the impugned order was thereupon made. That order set aside the order of Shri Brar and restored that of the Consolidation Officer. As a result of this order, therefore, the petitioner was to be deprived of plots Nos. 635 and 636.

7. *It is now necessary to set out s. on the interpretation of which this petition depends. That section was amended by Act 27 of 1960 with retrospective effect and it is the amended section that has to be considered by us. The amended section is in these terms :*

S. 42. "The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the records of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit."

8. *The petitioner's contention is that an order which can be interfered with under s. 42 is an order passed under the Act by any officer in his own right and not an order made by the Government itself or by an officer exercising powers of the Government upon delegation under s. 41(1).*

9. *The question really is as to the meaning of the words "any order passed by any officer under this Act" in s. 42. Do these words include an order passed by an officer in exercise of powers delegated to him by the Government*

under s.41(1)? We do not think, they do.

10. *Now, there cannot be much doubt that s. 42 makes a distinction between the Government and an officer, because under it the Government is given power to interfere with an order passed by an officer and, therefore, it does not authorise the Government to interfere with an order made by itself. As we understood the learned Advocate-General of Punjab, who appeared for the respondent State of Punjab, he conceded that position. He said that the Government could no doubt have itself heard an appeal preferred under s.21(4) instead of getting it heard by an officer to whom it delegated its power, and if it did so, then it could not under s.42 interfere with the order which it itself passed in the appeal. We think that this is the correct position, and we wish to make it clear that we are not basing ourselves on the concession made by the learned Advocate-General. We feel no doubt that an order passed by an officer of the Government cannot be an order passed by the Government itself.”*

21. While considering the effect of the order passed by an Officer, by virtue of delegated authority, the Honourable Apex Court in Roop Chand (supra), concluded that such delegated powers being exercised by an officer, would not amount to he being invested with the said power, so as to create an independent authority in the said officer. Such delegated power

would amount to the said authority utilizing the delegated powers for and on behalf of the officer, in whom, the statute had vested the powers to be exercised independently.

22. The Honourable Apex Court, then further concluded that an order passed by such officer under the delegated authority would amount to an order being passed by the said delegator. Then the order passed by an officer to whom the power had been delegated will have to be an order passed by that officer as defined under the Act. The observations of the Honourable Apex Court in paragraph Nos.11 to 13 read as under:-

“11. The question then arises, when the Government delegates its power, for example, to entertain and decide an appeal under s. 21(4) to an officer and the officer pursuant to such delegation hears the appeal and makes an order, is the order an order of the officer or of the Government? We think it must be the order of the Government. The order is made under a statutory power. It is the statute which creates that power. The power can, therefore, be exercise only in terms of the statute and not otherwise. In this case the power is created by s. 21(4). That section gives the power to the Government. It would follow that an order made in exercise of that power will be the order of the Government for no one else has the right under the statute to exercise the power. No doubt the Act enables the

Government to delegate its power but such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercises the power, he does so for the Government. It is of interest to observe here that Wills, J., said in *Huth v. Clarke* that "the word delegate means little more than an agent". An agent of course exercise no powers of his own but only the powers of his principal. Therefore, an order passed by an officer on delegation to him under s.41(1) of the power of the Government under s. 21(4), is for the purposes of the Act an order of the Government. If it were not so and it were to be held that the order had been made by the officer himself and was not an order of the Government - and of course it had to be one or the other - then we would have an order made by a person on whom the Act did not confer any power to make it. That would be an impossible situation. There can be no order except as authorised by the act. What is true of s.21(4) would be true of all other provisions in the Act conferring powers on the Government which can be delegated to an officer under s. 41(1). If we are wrong in the view that we have taken, then in the case of an order made by an officer as delegate of the Government's power under s.21(4) we would have an appeal entertained to and decided by one who had no power himself under the Act to do either. Plainly, none of these things could be done.

