

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 366 OF 2021

- 1 Mrs. Beatriz Almeida e D'Souza, 67
years of age and her husband,
 - 2 Mr. Nazareth D'Souza alias Nazare
Lazario De Souza, 68 years of age,
Both residents of H. No. 1095,
Madel, Chorao, Tiswadi, Goa. ... Petitioners.
- VERSUS**
- 1 Singaraj Leo Singh, Major of age,
Resident of H. No. 1078, Madel,
Chorao, Tiswadi Goa
 - 2 The Village Panchayat Secretary/
Sarpanch Village Panchayat
Chodan, Madel, Chorao, Ilhas Goa. ... Respondents.

Mr. C. Fonseca, Advocate for the Petitioners.

Mr. R. Gawas, Advocate for the respondent no.1.

CORAM: G. S. KULKARNI, J.
DATE: 28 SEPTEMBER 2022.

ORAL JUDGMENT:

1. Rule. Returnable forthwith. Learned Counsel for the respondent no.1 waives service. Respondent no.2 is a formal party. By consent of the parties heard finally.

2. A short, however, an interesting question arises for consideration in the present proceedings, namely, whether against an order passed by the Deputy Director on a revision under Section 201-A(2) of the Panchayat Raj Act, 1994 (for short, “**the Act**”), a second revision before the District Court under Section 201-B(1) would be maintainable.

3. This petition under Article 227 of the Constitution of India challenges an order dated 11 March 2020 passed by the learned District Judge at Panaji, whereby the learned District Judge, in allowing the revision as filed by the respondent no.1 under Section 201-B of the Act, has also rejected the petitioners' contention questioning the jurisdiction of the learned District Judge to entertain the revision as filed under Section 201-B of the Act.

4. Briefly the facts are: On 2 March 2016, the petitioners applied to the Village Panchayat of Chodan-Madel (respondent no.2), for transfer of house tax. According to the petitioners, the application was made on the strength of a Will dated 10 June 2011, which was registered with office of the Civil Registrar of Ilhas at Panaji. Petitioners contend that the Village Panchayat failed to act on the said application. The

petitioners, therefore, approached the Block Development Officer of Tiswadi (for short “**BDO**”) in an appeal under sub-section (1) of Section 201-A of the Act. The BDO by an order dated 18 July 2017 allowed the petitioners' appeal. Respondent no.1 being aggrieved by the order dated 18 July 2017 passed by the BDO approached the Deputy Director of Panchayats in a revision under sub-section (2) of Section 201-A of the Act along with an application seeking leave to file a revision. Such application to file a revision came to be rejected by the Deputy Director of Panchayats by an order dated 20 August 2019, observing that respondent no.1 had failed to show that his rights were affected. It is seen that in rejecting respondent no. 1's application for leave to file a revision under Section 201-A(2) of the Act, the Deputy Director has in fact, delved on merits of the issue. The order passed by the Deputy Director needs to be noted, which reads thus:

“Application dated 11/01/2019 is hereby dismissed, since the Revisionist has not demonstrated the manner in which his legal rights are affected by the order that was passed in Appeal by the Ld. BDO. It may be true that the Revisionist may have challenged the Public Will which is in favour of R1 & R2 in the Civil Court, however this Court is not the correct forum for adjudication of ownership disputes. In fact, the Revisionist has not been able to satisfy this Court as to

his interest in the property which would justify leave to be granted by this Court.

It is also an admitted fact that the record of Forum I & XIV wherein names of R1 & R2 figure in the Occupants column, has not been challenged before the appropriate forum.

Considering that the Revisionist has not succeeded in demonstrating his affectation of right in the present matter, this Court finds it appropriate to deny leave to file the present Revision.

Present proceedings stand closed.”

5. Respondent no.1 being aggrieved by the above order passed by the Deputy Director of Panchayats approached the District Court at Panaji, invoking the revisional jurisdiction of the District Court under Section 201-B of the Act, by filing a revision application being Revision Application No.32 of 2019.

