IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.4796 OF 2017

Santosh Patil … Petitioner
Vs.
Tahsildar, Revenue Department, Vasai and others … Respondents

WITH

WRIT PETITION (ST.) NO.4793 OF 2017

Yashwant Anant Patil … Petitioner
Vs.
Tahsildar, Revenue Department, Vasai and others … Respondents

WITH

WRIT PETITION (ST.) NO.4795 OF 2017

Kashinath Mukund Patil … Petitioner
Vs.
Tahsildar, Revenue Department, Vasai and others … Respondents

WITH

WRIT PETITION (ST.) NO.4857 OF 2017

Govind Dhondu Patil … Petitioner
Vs.
Tahsildar, Revenue Department, Vasai and others … Respondents

WITH

WRIT PETITION (ST.) NO.4794 OF 2017

Vasant Kashinath Dhumal … Petitioner
Vs.
Tahsildar, Revenue Department, Vasai and others … Respondents

Mr. Tejesh Dande with Mr. Bharat Gadhavi i/b. Tejesh Dande and Associates for Petitioners in all the Petitions.
Mr. S. D. Rayrikar, AGP for Respondents-State in all the Petitions.

CORAM : R. G. KETKAR, J.
DATE : APRIL 11, 2017

P.C. :

Heard Mr. Dande, learned Counsel for petitioner and Mr. Rayrikar, learned AGP for respondents-State in all the Petitions at length.

2. Writ Petition (St.) No.4796 of 2017 takes exception to the notices dated 05.12.2013, 15.11.2014 and 05.10.2015 issued by the respondent No.1, Tahsildar, Vasai under Section 48(7) of the Maharashtra Land Revenue Code, 1966 (for short 'Code'). Aggrieved by these notices, petitioner has instituted statutory appeal on 25.10.2016 before S.D.O., Vasai.

3. Writ Petition (St.) No.4793 of 2017 takes exception to the notices dated 05.10.2015 and 06.09.2016 issued by the respondent No.1, Tahsildar, Vasai under Section 48(7) of the Code. Aggrieved by these notices, petitioner has instituted statutory appeal on 25.10.2016 before S.D.O., Vasai.

4. Writ Petition (St.) No.4795 of 2017 takes exception to the notices dated 05.10.2015 and 06.09.2016 issued by the respondent No.1, Tahsildar, Vasai under Section 48(7) of the Code. Aggrieved by these notices, petitioner has instituted statutory appeal on 25.10.2016 before S.D.O., Vasai.

5. Writ Petition (St.) No.4857 of 2017 takes exception to the notices dated 05.10.2015 and 06.09.2016 issued by the respondent No.1, Tahsildar, Vasai under Section 48(7) of the Code. Aggrieved by these notices, petitioner has instituted statutory appeal on 25.10.2016 before S.D.O., Vasai.

6. Writ Petition (St.) No.4794 of 2017 takes exception to the notices dated 05.10.2015 and 06.09.2016 issued by the respondent No.1, Tahsildar, Vasai under Section 48(7) of the Code. Aggrieved by these notices, petitioner has instituted statutory appeal on 25.10.2016 before S.D.O., Vasai.

7. Mr. Rayrikar has raised preliminary objection about the

maintainability of these Petitions. He submitted that petitioner in each Petition has instituted statutory appeals under Section 247 read with Schedule E of the Code before S.D.O., Vasai. As the petitioners in all the Petitions have already exhausted equally efficacious, alternate, statutory remedy, these Petitions are not maintainable. He submitted that Section 256 of the Code, and in particular first proviso to sub-Section (2) thereof lays down that where an order against which appeal is preferred involves payment of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits 25% of such amount payable to the Government under the order impugned. He submitted that with a view to getting over condition of depositing 25%, petitioners have instituted the present Petitions.

