IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3091 OF 2022

Bandudas Kisandas Bairagi ...Petitioner
V/s.
Ramdas Gulabdas Bairagi & Ors. ...Respondents

Ms. Yogita Deshmukh Chitnis, for the Petitioner.
Mr. R. S. Pawar, A.G.P. for the Respondent / State.

CORAM : PRASANNA B. VARALE AND SHRIKANT D. KULKARNI, JJ.

DATE : 07 JUNE 2022

P.C.

. Heard the learned counsel for the Petitioner and the learned A.G.P. appearing for Respondent Nos.5 and 6. In view of the peculiar grievance raised by the Petitioner and in view of our proposed order in the nature of direction, the requirement of issuing notice to Respondent Nos.1 to 4 is dispensed with.

2. The apprehension carried by the Petitioner for approaching this Court is referred to in para No.4 of the order of Division Bench dated 27 May 2022 and the same reads thus-

> *"4. The learned counsel for the Petitioner submits that notice dated 19th May, 2022 has been issued by the Tahsildar – Dindori, District : Nashik and there is an apprehension that the Petitioner will be deprived of his easementary right. The Petitioner's Revision Petition is not accepted by the concerned Authorities despite filing it within limitation. The notice date 19th May, 2022 is placed on record."*

3. Our attention is invited to the documents placed on record. A perusal of these documents show that the Petitioner was Respondent No.2 in a proceeding initiated at the instance of Ramdas Bairagi, Shantaram Bairagi and Kesharabai Bairagi, who are the Respondent Nos.1 to 3 in the present petition. The Respondent No.4 Sukramdas Bairagi in the present petition was Respondent No.1 in the proceeding before Tehsildar, Dindori. The said proceeding was initiated invoking the provision under Section 143 of the Maharashtra Land Revenue Code, 1966 in a dispute for right of way. By order dated 6 January 2018, the said application was allowed.

4. Being aggrieved by the order of Tehsildar, Dindori, the Petitioner preferred an appeal before the Sub-Divisional Officer (SDO), Dindori bearing RTS Appeal No.8/2018. By order dated 26 December 2018, the SDO, Dindori has allowed the said

appeal partly. The order passed by the Tehsildar, Dindori is quashed and set aside and the matter was remanded back to the Tehsildar for re-inquiry and for passing orders afresh. The order of the SDO, Dindori was subjected to an appeal proceeding at the instance of the Respondents bearing RTS Appeal No.39/2019. The Additional Collector, Nashik has allowed the appeal preferred at the instance of Respondents in the present petition and confirmed the order of the Tehsildar, Dindori dated 6 January 2018.

5. The Petitioner being aggrieved by the order of Additional Collector Nashik, preferred an appeal bearing RTS Appeal No.485/2020 before the Additional Commissioner, Nashik. A perusal of the appeal memo at page 59 shows that though the appeal memo is undated and only referred to the month of September 2020, it seems that the verification of the appeal was made on 2 November 2020.

6. On 9 November 2021, the Additional Commissioner, Nashik by assigning the reason that appeal submitted by the Petitioner is a third appeal and as there is no provision of third appeal in Land Revenue Code, 1966, the appeal presented by the Petitioner cannot be entertained. The Additional Commissioner, Nashik in his order dated 9 November 2021 has observed that as there is no provision of third appeal, the Additional

Commissioner in his order stated that the appeal is removed from the proceedings.

7. The learned counsel for the Petitioner submitted that presentation of appeal before the Additional Commissioner was an act of bonafide mistake. It is also submitted by the learned counsel for the Petitioner that the Petitioner is at his advanced age i.e. 70 years of age and as the Petitioner is an illiterate person, more so, not conversant with the legal niceties, was fully dependent on some advise given to him. The learned counsel for the Petitioner further submitted that when it came to the knowledge of Petitioner that the appropriate remedy in challenging the order of Additional Collector is by way of preferring revision, the Petitioner immediately filed revision before the Additional Commissioner on 27 November 2021.

8. The learned counsel for the Petitioner then invited our attention to the revision memo placed on record at page 72 and by inviting our attention to para 7 of the revision memo, submitted that though the Petitioner had not filed any separate application for condonation of delay, specific submission was made in the revision. It was submitted in the revision that under bonafide belief and by way of a typographical error, the appeal was filed inspite of filing a revision. The learned counsel for the Petitioner then submitted that there was also specific submission

in the revision memo that as per provision of Maharashtra Land Revenue Code, 1966, particularly as per Section 257, the revision filed by the Petitioner is within limitation. Alongwith revision application, an application for grant of injunction is also filed. A copy of the same is placed on record at page 80. The learned counsel for the Petitioner further submitted that inspite of the repeated requests made to the authorities i.e. the Additional Commissioner, Nashik to entertain the revision, no heed to the request of the Petitioner and only it raised technical grounds that the Petitioner had wrongly filed the appeal. The revision is not entertained by the Additional Commissioner.