6. Petitioners appeared before the District Court in the said revision. At the very outset, the petitioners objected to the jurisdiction of the District Court to entertain the revision, contending that the revisional powers of the District Court under Section 201-B of the Act could not be exercised when already a revisional remedy was availed by respondent no.1, under Section 201-A(2) of the Act. Petitioners

contended that the issue of transfer of house tax being a miscellaneous matter, it would be covered under Section 201-A of the Act being a provision providing for appeal and thereafter a revision being provided by virtue of sub-section (2) of Section 201-A of the Act, providing for a complete procedure in itself. According to the petitioners, in such circumstances, a “second revision” under Section 201-B was not available to respondent no.1 as already a remedy of revision being provided under sub-section (2) of Section 201-A of the Act was invoked by respondent no. 1.

7. The learned District Judge, however, did not find favour in such contention as urged by the petitioners on the jurisdiction of the District Court to entertain a second revision as filed by respondent no.1, accordingly by the impugned order the learned District Judge rejected such objection of the petitioners. The learned District Judge *inter alia* observed that respondent no. 1 was not a party to the appeal before the BDO inspite of the admitted fact that the respondent no.1 was in possession of the suit house. It was observed that the Will on the basis of which petitioners were claiming their rights to the suit house was already challenged before the Civil Court in a Civil Suit. It was hence

observed that petitioners were not declared as the owners of the suit house based on the Will. It was observed that it is in such context the respondent no.1 being aggrieved by order dated 20 August 2019 passed by the BDO had filed an application for leave to file revision against the order passed by BDO before the Deputy Director of Panchayats which was rejected by the Deputy Director. In the circumstances, the learned District Judge while entertaining the revision passed the impugned order, whereby the learned District Judge set aside the revisional order dated 20 August 2019, passed by the Deputy Director of Panchayats, thereby allowed application dated 11 January 2019 filed by respondent no.1 to file a revision with a further direction that revision be decided by the Deputy Director of the Panchayats on its own merits.

8. On such backdrop, the petitioners are before this Court challenging the orders passed by the learned District Judge.

9. The primary bone of contention as urged by the petitioners in assailing the impugned order is to the effect that the learned District Judge could not have entertained a second revision under the provisions of Section 201-B of the Act, as Section 201-A sub-section

(2) already provides for a revision. It is the petitioners' contention that certainly a second revision would not be maintainable looking at the scheme of Section 201-A and Section 201-B of the Act. It is contended that the District Court ought to have held that the orders passed by the Deputy Director of Panchayats under sub-section (2) of Section 201-A of the Act had attained finality and necessarily the only remedy available to the respondent no.1 was to approach this Court and not to invoke jurisdiction of the District Court under Section 201-B of the Act.

10. On the other hand, the learned Counsel for respondent no.1 in supporting the impugned order would contend that Section 201-B(1) of the Act which was inserted by an amendment of 2010 clearly provides for a remedy of a revision against "any order" passed by any authority under the Act to be filed before the District Court. It is his contention that when the language of the provision itself is clear, such contention as urged on behalf of the petitioners is untenable. In support of this contention, learned Counsel for respondent no. 1 has placed reliance on a decision of a coordinate Bench of this Court in the case of *Competent Automobiles Company Ltd Vs Village Panchayat of*

*Cansaulim and others*¹. He contends that in such decision the Court has held that a remedy by way of revision as provided against any order passed by the authorities under the Act would lie before the District Court under Section 201-B of the Act. Learned Counsel for respondent no.1 hence would submit that the impugned order passed by the learned District Court does not call for any interference in the present proceedings, as the revisional jurisdiction has been appropriately exercised by the District Court.

Reasons and Conclusion:

11. Having heard the learned Counsel for the parties, the only issue which falls for consideration in the present proceedings, is as to whether in law, it was available for respondent no.1 to invoke the revisional jurisdiction of the District Court under Section 201-B of the Act against the order dated 20 August 2019 passed by the Deputy Director of Panchayats in proceedings under Section 201-A(2) of the Act, which itself is an order passed by the Deputy Director exercising revisional jurisdiction against the orders passed by the BDO, on the ground that a second revision would not be maintainable.

