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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12705 OF 2015

Pratap Shivaji Chumbale ...Petitioner

V/s.

The State of Maharashtra & Ors ...Respondents

Mr. P.S. Dani, Senior Advocate i/b. Mr. S.A. Sawant for Petitioner.
Mr. C.G. Gavanekar i/b. Mr. R.M. Haridas for Respondent Nos. 3 & 4.
Mr. G.R. Agrawal for Respondent No.2.
Mr. S.H. Kankal, AGP for Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 19TH MARCH, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 21st October, 2015 passed by the learned Minister, Revenue & Forest Department allowing the appeal filed by respondent no.2 under Section 247 of the Maharashtra Land Revenue Code, 1966 and setting aside the order dated 17th June, 2014 passed by the learned Minister allowing the application filed by the petitioner.

2. Mr. Dani, learned senior counsel for the petitioner invited my attention to the order dated 17th June, 2014 passed by the learned Minister after hearing the parties including the respondent no.2 and

also the appeal memo filed by respondent no.2 challenging the order passed by the learned Minister on 17th June, 2014. He also invited my attention to the order dated 21st October, 2015 and would submit that the order dated 17th June, 2014 passed by the learned Minister after hearing respondent no.2 could not have been challenged by respondent no.2 invoking Section 247 of the Maharashtra Land Revenue Code, 1966 before another Minister.

3. Mr. Agarwal, learned counsel for respondent no.2 on the other hand submits that though, respondent no.2 had mentioned the expression appeal in the document challenging the order dated 17th June, 2014, it was infact an application for review under Section 258 of the Maharashtra Land Revenue Code. He submits that the nomenclature used in the proceeding as appellant or appeal or referring to Section 247 of the Maharashtra Land Revenue Code, 1966 would not nullify the order passed by learned Minister on 21st October, 2015, who had exercised his power of review under Section 258 of the Maharashtra Land Revenue Code.

4. In rejoinder, Mr. Dani, learned senior counsel for the petitioner invited my attention to the proceedings filed by respondent no.2, impugning the order dated 17th June, 2014 which would indicate that in the entire appeal memo, respondent no.2 had described himself as an appellant and had invoked Section 247 of the Maharashtra Land

Revenue Code, 1966 and had impugned order dated 17th June, 2014 and the same was not in the nature of review.

5. A perusal of the appeal memo filed by respondent no.2 clearly indicates that the respondent no.2 had filed an appeal against an order dated 17th June, 2014 passed by the learned Minister, Revenue before another learned Minister Revenue and the same was not in the nature of review as sought to be canvassed by learned counsel for respondent no.2. The remedy of the respondent no.2, if any, against order passed by the learned Minister on 17th June, 2014 was not under Section 247 of the Maharashtra Land Revenue Code.

6. In my view, the impugned order dated 21st October, 2015 passed by the learned Minister Revenue who had exercised his power purportedly under Section 247 of the Maharashtra Land Revenue Code and setting aside the order passed by another learned Minister is totally without jurisdiction and without application of mind. The impugned order thus deserves to be set aside on this ground alone.

7. I therefore, pass the following order:

(I) The impugned order dated 21st October, 2015 passed by the learned Minister Revenue is quashed and set aside.

(II) The appeal filed by respondent no.2 impugning order dated 17th June, 2014 is dismissed. The petition is allowed in the aforesaid terms. No order as to costs.

(III) It is made clear that, if any, remedy is available to the respondent no.2 in law under the provisions of the Maharashtra Land Revenue Code is exercised by respondent no.2, such authority shall entertain such application on its own merits and in accordance with law. All contentions of the petitioner in that proceeding would be kept open.

(R.D. DHANUKA, J.)