12. Again, if an order passed by an officer to whom a power had been delegated by the Government under s.

41(1) was an order passed by the officer then an order made by an officer to whom power under s. 42 had been delegated would be an order by an officer within the meaning of s. 42. That order would then be liable to be interfered with by the Government under s. 42 and if such interference is again not by the Government itself but by another officer as its delegate, then in that way the process of interference might be repeated for ever. Obviously an interpretation leading to such a result cannot be correct. It is of some interest to point out here that in the present case the order under s. 42, that is, the impugned order had not been made by the Government itself but by the Director, Consolidation of Holdings, to whom the Government's power under that section had been delegated.

13. It was however said by the learned Advocate-General that this absurd result would not follow because power under s.42 can be exercised only once in respect of the same order. We will assume that power can be exercised in respect of the same order only once. But even so it seems to us that if the order by a delegate officer is an order within s. 42, then the power under that section can be exercised repeatedly. This will appear clearly if we take an illustration. Suppose delegate officer A makes an order under s. 21(4). This order can be interfered with by the Government under s. 42. Now suppose the Government delegates its power under s. 42 to officer B and officer B then makes an order under s. 21(4) as delegate of Government. That would be an order made by a delegate officer and capable of being interfered with under s. 42. This

exercise of power would be in respect of an order of officer B and therefore not in respect of the same order in respect of which power under s. 42 had been once exercised, namely, the order by officer A. Now assume this time delegate officer C exercises Government's power under s. 42. Again the order made by him would be interfered with under s. 42. Repeated exercise of power would be in respect of successive orders and never in respect of the same order. In this way finality in the matter can never be reached. We must reject an interpretation which prevents finality being reached. On the interpretation that we have suggested the matter would be finally decided; the power under s.42 cannot be exercised more than once in respect of the same matter.”

(Emphasis supplied).

23. The Honourable Apex Court then concluded that the law laid down in Lakha Singh Toba Singh Vs. Director, Consolidation of Holdings, Punjab [AIR 1969 Pun. 157], was not the correct position of law, since it concludes that the order passed by the officer, who exercised delegated power under the Act, would amount to the passing of the order in his own right and not as a delegate of the Government. In paragraph Nos.15 and 16 of Roop Chand (supra), it was concluded that the order passed by an officer as a delegate of the Government would not amount to passing an order in his own authority.

24. The Honourable Apex Court in the matter of Sidhartha Sarawagi Vs. Board of Trustees for the Port of Kolkata and others [(2014) 16 SCC 248], while dealing with the issue of delegation of authority, has observed in paragraph Nos.2 to 7 as under:-

"2. *Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as*

"the act of entrusting another with authority by empowering another to act as an agent or representative".

In P. Ramanatha Aiyar's, The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself".

3. *Mathew, J. in Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others[1], has succinctly discussed the concept of delegation. Paragraph 37 reads as follows:*

"37. ... Delegation is not the complete handing over or transference of a power from one person or body

of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.”

4. *There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well-settled: the said power cannot be sub-delegated. The Legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct. Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust*

the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

5. *Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy[3]. So long as the essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and*

the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

6. *The issue was considered by this Court in Jamal Uddin Ahmad v. Abu Saleh Najmuddin and Another[4] in the context of the procedure for filing of the election petitions under Section 81 of the Representation of Peoples Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorized officers.....*

7. *Practical necessities or exigencies of administration require that the decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim delegatus non potest delegare, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority.”*

25. In the matter of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Ltd. [(2007) 8 SCC 705], the Honourable Apex Court has considered the effect of delegation of powers and has dealt with the issue as regards the liability of the delegator for the actions of delegate. It was concluded that when a delegate exercises powers relying upon or on the basis of the power conferred upon it by the delegator, such an act

performed by the delegate would be deemed to be that of the principal i.e. delegator. The observations of the Honourable Apex Court in paragraph No.90 are as under:-