¹ Writ Petition No. 672 of 2015 decided on 23 December 2015

12. To examine such question at the outset, it would be necessary to note the relevant provisions namely Section 201-A and 201-B of the Act, which were inserted by an amendment, brought about to the Act with effect from 15 October 2010. Section 201-A and 201-B of the Act read thus:-

201-A. Appeal on miscellaneous matter dealt by the Panchayats.—

(1) Where no appeal has been specifically provided in this Act on any miscellaneous matters which is dealt with by the Panchayat or the Village Panchayat Secretary or the Sarpanch, an appeal shall lie to the Block Development Officer within a period of thirty days from the date of refusal of any request by the said authority and his decision on such appeal, subject to the provision of sub-section (2), shall be final.

Explanation:— For the purpose of this section, “refusal” means rejecting of any request in writing or non conveying of any reply to the application within a period of fifteen days from the receipt of application in his office.

(2) A revision shall lie to the Deputy Director against any order passed by the Block Development Officer under sub-section (1) within a period of thirty days from the date of the order.]

201-B:- Revision *(1) Save as otherwise provided in this Act, a revision shall lie against any order by any authority under this Act to the District Court without whose jurisdiction the subject matter of the dispute lies.* *(2) Every revision application shall be filed within thirty days from the date of the order (3) The decision of the District Court shall be final and*

binding on the parties to the revision (4) Every such revision shall be decided as expeditiously as possible and endeavour shall be made to decide the same within a period of three months from the date on which it is filed.

(emphasis supplied).

13. On a bare reading of Section 201-A of the Act it is seen that it provides for an appeal on miscellaneous matters dealt with by the Panchayats and ordains that where no appeal has been specifically provided in the Act for any “miscellaneous matters” which are dealt by the Panchayat or the Village Panchayat Secretary or the Sarpanch, an appeal in that regard shall lie before the BDO within a period of 30 days from the date of the refusal of any request by the said authority and the decision of the BDO, on such appeal, “*subject to the provisions of sub-section (2)*”, shall be final. Further, sub-section (2) of Section 201-A provides that a revision shall lie to the Deputy Director against any order passed by the BDO under sub-section (1) within a period of thirty days from the date of the BDO's order.

14. Thus, a cumulative reading of sub-section (1) read with sub-section (2) of Section 201-A of the Act brings about an effect that an order passed by the BDO becomes final, subject to the revisional

jurisdiction of the Deputy Director as provided for under sub-section 2 of section 201-A of the Act. When the provision itself ordains that the decision of the BDO on the appeal “shall be final” subject to the provisions of sub-section (2) which provides for a revision, it implies that there is no further remedy as provided under the Act against such order passed by the Deputy Director.

15. It is in the context of such consequence, as brought about by virtue of the Deputy Director exercising his revisional jurisdiction and passing an order on a revision filed under sub-section (2) of Section 201-A of the Act or for that matter on an application seeking leave to file a revision as in the present case, the provisions of Section 201-B would be required to be considered, to address the question which falls for consideration in the present proceedings.

16. As noted above, Section 201-B of the Act was also inserted by the amendment Act of 18 of 2010 with effect from 15 October 2010, to provide in sub-section (1) that “*save as otherwise provided in this Act*”, a revision shall lie against any order passed by any authority under the Act to the District Court within whose jurisdiction the subject matter of the dispute lies. It further provides that the decision of the

District Court shall be final and binding on the parties as provided for in sub-section 3 of the Act.

17. From the arguments as advanced at the bar and considering the impugned order as passed by the learned District Judge, there appears to be an element of confusion on the interplay of the provisions of Section 201-A and provisions of Section 201-B of the Act, which provide for the different remedies, these provisions stipulate.

