

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7210 OF 2018

Gaurishankar Tikaram Bansal ... Petitioner
Versus
The Collector, Ahmednagar and others ... Respondents

....
Mr. A. K. Gawali, Advocate for petitioner
Mr. S. N. Morampalle, AGP for the respondents
....

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 23rd FEBRUARY, 2021
PRONOUNCED ON : 08th MARCH, 2021**

PER COURT :-

. This writ petition is directed against the order dated 10.09.2015 passed by the Sub-Divisional Officer (S.D.O.), Shirdi, in NASR No. 20/2015, whereby order dated 06.05.2003 passed by the Tahsildar, Rahata in file, being No.Gunthewari/SR/21/2003, came to be set aside.

2. Facts:

The Tahsildar, Rahata, vide his order dated 06.05.2003, granted permission to use the land admeasuring 1100 square meters forming part of *gut* No.115 for non agricultural purpose. The said

order was passed in exercise of jurisdiction under the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 (for short “the Act of 2001”). The S.D.O., Shirdi vide impugned order dated 10.09.2015, set aside the said order.

3. Mr. A. K. Gawali, learned Advocate for the petitioner would submit that the S.D.O. did not have jurisdiction under the Act of 2001 to set aside the order of the Tahsildar dated 06.05.2003. The learned Advocate took me through the relevant provision of the Act of 2001 to submit the power is vested with the State Government, so as to supervise functioning of the authorities under the Act of 2001. On the question of availability of alternate remedy is concerned, learned Advocate would submit that this Court under exercise of jurisdiction under Article 227 of the Constitution of India, has ample jurisdiction to set aside the orders passed by the authorities without jurisdiction. The learned Advocate, therefore, urged for allowing the writ petition.

4. Learned AGP, would on the other hand, submit that the petitioner has an alternate remedy in the nature of appeal under Section 257 of the Maharashtra Land Revenue Code, 1966. He, therefore, urged for dismissal of the writ petition.

5. The impugned order appears to have been passed in exercise of power under the Act of 2001. Reading of the provisions of the Act of 2001 would indicate the power and functions of the Planning Authority for purposes of the said Act, are to be exercised and performed by the following officer, namely:-

(a) in the case of a Municipal Corporation, by the concerned Municipal Commissioner or such other officer as he may appoint in this behalf;

(b) in the case of a Municipal Council, by the concerned Chief Officer of the Council;

(c) in the case of the Nagpur Improvement Trust or a Special Planning Authority, by the chief executive officer or person exercising such powers under the Acts applicable to such authorities; and

(d) in the case of Collector, either the Collector or such other officer as he may authorise in this behalf.

6. The Tahsildar, Rahata is said to have passed the order dated 06.05.2003, in exercise of power delegated by the Collector. From reading of the scheme of the Act of 2001, it is evident that no remedy of appeal or revision to any of the authorities has been provided. It, however, appears that the State Government shall have a final say as regards implementation of the provisions of the Act of 2001 or in case of a dispute between the planning authority and the State Government.

7. Here is a dispute between an individual and the authority of State Government. In my view, the petitioner may have remedy of appeal to the Collector. Chapter 13 of the Maharashtra Land Revenue Code (M.L.R. Code) speaks of appeals, revision and review. Section 247(1) of the M.L.R. Code, reads thus :

“247. Appeal and appellate authorities

(1) In the absence of any express provisions of the Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a Revenue or Survey Officer specified in column I of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column I of the said schedule:

Provided that, *in no case the number of appeals shall exceed two.”*

8. The aforesaid provision speaks of orders passed under the M.L.R.C. or any other law for the time being enforced, are subjected to the appeal to the officers specified in Column No.2 of Schedule - E.

9. True, if any Act other than M.L.R.C. provides remedy of appeal and described authority, who shall exercise such power of appeal, then Section 247 of the M.L.R.C. will have no application. The Act of 2001 is silent to make any provision of remedy of appeal

or revision against any decision or order passed under the said Act. Section 247 of the M.L.R.C., would therefore have application. The order impugned in this petition has been passed by the Sub Divisional Officer. The petitioner may, therefore, have remedy of appeal to the Collector. He may avail the same, if so advised.

10. Since the petitioner has an efficacious alternate remedy against the order impugned in this petition, I am not inclined to pass any order in favour of the petitioner. The writ petition stands disposed of with liberty to the petitioner to avail alternate remedy.

[R. G. AVACHAT, J.]

SMS