Bhogale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3492 OF 2021

ANIL GANGADHAR NIKAM AND ORS. ..PETITIONERS
VS.
SACHIN KEDA BHAMARE & ORS. ..RESPONDENTS

Mr. Sagar Kasar for the Petitioners.

Ms. M.S. Bane, AGP for the State.

Mr. Satyajeet P. Dighe for Respondent No.1.

Mr. Amogh Wagh for Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : JULY 31, 2021

(THROUGH V.C.)

P.C.

Heard learned counsel for the parties.

2. The order impugned in this Petition under Article 227 of the Constitution of India is passed by the Additional Commissioner (Revenue) holding that he has no jurisdiction to entertain the Revision filed on behalf of the Petitioners under Section 257 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as ‘the Code’ for short). The Revision was filed against the order passed by the Additional Collector under Section 49(8) of the Code. The Commissioner was of the opinion that in view of the provisions of Sub-Section (9) of Section 49 of the Code, which provides that the order passed by the Tahsildar or the Collector shall not be

called in question in any Civil Court, the Revision against the Collector's order is not maintainable.

3. The facts briefly stated, the Respondent No.1 approached the Tahsildar by way of an application under Sub-Section (1) of Section 49 of the Code for construction of a water course through the land belonging to adjacent land holders. The application was allowed. Being aggrieved, the Petitioners filed an Appeal under Sub-Section (8) of Section 49 of the Code before the Additional Collector. The Additional Collector by order dated 30.12.2017 dismissed the Appeal. Challenging the order passed by the Additional Collector, the Petitioners approached this Court by way of Writ Petition No.2315 of 2018 which came to be disposed of on 21.06.2019 with liberty to the Petitioners to avail of the alternate remedy provided under Section 257 of the Code. In paragraph 2.12 and 2.13 of the Petition it is averred that the Petitioners tried to approach the State Government by filing a Revision under Section 257 of the Code. It is averred that the Officer of the State Government informed the Petitioners that they will have to file RTS Appeal before the Additional Revenue Commissioner, Nashik. Accordingly, the Petitioners approached the Additional Revenue Commissioner by filing the Revision. The impugned order holds that the Additional Commissioner has no jurisdiction to entertain the Revision in view of the express provisions of Sub-Section (9) of Section 49.

4. I have heard learned counsel for the parties.

5. The question that arises for consideration is :-

(a) Whether the Petitioners have a remedy under Section 257 of the Code to challenge the impugned order passed by the Additional Collector?

(b) Whether such a proceeding would lie before the State Government or the Revenue Commissioner under Section 257 against an order passed by the Collector exercising his powers under Sub-Section (8) of Section 49 of the Code.

6. Sub-Section (2) of Section 49 of the Code provides that the Tahsildar after making an enquiry, may by order in writing, direct the neighbouring holder to permit the applicant to construct the water course subject to such conditions stipulated. Sub-Section (4) of Section 49 provides that any order made under Sub-Section (2) shall be final. The order passed by the Tahsildar is thus given a finality. Sub-Section (8) of Section 49 provides that there shall be no appeal from any order passed by a Tahsildar under this Section, but the Collector may call for and examine the record of any case and if he considers that the order passed by the Tahsildar is illegal or improper, he may, after due notice to the parties, pass such order as he deems fit. Sub-Section (9) of Section 49 of the Code provides that the orders passed by the Tahsildar or Collector under this Section shall not be called in question in any Court. It is thus seen that against an order passed under Sub-Section (2) of Section 49 by the Tahsildar, there is no appeal provided. The remedy for the aggrieved party is to approach the Collector under Sub-Section (8) of Section 49 challenging the Tahsildar’s order on the ground that the same is illegal and improper.

7. Further, the order passed by the Collector is given a finality, in the sense that the order so passed cannot be called in question in any Court. A conjoint reading of Sub-Sections (4) and (8) of Section 49 make it clear that these provisions intend to restrict the Right of an appeal before the superior authorities under the Code. It is pertinent in this context, now to consider Section 259 of the Code which provides that "Whenever in this Code, it is provided that a decision or order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order; but it shall be lawful to the State Government alone to modify, annul or reverse any such decision or order under the provisions of Section 257".

8. Once Section 49 provides for finality to the order passed by the Tahsildar, even if a remedy under Section 49(8) is availed of, the order passed by the Tahsildar or the Collector has to regarded as having attained finality. If we consider Section 259 in this light, the right to prefer an Appeal under Section 247 or the right to prefer an appeal under any other provisions of the Code against the order passed by the Collector stands curtailed. Sub-Section (1) of Section 247 provides that 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 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. The proviso to Section 247 of the Code stipulates that in no case the number of appeals shall exceed two. The purport of Section 49 of the Code, in respect of decisions or orders expressly made final, is that the aggrieved person cannot avail of the right of appeal provided either under Section 247 of the Code or any other provisions under the Code. It is therefore that Sub-Section (9) of Section 49 is to be construed as giving finality to the orders passed by the Tahsildar or the Collector. It is well settled that right of appeal is not an inherent right. The extent of power of an appellate forum and the mode and manner of its exercise can always be provided in the provisions that creates such right.

9. In the absence of there being any provision like Sub-Section (4) and (9) of Section 49, the aggrieved person could well have availed of the remedy by filing an Appeal/Revision before the Commissioner (Revenue) under Section 247/257 of the Code being the Revenue Officer superior to the Collector, to examine the order passed by the Collector. However, as Section 259 of the Code says that 'Whenever in this Code, it is provided that a decision or order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order; but it shall be lawful to the State Government alone to modify, annul or reverse any such decision or order under the provisions of Section 257'; meaning thereby, that in respect of orders which have attained finality, it is only the State Government alone which can modify, annul or

reverse any such decision or order. No doubt, Section 259 of the Code makes a reference to the provisions of Section 257 which have to be understood in the context of the nature of jurisdiction to be exercised by the State Government while examining the order passed by the Collector and nothing more. The intendment of Section 259, therefore, is that it shall be lawful for the State Government alone to modify, annul or reverse any such decision or order passed by the Collector under Sub-Section (8) of Section 49.

10. The Additional Commissioner held that the Revision before him is not maintainable under Section 257 of the Code in view of the provisions of Section 259. This view cannot be faulted. However, in view of the provisions of Section 259, the remedy for the Petitioners is to approach the State Government alone under Section 257 in the light of what is stipulated by Section 259 of the Code.

11. Learned counsel for the Petitioners submitted that, before approaching the Commissioner (Revenue), an attempt was made to file the Revision before the State Government, but the Officer concerned asked the Petitioners to file the Revision before the Revenue Commissioner. An averment is specifically made at paragraph 2.12 and 2.13 of the Petition, whereafter the Petitioners approached the Commissioner. It is in these circumstances that I proceeded to take this view, as the Petitioners have an alternate efficacious remedy of approaching the State Government alone

under Section 257 of the Code challenging the order passed by the Additional Collector.

12. Learned counsel for the Petitioners submit that a Revision/appropriate proceedings will be filed by the Petitioners before the State Government under Section 257 of the Code within a period of four weeks from today. Accordingly, the Petitioners may file appropriate proceedings under Section 257 challenging the order passed by the Additional Collector before the State Government within a period of four weeks from today. The same shall be decided on its own merits and in accordance with law by the State Government. The Petitioners are at liberty to move an application for interim relief/s before the State Government. Till the application for interim relief is decided, the impugned orders passed by the Additional Collector and Tahsildar shall remain stayed.

13. Since the application before the Tahsildar was made as far back in the year 2013, the State Government is requested to decide the proceedings expeditiously and in any event within a period of sixteen weeks from the date of filing of the Revision.

14. It is made clear that in the event the Petitioners fail to file Revision/appropriate proceedings and the application for interim reliefs before the State Government within a period of four weeks from today, the interim protection granted by this Court shall stand vacated.

15. I have not expressed any opinion on the merits of the rival contentions and all contentions on merits are kept open.

16. The Writ Petition is disposed of.

(M.S.KARNIK, J.)