"90. *There cannot be any doubt whatsoever that even a delegatee exercises its power relying on or on the basis of its power conferred upon it by the delegator, its act would be deemed to be that of the principal as has been held by this Court in State of Orissa and Ors. v. Commissioner of Land Records and Settlement, Cuttack and Ors. : AIR 1998 SC 3067, this Court held:*

"25. *We have to note that the Commissioner when he exercises power of the Board delegated to him under Section of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in Roop Chand v. State of Punjab. In that case, it was held by the majority that where the State Government had, under Section of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under Section to an "officer", an order passed by such an officer was an order passed by the State Government itself and "not an order*

passed by any officer under this Act" within Section and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State under Section of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled under Section to call for the records of the case which was disposed of by an officer acting as its delegate."

26. The Gujarat High Court in the matter of Samatbhai Punabhai Jhalandra Vs. Mamlatdar and three others [2007 III LLJ 295 - Gujrat], considered a similar situation and concluded in paragraph Nos. 5 to 8 and 10 and 11 as under:-

"5. It appears that against the order of the Mamlatdar, the petitioner preferred the appeal before the Collector under Section 203 of the Code, but he was communicated vide letter dated 31.5.2005 that the appeal was not maintainable before the Collector and the papers of the appeal were returned. The petitioner thereafter approached before the Dy. Collector, Rajula and he received the communication dated 24.6.2005 from the office of the Dy. Collector that the appeal was not maintainable before the Dy. Collector. It appears that the petitioner thereafter preferred revision before the Gujarat Revenue Tribunal, but the petitioner was communicated vide letter dated

3.10.2005 that such revision was not maintainable before the Tribunal and, therefore, the revision was returned back to the petitioner. The petitioner also preferred appeal before the Additional Director, Geological Science and Minerals, Department of Government, but vide communication dated 9.1.2006, the petitioner was informed that the appeal was not maintainable before him and the appeal was returned back to the petitioner. It is under these circumstances the petitioner has approached this Court by preferring the present petition for challenging the order passed by the Mamlatdar under Section 39A of the Code.

6. The learned Advocates appearing for both the sides were heard on the contentions of the availability of alternative remedy as per the provisions of the Code read with the Bombay Revenue Tribunal Act, 1957.

7. There is no dispute on the point that the powers were exercised by the Mamlatdar under Section 39A of the Code. It is true that as per the language of Section 39A of the Code the powers are with the Collector and the decision as to the value of such natural products is made as conclusive. However, as recorded hereinabove, vide order dated 25.1.1957 of the State Government the powers are delegated to the Mamlatdar and, therefore, the Mamlatdar has exercised the power as delegatee of the Collector under Section 39A of the Code. Hence, the order passed by the Mamlatdar, impugned in this petition is under Section 39A of the Code being delegatee of the Collector.

8. As per the provisions of the Bombay Revenue Tribunal Act, 1957, the jurisdiction of the Revenue Tribunal is provided under Section 9 , which reads as under:

Section 9. Jurisdiction of Tribunal- (1) Subject to the provisions of this Section, the Tribunal shall have jurisdiction to entertain and decide appeals from and revise decisions and orders of officers, not below the rank of a Collector or Deputy Commissioner, in respect of cases arising under the provisions of the enactments specified in the First Schedule.

(2) Save as expressly provided in any enactment for the time being in force the State Government may by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from, and revise decisions and orders of, such persons, officers and authorities in such other cases as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the entries in the First Schedule, and thereupon the Tribunal shall have jurisdiction in such matter and the jurisdiction in such matter and the jurisdiction of any other person, officer or authority therein shall cease.

(3) The State Government may, at any time, in like manner, cancel such notification or omit any entry from the First Schedule, and resume to itself such jurisdiction:

Provided that nothing herein shall prevent the State Government after such resumption of jurisdiction from conferring any such jurisdiction on any other person officer or authority.

(4) Notwithstanding anything contained in any other law for the time being in force when the Tribunal has jurisdiction to entertain and decide appeals from and revise decisions and orders of, any person, officer or authority in any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or orders of such person, officer or authority in that matter.

