

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9604 OF 2018
(Chandrakant s/o Bhagwanrao Chinchalkar Vs. The Collector,
Nanded and others)

Mr.R.L.Kute, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 14/01/2019

PER COURT :

1. On 21/08/2018, this Court had passed the following order :-

“1. The issue is as to whether, the Additional Divisional Commissioner can recall the order of “Dismissed in Default” passed in an appeal under Section 247 of the Maharashtra Land Revenue Code and whether, Section 251 for condoning the delay applicable to admission of appeals after the period of limitation, could also be made applicable to an application filed for restoration of the appeal ?

2. The learned Advocate for the Petitioner seeks time to research on this issue and make his submissions on the next date.

3. Stand over to 31/08/2018 for “Passing Orders”.

2. On 31/08/2018, a further order was passed :-

“1.

2. Mr.Kute points out that the order of “dismissed in default” can be reviewed by the Additional Divisional Commissioner under Section

258(1) r/w the 4th proviso which reads as under :-

“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.”

3. He then adverts to Section 251 contending that it is an enabling provision which would empower the State Government and every Revenue or Survey Officer to review an order under Chapter XIII of the M.L.R.Code. When the 4th proviso creates a limitation of 90 days, Section 251 would empower such authority to condone the delay and accept an application for review.

4. The learned AGP submits that he desires to research on whether an application for review would include a request for recalling an order of “dismissed in default”.

5. By the consent of the parties, stand over to 06/09/2018 for “passing orders”.

3. Learned Advocate for the petitioner submits today that since a statutory second revision is available to the petitioner in view of the judgment of the Hon'ble Apex Court in the matter of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra [2015(6) Mh.L.J.915], the petitioner desires to withdraw this petition.

4. In view of the above, this petition is disposed of as withdrawn. If the petitioner prefers the second revision within 4 weeks from today, the time spent by the petitioner from 27/06/2018 in this Court until 4 weeks from today, would be a ground to be canvassed for condonation of delay.

5. All contentions of the litigating sides are kept open.

(Ravindra V.Ghuge, J.)