9. It is further submitted by the learned counsel for the Petitioner that the Act provides remedy of revision so as to raise grievance about the order passed by the Collector and when the Petitioner filed revision that specifically not entertained by the Collector is as good as depriving the party from availing a legal remedy on technical grounds.

10. The learned counsel for the Petitioner submits that after considering the revision on merits, the Additional Commissioner may pass appropriate orders but not entertaining the revision would cause serious prejudice to the Petitioner.

11. Learned A.G.P. while opposing the Petition submits before this Court that the Petitioner ought to have filed the revision within the stipulated period and the Petitioner himself had chosen wrong remedy and for the mistake of the Petitioner the authority cannot be blamed.

12. Though the learned A.G.P. opposes the petition, considering the material placed on record and particularly considering the relevant provisions, we find considerable substance in the submission of learned counsel for the Petitioner. Being aggrieved by the order of the Additional Collector dated 17 September 2020, the Petitioner had immediately filed appeal before the Commissioner on 22 November 2020. Thus, the intention of the Petitioner challenging the order of which he was aggrieved was more than clear. It was bonafide mistake of the Petitioner that he filed appeal instead of revision.

13. The mistake was then rectified by the Petitioner by filing the revision before the Additional Commissioner, Nashik. At the cost of repetition, we state that in the appeal memo itself more than once the statement is made that appeal was filed under bonafide belief. The learned counsel for the Petitioner prayed for passing order in the revision.

14. The remedy of revision is provided under Section 257 of Maharashtra Land Revenue Code, 1966, which reads thus-

> *"257.* ***Power of State Government and of certain Revenue and Survey Officers to call for and examine records and proceedings of subordinate officers.***
>
> *(1) The State Government and any revenue or Survey Officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate Revenue or Survey Officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.*
>
> *(Provided that, no such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the subordinate officer (except with the previous permission of the State Government.))*
>
> *(2) A Tahsildar, a Naib-Tahsildar, and a District Inspector of Land Records may in the same manner call for and examine the proceedings of any officer*

subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so-called for should be modified, annulled, or reversed, it or he may pass such order thereon as it or he deems fit :

*(**Provided that**, any proceeding brought before any revenue or survey officer shall be disposed of within a period of one year from the date on which such proceeding is filed :*

***Provided further that**, any proceeding pending under this Section, before any revenue or survey officer on the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 2016 shall be disposed of within a period of one year from the date of such commencement :*

***Provided also that,** where the revisional authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording* *reasons thereof in writing.*

Provided also that, *in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any such proceeding may be extended further by six months by the State Government or any officer not below the rank of Collector designated in this behalf who is superior to the revisional authority.*

Provided also that, *if the revisional authority fails to dispose of any such proceedings within the period specified in sub-section(3), without sufficient cause, then he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him.*

Provided also that, *the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having given to the parties interested notice to appear and to be heard in support of such order.*

Provided also that, *an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.)*

(4) Revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible, but it shall be lawful for the State Government alone to modify, annul or reverse any such order issued under sub-section (1) or (2)

15. Thus, we find considerable merit in not entertaining the revision is as good as depriving the Petitioner from availing the legal remedy merely on technical grounds. It can further be seen that the order of the Collector was passed on 17 September 2020 and initially appeal was filed on 2 November 2020 and subsequent to the order of the Additional Commissioner, immediately revision was filed by the Petitioner on 6 December 2021 alongwith grant of injunction.

16. Thus, it can be said that the revision is filed by the Petitioner within five years from the date of the order of the Additional Collector, Nashik.

17. Considering these facts, we find that the delay, if any caused for preferring the revision before the authority is due to bonafide reasons and the same needs to be condoned and accordingly, the delay is condoned. Resultantly, we disposed of the petition with direction to the Respondent – Additional Commissioner, Nashik to accept the revision filed at the instance of the Petitioner dated

6 December 2021 and the said revision application be decided as expeditiously as possible. Needless to state that by giving an opportunity of hearing to the parties. The writ petition is accordingly disposed of.

18. Authenticated copy be supplied to the learned A.G.P. Learned A.G.P. to communicate this order to the Competent Authority. We however make it clear that the order passed by us on the backdrop of the peculiar circumstances of the present petition and the same shall not be treated as a precedent.

(SHRIKANT D. KULKARNI, J.) **(PRASANNA B. VARALE, J.)**