9.

10. *Therefore, the appellate powers against the order or the decision of the authority under Section 39A of the Code are with the Gujarat Revenue Tribunal and under these circumstances, it appears that Gujarat Revenue Tribunal vide communication dated 3.10.2005, copy whereof is produced at Annexure 'T' has wrongly returned the revision to the petitioner, observing through the Registrar of the Tribunal that there is no jurisdiction with the Tribunal against the impugned order.*

11. *In view of the aforesaid provisions of the Bombay Revenue Tribunal Act, 1957 read with the Schedule, the jurisdiction vests to the Tribunal for hearing the appeal*

and/or revision. In the result the Tribunal has committed error of jurisdiction in declining to entertain the appeal against the order of the Mamlatdar under Section 39A of the Code as delegatee of the Collector. ”

27. Considering the settled position of law, it is apparent that the order dated 7.4.1989 has been passed by the SDO not by exercising his inherent powers or the powers flowing from his position, but for and on behalf of the Collector as an agent and delegate of the Collector. Ordinarily, an order passed by the SDO, exercising his independent powers could be appealed against before the Collector as per Schedule 'E'. However, since the SDO has exercised the powers of the Collector and for and on behalf of the Collector, the order dated 7.4.1989 would amount to being an order passed by the office of the Collector. In this fact situation, the appellate authority for these petitioners would be the Divisional Commissioner.

28. Considering the above, I find that the Appeals filed by these petitioners before the Divisional Commissioner would be maintainable. Whether there is any delay and whether such delay can be condoned, is a matter which would be independently considered and adjudicated upon by the Divisional Commissioner, provided these petitioners have filed or

may file applications for condonation of delay.

29. The learned AGP rightly points out that the Appeals filed by the petitioners ought to be accompanied with the copy of the order under challenge, which is undisputedly dated 7.4.1989 passed by the SDO, Chalisgaon, under delegated authority of the District Collector. The petitioners contend that despite their best efforts, they have not been supplied with the copy of the said order. They express a serious apprehension that probably the said order is not in existence at all. It is an altogether different aspect that the said order has been passed without hearing the petitioners.

30. In the light of the above, I deem it appropriate to direct respondent No.1 - District Collector, Jalgaon to ensure that a copy of the order dated 7.4.1989 is supplied to the petitioners within three weeks. Shri Gholap, learned Advocate for the petitioners submits that the petitioner named below, alone could be served with the order dated 7.4.1989 by the Collector and all the petitioners would act on the said copy in so far as the appeals are concerned, which are identical and can be taken up together for adjudication by the Divisional Commissioner.

Name :- Shri Shantilal Mulji Patel,
Address :- Shri Umiya Vijay Saw Mill,
Ganesh Road, Chalisgaon 424101

31. In the light of the above and considering the law laid down in Roop Chand (supra), Sidhartha Sarawagi (supra) and State of Orissa (supra), and as no other judgment of the Honourable Apex Court taking a different view in the matter of delegated powers being exercised having been cited, these petitions are partly allowed. The impugned orders dated 13.7.2015 informing the petitioners that their appeals have not been entertained, are quashed and set aside. The appeals filed by each of these petitioners shall be registered with the office of respondent No.2.

32. As a matter of compliance, these petitioners shall tender a photostat copy of the order dated 7.4.1989, *pher phar* No.4062, which is impugned in the Appeals, in the said proceedings, in each of the Appeals, after receiving such a copy. In the event, the District Collector informs the petitioners that the reasoned order dated 7.4.1989 by the SDO, Chalisgaon is not available, respondent No.2 would then consider the said Appeals of the petitioners on their own merits, by relying upon the Photostat

copy of the *pher phar nond wahi (Pher phar patrak)* which is at page No.38 in the first petition herein and based on the said entry, respondent No.2 would adjudicate upon the Appeals. As noted above, the petitioners would be at liberty to tender their individual applications for delay condonation, if not already filed.

33. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d