18. At the first blush, certainly, an impression is gathered from the reading of Section 201-B that a remedy of a revision is available to challenge any orders passed by any authority under the Act. This would be one way of looking at Section 201-B of the Act to read that a revision would be maintainable against any order passed by any authority under the Act to the District Court, which one may presume would include an order passed by the Deputy Director. However, a careful reading of Section 201-B, dispels this impression, as it is revealed that this would not be the correct reading of Section 201-B. The reasons can be discussed.

19. On a plain reading of Section 201-A of the Act it is quite clear that it creates an inbuilt mechanism for a dispute resolution, in so far as miscellaneous matters dealt with by the Panchayats are concerned. Sub-section (1) of Section 201-A of the Act provides that where no appeal has been specifically provided in the Act on any miscellaneous matters dealt with by the Panchayat or the Village Panchayat Secretary or Sarpanch an appeal in that regard would lie to the BDO, to be filed within a period of 30 days from the date of refusal of any request by the said authority and the decision of the BDO on such appeal “subject to the provisions of sub-section (2) shall be final” namely of an order being passed on any revision which may be filed to the Deputy Director of Panchayats, against any order passed by the BDO. It thus needs to be stated that sub-section (1) of Section 201-A in no uncertain terms attributes a finality to the orders passed by the Deputy Director on a revision filed under sub-section (2) of Section 201-A of the Act.

20. If such is the consequence as brought about by Section 201-A(1) of the Act, then as to what is the effect of such consequence in its application to Section 201-B of the Act, is required to be examined. It is significant that sub-section (1) of Section 201-B of the Act begins

with categorical words “*save as otherwise provided in this Act*”. In my opinion, in the context of Section 201-A of the Act, the only meaning which can be attributed to such expression is to the effect that it necessarily “saves” the consequence which is brought about by sub-section (1) of Section 201-A of the Act, namely, attributing finality to the orders passed by the BDO, which is subject to the orders passed by the Deputy Director as sub-section (1) read with sub-section (2) of Section 201-A of the Act would provide. It needs to be stated that Section 201-B cannot be intended to have an effect which would take away the finality being conferred to the orders of the BDO which subject to a revision before the Deputy Director attain a status to become final.

21. The use of the expression "shall be final " is required to be given its due meaning considering what has been provided for in sub-section (2) of section 201-A of the Act. The use of such expression will have to be understood in the context the legislative provision uses it, and keeping in view the object and purpose of the provisions. In *Aundal Ammal Vs Sadashiv Pillai*² the Supreme Court has held that the

² (1987) 1 SCC 183

expression “shall be final” in the Act means what it says. It was held that in construing the provisions when it provides for different remedies public policy or public interest demands curtailment of law's delay and justice demanding finality within quick disposal of a case. It would be useful to refer to the observations of the Court in paragraphs 16, 17 and 18 of the said decision, which read thus:-

16. *In Kydd v. Watch Committee of City of Liverpool. Lord Loreburn L.C., construing the provisions of section 11 of the Police Act, 1890 of England which provided an appeal to quarter sessions as to the amount of a constable's pension, and also stipulated that the Court shall make an order which would be just and final, observed:*

“Where it says, speaking of such an order, that it is to be final, I think it means there is to be an end of the business at quarter sessions ”

17. *The said observation could most appropriately be applied to the expression used by the legislature in sub-section (5) of section 18 of the Act in question. It means what it says that subject to the decision of the appellate authority, the decision of the Rent Controller shall be final and could only be questioned in the manner provided in Section 20 and in no other manner. The intention of the legislature in enacting the said Act is clear and manifest from this section and the scheme of the Act, that is to say, to regulate the leasing of buildings and to control the rent of such buildings and to provide a tier of Courts by themselves for eviction of the rented premises. This is writ large in the different provisions of the Act. This Court, referring to the aforesaid observations of Lord Loreburn, L.C. in the case of *South Asia Industries Private Ltd. v. S.B. Sarup Singh**

and Others. observed at page 766 of the report that the expression "final" prima facie meant that an order passed on appeal under the Act was conclusive and no further appeal lay. This Court was construing sections 39 and 43 of the Delhi Rent Control Act, 1958 and the effect thereof in the context of Letters Patent Appeal. There sections 39 and 43 provided as follows:--

"Section 39. (1) Subject to the provisions of sub-section (2), an appeal shall lie to the High Court from an order made by the Tribunal within sixty days from the date of such order. Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law.

43. Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

18. ***This Court observed at page 766 that a combined reading of the said two sections made it clear that subject to the right of appeal to the High Court on a substantial question of law, the order passed by the Controller or an order passed on appeal was final and could not be called in question in any original suit, application or execution proceeding. The use of the expression "shall be final" will have to be understood in the proper context and***

keeping in view the purpose of the different sections”.

(emphasis supplied)

22. Once Section 201A(1) stipulates finality to the orders passed by the BDO subject to the revision as provided under sub-section (2) of Section 201-A, as clear from the plain reading of sub-section (1) of Section 201-A of the Act, it cannot be interpreted otherwise to mean that a further remedy of a challenge, to the orders passed by the Deputy Director exercising jurisdiction under sub-section (2) of Section 201-A is available under Section 201-B. In other words, insofar as orders passed by the Deputy Director under sub-section (2) of Section 201-A of the Act are concerned, by virtue of the plain consequence as brought about by sub-section (1) of Section 201-A of the Act such orders cannot be subject matter of a revision under Section 201-B of the Act.

23. Having discussed the underlying principles on finality to the orders of the Deputy Director which Section 201-A(1) brings about, it needs to be stated that the provisions of sub-section (2) of section 201-A read in conjunction with Section 201-B cannot be construed to mean that there are successive revisions that are available to a party. Even

otherwise, it is difficult to envisage that the legislature provides for two successive revisions in proceedings arising out of the orders passed by the BDO between the same parties. In such context, the following discussion on the position in law would aid the conclusion.

24. Thus, to read a second revision being maintainable against the orders passed by the Deputy Director under sub-section (2) of Section 201-A of the Act would lead to a consequence not intended by Section 201-B of the Act. In fact, it would amount to reading something in Section 201-B which is not provided for, inasmuch as the legal effect which is brought about by the opening words used in the provision namely “save as otherwise provided in this Act” are intended to save the effect and the consequence as brought about by the other provisions which the legislature has intended to be not disturbed, which would certainly include the effect and the consequence Section 201-A(1) and (2) brings about.

25. It appears to be well settled that normally a legislation would not provide for a remedy of two revisions arising from a common/primary order. In *Vishesh Kumar Vs Shanti Prasad*³ one of the question the

³ (1980) 2 SCC 378

Supreme Court was considering was as to whether the High Court would possess a revisional jurisdiction against an order of the District Court under Section 25 of the Provincial Small Cause Courts Act, 1987 disposing of a revision petition. In such context, it was held that revisional power of the High Court over the revisional power of the District Court would plainly defeat the object of legislative scheme. It observed thus in paragraph 8:-

“8. The controversy whether it is open to the High Court to exercise revisional power in respect of a revisional order under s. 115 of the District Court presents little difficulty. The basis for determining that question flows from the principle incorporated in the bifurcation of the revisional jurisdiction. And legislative history comes to our aid. The consistent object behind the successive amendments was to divide the work load of revision petitions between the High Court and the District Court and decentralise that jurisdiction. That purpose was sought to be achieved by classifying all cases into two mutually exclusive categories depending on the valuation of the suit out of which they arose. In determining whether the Legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it. It seems to us that to recognise a revisional power in the High Court over a revisional order passed by the District Judge

would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction-to reduce the number of revision petitions filed in the High Court-would be frustrated. The scheme would, in large measure, lose its meaning. If a revision petition is permitted to the High Court against the revisional order of the District Court arising out of a suit of a value less than Rs. 20,000/-, a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs. 20,000/-. That was never intended at all."

(emphasis supplied)

26. In interpreting provisions of Section 154 of the *Maharashtra Co-operative Societies Act in Virendra Bhagi Rathod Vs housing Society Ltd⁴* this Court observed that there were number of decisions delivered by different Benches (as referred in paragraph 5 of the said decision) wherein it has been held to be too well settled that once revisional authority exercises power under Section 154 of the Act, there cannot be second revision.

27. For the above reasons, in my considered opinion, a second revision before the District Court as preferred by respondent no.1 was

⁴ 2004(1) MH. L. J. 656

clearly not maintainable under the provision of Section 201-B of the Act.

28. In so far as the reliance placed by the learned Counsel for respondent no.1 on the decision of the coordinate Bench of this Court in *Competent Automobiles Company Ltd* (supra), in my opinion, the same would not be applicable in the context of the present facts. In such case the Court was considering an order passed under Section 66(7) of the Act. Section 66 of the Act provides for "Regulation of the Erection of buildings" in which sub-section (7) thereof provides that appeal shall lie before the Director, within a period of 30 days from any order or direction as may be made by the Deputy Director of Panchayats. It was an order passed in appeal as provided for under sub-section (7) of Section 66 of the Act which was sought to be challenged by the respondent therein, in a revision which was filed before the learned District Judge, Margao under Section 201-B of the Act. The learned District Judge had granted an ad-interim ex-parte stay to the order passed by the Additional Director of Panchayats passed under Section 66(7) of the Act. It was such order of the District Court which was challenged before this Court. In this context, a plea was

raised before this Court that a Revision application before the District Court was not maintainable under Section 201-B of the Act, inasmuch as, there was finality, which was attached to orders passed under Section 66(7) of the Act. The learned Single Judge in these facts observed that finality under Section 66(7) of the Act would bar only an appeal and not a revision against the said order namely the revision as filed under Section 201-B of the Act. Also this decision does not decide the issue/ proposition, as to whether a second revision from the orders passed under Section 201-A(2) would be maintainable under Section 201-B. Thus, there can be no quarrel in what has been held by the coordinate Bench of this Court in such a decision, however, it is certainly not applicable to the facts in hand. Hence, this decision would not assist respondent no.1.

29. Before parting, it needs to be stated that although, the learned Adhoc District Judge was in an error of law in entertaining the revision, in my opinion, she was not wrong in her conclusion that the Deputy Director was not correct in not granting leave to respondent no. 1 in filing the revision application. Although, the impugned order is required to be set aside for want of jurisdiction available with the

learned District Judge, this Court in exercising the constitutional jurisdiction, it wields, cannot be oblivious to the requirement of justice and the interest of justice, which the Court would need to bear in mind in adjudicating the present proceedings. It clearly appears that the Deputy Director has committed a jurisdictional error when he refused leave to respondent no. 1 to pursue a revision, which was clearly available to respondent no. 1 by virtue of Section 201-A(2) of the Act, which provides for a remedy of a revision from an order passed by the BDO. Thus, having considered the nature of the order passed by the Deputy Director, in my opinion, it is appropriate that the revision as filed by respondent no. 1 before the Deputy Director is decided on its own merits and without being influenced by the order dated 20 August 2019 passed by the Deputy Director, rejecting leave to respondent no. 1 to file a revision, as also, the impugned order passed by the learned Adhoc District Judge.

30. As a result of above discussion, the petition would be required to be allowed by the following order:-

O R D E R

- i. The impugned order dated 11 March 2020 passed by the learned Ad-hoc District Judge in Revision Application no.32 of 2019 is quashed and set aside.
- ii. The Deputy Director shall decide the revision filed by respondent no. 1 on its own merits and without being influenced by order dated 20 August 2019 passed by him and the impugned order dated 11 March 2020 passed by the learned District Judge.
- iii. All contentions, of the parties on the proceedings before the Deputy Director are expressly kept open.

31. Rule is made absolute in the above terms. No costs.

G. S. KULKARNI, J.

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