

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 5436 OF 2013
WITH CA/10436/2013 IN WP/5436/2013

SATISH S/O PRALHADRAO BODLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Nagargoje Ankush N.
AGP for Respondent Nos. 1 to 5 : Mr. S. N. Morampalle
Advocate for Respondent No.8 : Mr. A. S. Barlota

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CORAM : V. K. JADHAV, J.
DATED : 14th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. By the instant petition, the petitioner is challenging the order dated 23.05.2013 thereby dismissing the petitioner's revision filed against the order dated 31.05.2012 passed by respondent no.3-Additional Collector.
3. Brief facts giving rise to the present Writ Petition are as follows:

By registered sale deed dated 27.01.2009, the petitioner has purchased certain land from respondent no.7 and on the basis of the said registered sale deed, mutation entry no. 1421 came to be effected in favour of the petitioner. In the year 2010, respondent no.6 has filed an objection before the Tahsildar, Taluka Paithan, District Aurangabad, objecting the aforesaid mutation entry effected in favour of the petitioner. After hearing both parties, the learned Tahsildar, by order dated 14.02.2010, rejected the objection application and confirmed the mutation entry effected in favour of the petitioner. Aggrieved by the same, respondent no.6 has preferred an appeal before respondent no.4- Sub Divisional Officer, Aurangabad. The respondent-SDO, by order dated 08.08.2011, allowed the said appeal and quashed and set aside the order passed by the Tahsildar, Paithan. Aggrieved by the same, the present petitioner has approached the Additional Collector, Aurangabad by filing an appeal and the learned Additional Collector, by order dated 31.05.2012, dismissed the said appeal as not filed within limitation. Aggrieved by the same, the petitioner has preferred the revision before the Divisional Commissioner, Aurangabad and the learned

Divisional Commissioner, by order dated 23.05.2013, dismissed the revision. Hence this Writ Petition.

4. The learned counsel for the petitioner submits that against the judgment and order passed by the SDO, the petitioner has preferred the appeal before Additional Collector, Aurangabad and since delay of three months and 13 days was caused in filing the aforesaid appeal before the Additional Collector, Aurangabad, also filed an application for condonation of delay. The learned Additional Collector, Aurangabad, by order dated 31.05.2012, dismissed the appeal as the same was not filed within limitation and the petitioner has not explained the delay satisfactorily. The learned counsel submits that aggrieved by the said order, the petitioner has approached the Deputy Commissioner, Aurangabad Division, Aurangabad by filing revision. The Deputy Commissioner, Aurangabad has specifically observed in the order that the Additional Collector ought to have considered the application for condonation of delay and thereafter decided the matter on merits. The learned Deputy Commissioner has also observed that no specific findings have been recorded on the merits of the application for condonation

of delay by the Additional Collector and further observed that the order passed by the Additional Collector requires interference. The learned counsel submits that in the last para of the order, the learned Deputy Commissioner has observed that the revision petition filed by the revision petitioner deserves to be allowed and the order under revision is liable to be quashed and set aside. However, in the operative part of the order, the learned Deputy Commissioner has dismissed the revision petition and confirmed the order passed by the Additional Collector, Aurangabad. The same is contrary to his observations. The learned counsel submits that it appears that the learned Deputy Commissioner has committed error in passing the operative order.

5. The learned counsel for the petitioner submits that though the alternate remedy is available to the petitioner to approach the State Government against the order passed by the Deputy Commissioner, however, since the Deputy Commissioner has committed mistake in the operative part of the order, which is apparent on the face of record, the same can be corrected and for that purpose, the petitioner need not avail alternate remedy

of filing revision before the State Government.

6. The learned counsel for respondent no.8 submits that the learned Additional Collector has not dismissed the appeal preferred by the petitioner only on the ground that delay has not been explained satisfactorily, however, the learned Additional Collector has also considered the case on merits. The learned counsel submits that even this Court, in Writ Petition No. 8115 of 2013 with Writ Petition No. 7986 of 2013, in the identical facts of the case, observed that in terms of the provisions of Section 257 of the Maharashtra Land Revenue Code, second revision can be filed under Section 257 before the Hon'ble Minister and accordingly, disposed of the Petitions with liberty to the petitioners therein to avail of the remedy under Section 257 of the MLR Code before the Hon'ble Minister. The learned counsel submits that in the case of ***Gurudassing Nawoosing Panjwani vs State of Maharashtra and ors.***, reported in **2015 AIR SCW 6277**, the Supreme Court has also observed that the Minister concerned of the State Government can entertain such second revision in view of the provisions of Section 257 of the MLR Code. The learned counsel submits that, in view of the

same, the Petition is liable to be dismissed and the petitioner may avail the alternate remedy, if required.

7. On careful perusal of the impugned order dated 23.05.2013 passed by the Deputy Commissioner, it appears that in last two paragraphs of the impugned order, the learned Deputy Commissioner has made the following observations:

. “It is observed that the present revision petitioner is the purchaser who had purchased the suit land by way of registered sale deed. After careful perusal of the impugned order it seems that the Additional Collector has recorded findings in respect of the issuance of notice in the proceeding before Sub-Divisional Officer, Aurangabad and he has criticized the behaviour of the petitioner in the proceeding before him but he has merely said about delay caused to file appeal before him. The question is why the Additional Collector negated of merely 3 months and 13 days is remained unanswered. The act of petitioner before Sub-Divisional Officer is different issue. Additional Collector ought to have considered that the petitioner has purchased the suit land under litigation by way of registered sale deed and therefore by condoning the delay of 3 months

and 13 days the matter has to be decided on merits. No specific findings have been recorded on the merits of delay condonation application by Additional Collector. Therefore order passed by Additional Collector requires interference.

In view of the facts and circumstances of the case and record placed before me I came to the conclusion that the revision petition filed by the revision petitioner is deserves to be allowed and the order under revision passed by the Additional Collector, Aurangabad in file No.2011/Appeal/MLRC/CR-180, dated 31.05.2012 is liable to be set aside.....”

8. In terms of the aforesaid observations, the learned Deputy Commissioner ought to have allowed the revision petition by setting aside the order passed by the Additional Collector directing him further to consider the appeal on merits by condoning the delay. However, it appears that the Deputy Commissioner has dismissed the revision by confirming the order passed by the Additional Collector, Aurangabad.

9. Even though the alternate remedy of filing second revision before the State Government is available, in the facts of the present case and considering the mistake committed by the learned Deputy Commissioner while passing the operative part of the order, it would be appropriate to send the matter back to the learned Deputy Commissioner for passing an appropriate operative part of the order in terms of the observations made in the body of the order. Hence the following order:

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order dated 23.05.2013 passed by the Deputy Commissioner, Aurangabad Division, Aurangabad in Case No.ROR/Rev/240/2012 is hereby quashed and set aside to the extent of the operative part of the order.
- III. The matter is remitted to the learned Deputy Commissioner, Aurangabad Division, Aurangabad, with a direction to pass an appropriate operative order in the revision in accordance with the observations made by him in the body of the order.

IV. The parties shall appear before the learned Deputy Commissioner, Aurangabad on 02.04.2018 and the learned Deputy Commissioner shall dispose of the revision within a period of one month after appearance of the parties.

V. The Writ Petition is accordingly disposed of.

VI. In view of disposal of Writ Petition, the pending Civil Application also stands disposed of.

(V. K. JADHAV, J.)

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