(*Reportable)*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2853 OF 2018

RAJIYA SHAIKH ABDUL HAFIZ AND OTHERS
VERSUS
SHAIKH JUNED SHAIKH HAMID AND OTHERS

...

Advocate for the Petitioners : Shri Kadam Vishant P.
Advocate for the Respondents : Shri N.E.Deshmukh.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th March, 2018

ORAL ORDER :

1 By this petition, I have considered the issue as to whether, the Additional Commissioner can review or recall his order passed on a review application under Section 258(2) of the Maharashtra Land Revenue Code, 1966.

2 The Petitioners are aggrieved by the order dated 07.03.2018 passed by the Additional Divisional Commissioner No.2, Aurangabad by which, the application seeking a second review dated 05.02.2018, filed by the Respondents, has been allowed. The original Review Order dated 11.01.2018 has been recalled and Review Application No.2016/ROR/REV/PT/414 has been listed for a rehearing.

3 The learned Advocate for the Petitioners submits that the

Respondents had preferred a Review Application under Section 258(2) of the Maharashtra Land Revenue Code, 1966. An application for condonation of delay was filed along with the said application. By order dated 11.01.2018, the Reviewing Authority has rejected the Review Application and has sustained the earlier order dated 12.04.2016 passed in ROR/REV/446/2015. The Reviewing Authority, while rejecting the Review Application, concluded that the application for condonation of delay has not been filed. Factually, such an application was filed and which was lost sight of by the Reviewing Authority.

4 I have considered the strenuous submissions of the learned Advocates for the respective sides.

5 The learned Advocate for the Respondents has relied upon the judgment of the Honourable Supreme Court in the matter of *S.Nagaraj and others vs. State of Karnataka and another, 1993 Supp. (4) SCC 595*.

6 Section 258 of the Maharashtra Land Revenue Code, 1966 reads as under :-

> "*258. Review of orders.*
>
> *(1) The State Government and every Revenue or 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.* "

7 Section 258 of the Maharashtra Land Revenue Code, 1966, thus, enables a party to prefer a review application, besides empowering the Authority to review it's own order on it's own motion. It mandates that the review application would be considered only on account of three reasons mentioned under sub-section (2) thereof. Section 258(1)(iv) mandates that a review application shall not be entertained unless it is filed within 90 days from the passing of the order. As such, the limitation prescribed is of 90 days. There is no provision for the said Revenue Authority to enlarge the said limitation period. Since it is not a "Court", Section 5 of the Limitation Act may not be applicable.

8 I am not concerned with the above said issue as to whether, the Revenue Authority posing to be a court, could enlarge the limitation period beyond 90 days by invoking Section 5 of the Limitation Act, keeping in view that a similar issue as to whether, the revenue authorities can condone the delay without there being any provision under the Revenue Laws for seeking condonation of delay under the Maharashtra Village Panchayats Act, has been referred to the Larger Bench.

9 The issue before this Court is that the order dated 11.01.2018 passed by the Reviewing Authority has again been reviewed on an application filed by the Respondents on 05.02.2018, which has been

allowed by the impugned order dated 07.03.2018.

10 Section 258(5) of the Maharashtra Land Revenue Code, 1966 specifically creates a bar on the Reviewing Authority in entertaining any application to reconsider an order passed under review. Section 258(5) specifically provides that "*order passed in review shall on no account be reviewed.*" The language used in Section 258(5) would, therefore, indicate that once the Reviewing Authority has passed an order on the Review Application under Section 258(2), it can no longer hold jurisdiction over the said file and cannot revisit or reopen the file for reconsidering the grounds as to whether, the order passed on the Review Application could be reviewed or recalled.

11 The learned Advocate for the Respondents submits that the application dated 05.02.2018 filed by the Respondents was not for reviewing the order passed on the review application. It was an application requesting the Reviewing Authority to recall the order passed on the Review Application. I find that Section 258(2) permits an order to be reviewed only for three reasons mentioned there below.

12 In the instant case, the Respondents prayed that the Reviewing Authority should recall it's order dated 11.01.2018 thereby, dismissing the Review Application, for the reason that the application for condonation of delay was filed and the Reviewing Authority presumed that there was no such application filed.

13 Considering Section 258(5), irrespective of whether the Reviewing Authority has rightly or wrongly passed it's order under Section 258(2), it would not be open for the said Authority to revisit it's earlier order and consider as to whether, it was properly passed or not. Since there is a clear embargo under Section 258(5), once an order was passed on the review application, the Reviewing Authority would have no jurisdiction to reconsider whether, it had passed an order properly or erroneously as it would become functus officio.

14 Reliance is placed by the Respondents upon the judgment in the case of *S.Nagaraj (supra)* and especially paragraph 18 by which, the Honourable Supreme Court has held that neither the rules of procedure nor technicalities of law can stand in the way of justice, which is a virtue and would transcend all barriers. The order of the Court should not be prejudicial to anyone.

15 The said view would not be of any assistance to the Respondents for the reason that the said view was expressed by the Honourable Supreme Court with regard to the court exercising writ jurisdiction. It was held that the entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake, the writ court can restrain the perpetration of miscarriage of justice and rectify the error.

16 In the instant case, the issue is of a clear embargo on the

Reviewing Authority in reconsidering it's order passed, practically by entertaining a second review application. The intent and object of the Legislature behind introducing Section 258(5) is apparent that once an order is passed on the Review Application by the Authority exercising it's review jurisdiction under Section 258(2), the parties should not be permitted to again approach the same Reviewing Authority and seek a rehearing or review of the order it has passed. Using a different word like "recall" would not be anything different than requesting the said authority to review it's order passed on the Review Application.

17 Even otherwise, if the order passed on the Review Application dated 11.01.2018 is perverse or erroneous, by which the Respondents are aggrieved, they have a remedy under the Maharashtra Land Revenue Code, 1966 to approach the State Government.

18 Considering the above, this Writ Petition is allowed. The impugned order passed by the Reviewing Authority dated 07.03.2018, setting aside it's order passed on the Review Application dated 11.01.2018, is without jurisdiction and is unsustainable. The said order dated 07.03.2018 is, therefore, quashed and set aside and the second application filed by the Respondents under Section 258(2) praying for recalling the order of review, is dismissed for being untenable.

19 The Respondents are, therefore, at liberty to assail the order dated 11.01.2018 passed by the Reviewing Authority under Section

258(2) by resorting to a remedy as is permissible under the Maharashtra Land Revenue Code, 1966.

20 At this juncture, the learned Advocate for the Respondents submits, on instructions, that the Respondents would be filing a revision application under Section 257 of the Maharashtra Land Revenue Code, 1966 with promptitude and as they were protected during the proceedings before the Revenue Authorities, the said protection may be continued only for two weeks so that they can immediately proceed to file their revision application and seek orders from the concerned statutory authority.

The learned Advocate for the Petitioners opposes the said request.

21 Since the Respondents were protected during the proceedings before the Revenue Authorities and since they state that they wish to approach the concerned statutory authority by filing a revision urgently, ends of justice would be met by directing the Petitioners not to create third party interest in the properties at issue for a period of two weeks.

kps **(RAVINDRA V. GHUGE, J.)**