8. On the other hand, Mr. Dande submitted that notices in Writ Petition (St.) No.4796 of 2017 were issued on 05.12.2013, 15.11.2014 and 05.10.2015. In respect of the rest of the Petitions, notices were issued on 05.10.2015, that is to say, before Section 256 was amended with effect from 22.08.2016, and therefore, petitioner is not liable to pay 25% deposit as per the first proviso to sub-Section (2) of Section 256. He submitted that in rest of the Petitions, notices dated 06.09.2016 are purely consequential. In any case, he submitted that second proviso to Section 256(2) empowers the appellate authority to suitably reduce such amount of deposit in such exceptional cases, after recording the reasons in writing therefor. He states that within one week from today, petitioner will file application for condonation of delay in filing the appeal and separate application for exercising powers under second proviso to Section 256(2).

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. It is not in dispute that notices in question are issued under Section 48(7) of the Code. Section 247 read with Schedule E provides for appeal and appellate authorities. As the notices are issued by Tahsildar, who is a revenue officer, appeals against the decisions of Tahsildar will lie before S.D.O. Pertinently, petitioners in all the Petitions have already instituted appeals before the appellate authority. In view thereof, I find merit in the submission of Mr. Rayrikar that as the petitioners in all the Petitions have already exhausted equally efficacious, alternate remedy, Petitions are not maintainable.

10. In the present case, though the notices are issued in some of the cases prior to 22.08.2016, admittedly, appeals are preferred on 25.10.2016. Amended Section 256 of the Code reads thus,

> "**S.256. Stay of execution of orders:**
>
> (1) A revenue or survey officer who has passed any order or his successor in office may, at any time before the expiry of the period, prescribed for appeal, direct the execution of such order to be stayed for such time as he thinks fit, provided no appeal has been filed.
>
> (2) The appellate authority may, at any time, direct the execution of the order appealed from, to be stayed for such time as it may think fit.
>
> Provided that, where an order against which appeal is preferred involves payment of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits twenty-five per cent of such amount payable to the Government under the order impugned:
>
> Provided further that, in exceptional cases, the appellate authority may, after recording the reasons in writing therefor, suitably reduce such amount of deposit:
>
> Provided also that, the amount to be deposited by the appellant as specified above shall be adjusted against the amount found payable to the Government under the final orders passed in appeal and in case the amount finally found payable to the Government is less than the amount deposited by the appellant, the excess amount shall be refunded the appellant without any interest."

11. Mr. Dande submitted that amended Section 256 cannot be made applicable in the present case requiring petitioner to deposit 25% or such amount as may be reduced by the appellate authority. It is not possible to accept this submission. Admittedly, Section 256 is amended with effect from 22.08.2016. Admittedly, appeals are preferred on

25.10.2016. In view thereof, the amended provisions of Section 256 would be applicable and not the unamended Section 256.

12. A perusal of first proviso shows that appellate authority has power to stay execution of the order appealed from subject to depositing 25% of such amount payable to the Government under the order impugned. The second proviso empowers the appellate authority in exceptional cases and after recording reasons in writing therefor to suitably reduce such amount of deposit. In view thereof, Petitions are disposed of in the following terms:

a. Petitions are dismissed as not maintainable;

b. Within one week from today, petitioner in each Petition shall file application for condonation of delay in filing the appeal;

c. Petitioner in each Petition shall also file application for exercising power of the appellate authority under second proviso to Section 256(2);

d. The appellate authority is requested to dispose of the applications for condonation of delay within four weeks from filing of the applications;

e. Respondents shall not take any coercive steps during this period of six weeks from today;

f. The appellate authority will decide the application for stay as also application to be filed within one week from today for the appellate authority to exercise powers under the second proviso to Section 256(2) after decision on the application for the condonation of delay within six weeks thereafter;

g. If any adverse order is passed against the petitioners, the same shall not be given effect to for a period of two weeks from the date of communication of the order;

h. All contentions of the parties on merits are expressly kept open;

i. Order accordingly.

(R. G. KETKAR, J.)