

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6053 OF 2019

Mrs. Maharukh Jamshed Engineer

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Ms. Shilpa Kapil, Advocate for the Petitioner.

Mr. M. M. Pabale, AGP for Respondent Nos.1 to 4.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2020

P.C.

1] Heard learned counsel for the parties.

2] The grievance of the Writ Petitioner is to the order dated 22nd January 2019 passed by the 2nd Respondent. The order dismisses Appeal No.205 of 2019 filed by the Petitioner challenging the order dated 31st August 2017 condoning the delay in filing the Appeal filed by Respondent Nos.5 and 6.

3] Reason given in the order by the 2nd Respondent is that no Appeal is maintainable against an order condoning delay in preferring an Appeal.

4] The issue is no longer *res-integra*. It has been settled by the judgment dated 14th September 2018 passed by a Division Bench of this Court in Writ Petition No.1790 of 2018 raising a grievance against the order dated 31st August 2017 passed by District

Superintendent of Land Records by which the delay in filing of Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 was condoned. In the said round of litigation between the same parties, the Division Bench held that the order dated 31st August 2017 is in two parts : First part being the order condoning the delay and second part is fixing the Appeal on particular date. The Division Bench held that the order condoning the delay is appealable and the bar created under Section 247 would not interject the Appeal being filed and heard. Liberty was given to the Petitioner to make representation to the concerned authority as regards other prayer is concerned. This finding opened the gate of the Petitioner by filing an Appeal under Section 247 of the Maharashtra Land Revenue Code.

5] In the backdrop of the above noted fact, the impugned order which reject the Appeal of the Petitioner direct her to file a Review Petition under Section 257 of the Maharashtra Land Revenue Code, 1966 cannot be sustained and is an erroneous decision which deserves to be corrected.

6] Thus, the Writ Petition is disposed of setting aside the impugned order dated 22nd January 2019. It is declared that the Appeal preferred by the Petitioner was maintainable requiring the 2nd Respondent to decide the Appeal on merits.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE