Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5046 OF 2021

Avinash Dnyaneshwar Dhamale & Anr. **… Petitioners**
V/s.
State of Maharashtra & Ors. **… Respondents**

Dr. Uday P.Warunjikar with Mr.Siddhesh Pilankar for the petitioners.
Ms.Vaishali M.Nimbalkar, AGP for the State-Respondent Nos.1 & 2.
Mr.Abhijit Kulkarni, for Respondent Nos.9 to 17.

CORAM : G.S.KULKARNI, J.
DATE : 7th September, 2021.

P.C.:

Heard Dr. Warunjikar, learned counsel for the petitioners, Ms. Nimbalkar, learned AGP for respondent nos. 1 and 2 and Mr. Kulkarni, learned counsel for respondent nos. 9 to 17. Dr. Warunjikar informs that respondent nos. 3 to 8 were served with a notice of this petition being heard on 3 September, 2021. However, considering the nature of the grievances and the order I propose to pass, in my opinion, the petition can be disposed of even in the absence of respondent nos. 3 to 8, as no prejudice would be caused to them.

2. The petitioners' challenge in this petition, is to an order dated 10 August, 2021 passed by the learned Additional Collector, Pune. By such order, the petitioners' application for setting aside

mutation entry no. 16748 and for restoration of the 7/12 extract, pending the disposal of petitioners revenue appeal (RTS/2/A/53/2021) has been rejected by the Additional Collector, Pune.

3. Disputes between the petitioners and the private respondents on revenue entries in regard to the land in question ultimately culminated into an Appeal (RTS/Appeal/441/2014) being filed by respondent nos. 9 to 17 before the Sub-Divisional Officer, Pune who held in favour of the private respondents. The details of such proceeding need not be discussed, suffice to note that the order passed by the Sub-Divisional Officer was challenged by the petitioners before the Additional Collector in RTS Appeal No. 53 of 2021, which came to be filed on 15 January, 2021, within the prescribed period of limitation of 60 days to file such appeal as ordained by Section 250 of the Maharashtra Land Revenue Code, 1966.

4. Mr. Warunjikar contends that in a given case once such appeal was filed within limitation and/or before the limitation could expire, the order assailed in appeal ought not to have been implemented by the SDO. It is submitted that, however, in the

present case, the Sub-Divisional Officer had shown undue haste in implementing the order dated 6 January, 2021 inasmuch as the Sub-Divisional Officer on 27 January, 2021 implemented the said order by making changes/altering the revenue record when the SDO's order dated 6 January, 2021 was already assailed by the petitioners in an appeal.

5. Dr. Warunjikar submits that such action on the part of the SDO or any officers below him would be in the teeth of the directives as contained in the Circular dated 15 December, 2010 issued by the Divisional Commissioner, Pune Division as also an earlier circular dated 6 January, 2010 issued by the Collector, Pune. It is submitted that the petitioners, being aggrieved by such action of the Sub-Divisional Officer, moved an interim application in the pending appeal filed before the Additional Collector praying for stay of the SDO's order. The Additional Collector passed an order on such application on 9 March, 2021 directing that the parties shall maintain status quo.

6. Thereafter, the petitioners moved another application before the Additional Collector (the application in question) on 2 December, 2021 praying that the mutation as effected by the Sub-

Divisional Officer on 27 January, 2021 giving effect to the Sub-Divisional Officer’s order dated 6 January, 2021 which was before the limitation for filing the statutory appeal could get over, be set aside. By the impugned order, such application has been rejected by the Additional Collector interalia observing that as already an order was passed on 9 March, 2021 directing the parties to maintain status quo, hence as such, no prejudice was caused to the petitioners in the adjudication of said appeal which itself was being taken up for hearing and accordingly, rejected the application.

7. In assailing the impugned order, Dr. Warunjikar’s primary submission is on the approach of Sub-Divisional Officer, which according to him, is in total disregard to the Circulars dated 15 December, 2010 issued by the Divisional Commissioner, Pune Division, as also the earlier circular dated 6 January, 2010 issued by the Collector, Pune, which categorically provide that until the period of limitation is over, the revenue authorities ought not to give effect to the order and alter the revenue records. The relevant extracts of the Circulars are required to be noted, which reads thus:

(Official translation of the Marathi Circular)

Circular dated 6 January, 2010 of the Collector, Pune

"Office of the Collector, Pune,
Tenancy Branch
No. PTI/ W.S. / 3956/09
Pune,
Date – 31/12/2009
06/01/2010

Subject - Record of Rights.
Regarding appeal proceedings.

Circular:-
…………

Hence, as per the instructions given in the Circular bearing No. Mah. / 3/Administration / 1605/2009, dated 04.11.2009, issued by the Divisional Commissioner, Pune, the Officers and Appellate Officers deciding the disputed matters, while passing orders in the matters in dispute before them, should categorically mention in the order itself that, the implementation of the said order should be made only after the period prescribed for preferring an appeal gets over.

Further, all Tahasildars should give instructions to the Implementing Officers / employees working under their control that if the implementation of the instructions given in the Circular is made in the village record before the prescribed period, action as per the rules shall be initiated against the concerned official. Moreover, the Tahasildars/ Sub Divisional Officers shall verify the same, from time to time, during their visit to the village concerned.

For Collector, Pune.

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(Official translation of the Marathi Circular)

Circular dated 15 December, 2010 of the Divisional Commissioner

Read:-
1) Divisional Commissioner Office, Pune Division, Pune,

Circular No. Rev/3/ Administration/03/2008 dtd. 5/10/2008
2) Divisional Commissioner Office, Pune Division Pune, Memorandum No. Rev/3/Administration/1605/2009 dtd. 4/11/2009

Rev./3/Administration/
R. R./ 1233/2010
Office of the Divisional
Commissioner,
Pune Division, Vidhan Bhavan
Pune- 411001
Date- 15/12/2010

Circular

Appeals are filed under Section 247 of the Maharashtra Land Revenue Act 1966. Similarly, revision is made under Section 257 and review of order passed on different levels is made under Section 258 and the parties those who does not agree to the decision taken in this manner, such parties can prefer an Appeal against the said decision. The period to file an Appeal is fixed under Section 250 of the Maharashtra Land Revenue Act 1966. During this period, the interested parties can file an Appeal and can seek the stay for the implementation of the decision. The said interested parties have the right to seek the stay in this manner.

On taking into consideration the aforesaid facts, the implementation of the decisions taken in Quasi-Judicial matters, should not be made until the completion of fixed legal period for filing an Appeal. Moreover,while passing orders, it should be mentioned in the said order itself that, the aforesaid decision should be implemented only after the completion of prescribed period to file an appeal. These directions/instructions had been given vide this office circular dtd. 5/10/2008 in (Read) and Memorandum dtd. 4/11/2009 of this office. However, directions are given to make modifications in the said circular with a view to implement the said circular scrupulously.

In the decision of all the complaint-entries existing at the level of Circle Officer and Tahsildar, it should be clearly mentioned in the order to wait for taking the action of implementing the decision, till the appeal period is over.

If the first appeal is the appeal against the order given under Section 5 of Mamlatdar Court Act and the appeal on the order given as per Sections 138 and 143 of the Maharashtra Land Revenue Code 1966, then, after examining the merit in

the said matter, it is not necessary to wait for implementing the decision, till the appeal period is over.
…………….

(Signature Illegible)
(Dilip Band)
Divisional Commissioner, Pune,
Division, Pune”

8. On a bare perusal of the above Circulars, in my opinion, there is much substance in the contentions as urged by Dr. Warunjikar. The circulars clearly provide that till the period of limitation is over, the revenue authorities ought not to resort to an action to give effect to the orders passed by the sub-ordinate revenue officers, when against such orders statutory appeals could be preferred. The object of the Circular is to avoid multiplicity of proceedings and reduce unwarranted complexities between the parties when a substantive appeal is provided by the statute and limitation to file such appeal is yet to expire. Thus, the intention is also to avoid unnecessary prejudice that would be caused to the parties. Once the revenue authorities have issued a circular, it cannot remain a paper circular, not only the same deserves to be implemented but the revenue authorities at all material times are required to be conscious of such directives contained in the circulars. The Circulars issued by the revenue authorities are binding on

them is a well-settled principle of law.

9. In the facts of the present case, it appears that the concerned Sub-Divisional Officer was totally oblivious to such directives issued by the Divisional Commissioner, Pune as also the Circular issued by the Collector, Pune, as quite glaring when before the period of limitation could get over, he proceeded to give effect to the order dated 6 January, 2021 passed by him in making the objected mutation entry. Mr. Warunjikar would be correct in his contention that such approach on the part of Sub-Divisional Officer would be in the teeth of such circulars. In such context, in my opinion, interest of justice would be served if the State Government itself issues a fresh circular in terms of what has been already provided for in the Circulars as noted above, so that the subordinate revenue officers in the State, do not hastily implement the orders passed by them before the appeal period is over. Ordered accordingly.

10. Insofar as the present proceedings are concerned, as noted above, already there are interim orders passed by the appellate authority which are in operation, the parties are in

agreement that the appeal itself was taken up for hearing by the Additional Collector, Pune. Also the learned counsel for the contesting parties make a statement that their respective clients are keen that the appeal be adjudicated expeditiously. It is hence in the interest of justice that on the adjourned date of hearing, the Additional Collector takes up the appeal and after hearing the parties, passes an appropriate order.

11. Needless to observe that all contentions of the parties are kept open. The Additional Collector shall decide the appeal without being influenced by the interim actions as taken by Sub-Divisional Officer in implementing the order dated 6 January, 2020.

12. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)