

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4284 OF 2019

(MAA UMIYA TRANSPORT CITY AND INDUSTRIAL ESTATE LTD. & OTH...VS.. NAGORAO LAHANU
 CHOUKE & OTH.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Nitin B. Bargat, Advocate for Petitioners.
 Shri H.I.Kothari, Advocate for Respondent Nos. 1 and 2.
 Ms Kalyani Deshpande, A.G.P. for Respondent Nos. 4 to 6.

CORAM : Z.A.HAQ, J.

DATED : JUNE 25, 2019.

Heard.

2. By order dated 26th July 2016, Sub-Divisional Officer had decided appeal filed by the respondent No.5 under Section 247 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code"). Being aggrieved by this order, the respondent No.1 and M/s. Pethe Builders and Developers had filed appeal under Section 247 of the MLR Code before the Collector, Nagpur. This appeal was filed on or about 30th August 2016. In the meantime, the respondent Nos.1, 2 and 3 had approached the Sub-Divisional Officer and had orally requested for reviewing the order passed by him on 26th July 2016. On 27th March 2017, the Sub-Divisional Officer sent a communication to the Collector, Nagpur seeking permission as required by proviso (iii) to Section 258(1) of the MLR Code to review the order dated 26th July 2016. By communication/order dated 12th April 2017, the officiating Additional Collector granted permission to the Sub-Divisional Officer to exercise review jurisdiction. This communication/order dated 13th April 2017 was challenged by the petitioner before Divisional Commissioner,

Nagpur by filing appeal under Section 247 of the MLR Code. This appeal is decided by the Divisional Commissioner by the impugned order. In the meantime, the respondent No.1 has filed application under Section 258 of the MLR Code before the Sub-Divisional Officer and has prayed that the order passed on 26th July 2016 be reviewed. This application is filed on 1st June 2017.

3. The communication/order of the Additional Collector, dated 13th April 2017 granting permission to the Sub-Divisional Officer to exercise jurisdiction under Section 258 of the MLR Code is challenged by the petitioners on the following grounds:

- a) That the powers under Section 258 of the MLR Code cannot be exercised, if appeal or revision against that order is pending. This submission is made relying on proviso (iii) to Section 258(1) of the MLR Code.
- b) The Sub-Divisional Officer could not have sought permission to review the order dated 26th July 2016 on the basis of the oral request made by the Respondent Nos. 1 to 3.
- c) That the communication/ order issued by the Additional Collector on 13th April 2017 is after the period of 90 days of passing of the order by the Sub-Divisional Officer on 26th July 2016 and in view of Section 250 of the MLR Code, jurisdiction under Section 258 of the MLR Code cannot be exercised after 90 days and the order dated 26th July 2016 cannot be reviewed after 90 days.

As far as the first submission is concerned, I find that proviso (iii) to Section 258(1) of the MLR Code does not prevent the Collector from examining whether the permission can be granted to the Sub-Divisional Officer to exercise review jurisdiction, if appeal or revision is pending against the order of which review is sought.

Section 258(1) proviso (iii) reads as follows:

“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)

(ii)

(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;”

The above provision lays down that the order passed by the concerned Authority exercising jurisdiction under Section 247 of the MLR Code shall not be reviewed so long as the appeal or revision is pending against that order and it does not create any impediment in exercise of the powers by the Collector to examine whether permission should be granted to the Sub-Divisional Officer, or not to review the order.

In the present case, the Sub-Divisional Officer has not yet exercised the jurisdiction under Section 258 of the MLR Code. Today, there is neither any appeal nor revision pending against the order passed by the Sub-Divisional Officer on 26th July 2016. Admittedly, the respondent No.1

and M/s. Pethe Builders and Developers had filed appeal before the Collector, Nagpur under Section 247 of the MLR Code to challenge the order passed by the Sub-Divisional Officer on 26th July 2016. This appeal was filed on 30th August 2016 and was pending on 13th April 2017 when Additional Collector granted permission to the Sub-Divisional Officer to exercise review jurisdiction. However, the appeal which was filed by the respondent No.1 and M/s.Pethe Builders and Developers is withdrawn by them on 29th June 2017.

4. In the above facts, it cannot be said that there is any legal impediment which prohibits the Sub-Divisional Officer from exercising jurisdiction under Section 258 of the MLR Code.

The proviso (iii) below Section 258(1) of the MLR Code does not come in the way of the Collector or Commissioner from considering the issue of grant of permission as per proviso (i) of Section 258(1) of the MLR Code. Proviso (i) and proviso (iii) operate in different situations and proviso (iii) does not govern the exercise of powers / jurisdiction by the officer / authority, as per the proviso (i) below Section 258(1) of the MLR Code. Hence, the submission made on behalf of the petitioner, relying on the proviso (iii) of Section 258(1) of the MLR Code cannot be accepted.

5. Point No.(b) raised by the petitioner also does not deserve any consideration. Section 258(1) of the MLR Code enables the authority to exercise review jurisdiction *suo motu* also, subject to condition that before exercising review jurisdiction, the Authority has to obtain sanction of the

superior authority. It being so, it has to be treated that in the present case, the Sub-Divisional Officer had moved the Collector by the application dated 27th March 2017 seeking permission to exercise review jurisdiction *suo motu*. Only because the respondent Nos. 1 to 3 orally requested the Sub-Divisional Officer to review the order dated 26th July 2016, it cannot be said that the communication sent by the Sub-Divisional Officer to the Collector on 27th March 2017 seeking permission to exercise review jurisdiction could not have been entertained.

6. Point No.(c) raised on behalf of the petitioner, to say the least, is misconceived. Section 250 of the MLR Code provides the limitation for filing appeal under the provisions of the MLR Code. This provision does not provide for limitation for filing review application or for exercise of review jurisdiction by the concerned authority. The Advocate for the petitioner has not been able to point out any provision prescribing limitation for exercise of the review jurisdiction under Section 258 of the MLR Code. Hence, the submission made on this point also cannot be accepted.

7. In view of the above, I see no reason to show any indulgence. Hence, the writ petition is **dismissed** with costs qualified at Rs.Forty Thousand, to be paid by the petitioner.

The amount of costs shall be deposited by the petitioners with the Registry of this Court within two months. On deposit of the amount of costs, Rs.Fifteen Thousand shall be given to the respondent Nos.1, 2 and 3 and balance amount of Rs.Twenty Five Thousand shall be deposited with High Court Legal Services Sub-Committee, Nagpur.

JUDGE