

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15106 OF 2022

Ahmad Ambir Shaikh (deceased) thr.
LRs. Mukhtyar Esmael Shaikh & Ors. ..Petitioner/s

v/s.

Abdul Rahiman Ambir Shaikh (deceased)
thr. L.R. Safiya Khalil Shaikh & Ors. ..Respondents

Mr. Milind Parab a/w. Pathare H.D i/b. Milind Parab & Associates for
the Petitioner/s.

Mr. Girish Godbole a/w. Pradeep Salgar i/b. Shivraj Patne for the
Respondent Nos.1A to 1D.

Ms. V.S.Nimbalkar, AGP for the State- Respondent Nos.5 and 6.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 14th DECEMBER, 2022.**

P.C.

1. The Petitioner herein has assailed the judgment and order dated 24.11.2022, whereby the learned Addl. Collector, Thane, has dismissed the Revision Application No. 20 of 2022 for want of jurisdiction.

2. Heard learned Counsel for the Petitioner, learned Counsel for the Respondent and learned AGP for the State. Perused the records and considered the submissions advanced by learned Counsel for the respective parties.

3. The legal representatives of Respondent No.1 challenged the

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Mutation Entry No.574, 697 and 1291 before the SDO, Bhivandi, in RTS Appeal No. 74/2022 which was filed along with an application for condonation of delay. By order dated 4.10.2022, learned SDO condoned the delay of 37 years and admitted the appeal. Being aggrieved by this order, the Petitioner filed Revision Application before the Addl. Collector, Thane. The Addl. Collector, relying upon the decision of the learned Single Judge of this Court in ***Ramanlal s/o. Kachardas Bakliwal & Anr. vs. Niyaz Mohammad Khan Akhil Khan & Ors., 2004 ALL MR 49***, held that the revision is not maintainable. Aggrieved by this order, the Petitioner has invoked the writ jurisdiction of this Court.

4. Mr. Parab, learned Counsel for the Petitioner submits that since the SDO had condoned the delay of 37 years and admitted the appeal under Section 251 of Maharashtra Land Revenue Code, without hearing the parties. He submits that since the appeal is admitted, remedy of appeal under Section 252 of the Code was not available. He has relied upon the decision of ***Balwant Narayan Thale vs. Pushpalata Vasudev Patil & Ors. 2017 SCC Online Bom 6969*** to contend that the Addl. Collector was well within his rights to exercise powers of revision under Section 257 of Maharashtra Land Revenue Code. He contends that the impugned order is ex-facie illegal and cannot be sustained.

4. Shri Godbole, learned Counsel for the Respondent contends that

the petitioner has efficacious remedy under Section 257 of Maharashtra Land Revenue Code, and hence the petition is not maintainable. He further submits that the decision of the Addl. Collector is based on the decision of the learned Single Judge of this Court in Ramanlal Bakliwal (supra), which is also followed in ***Vishwanath Balawant Shingnapurkar vs. Yashwant Harishchandra Umale & Anr (W.P. 5725 of 2015)***.

5. Learned AGP concedes that the revision was maintainable. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. In Ramanlal (supra) the Superintendent of Land Records had condoned the delay, admitted the appeal and passed interim orders granting stay to the mutation entries. Aggrieved by the said order, the Petitioner had filed revision before the State Government. The State Government had advised the Petitioner to file an appeal before the Superintendent of Land Records. While setting aside the said order, the learned Single Judge of this Court held that conjoint reading of Section 251 and 252 reveals that no appeal lies from an order admitting an appeal or from an order granting or rejecting an application for stay. It was held that since the appeal has been expressly barred, the order could be challenged only in revision under Section 257 of the Code.

7. In Vishwanath Shingnapurkar (supra) the second appeal was filed before the Addl. Collector with an application for condonation of delay. The order of the Addl. Collector condoning the delay was challenged in revision before the State Government. The State Government had dismissed the revision application on the ground of tenability. The said order was set aside by the learned Single Judge of this Court. Relying upon the decision in Ramanlal, it was held that revision under Section 257 of the Code was maintainable before the State Government against the order condoning the delay in filing the appeal.

8. In Balwant Narayan Thale (supra), the Addl. Collector had refused to entertain an appeal against an order of condonation of delay. Learned Single Judge of this Court held that having regard to Section 252 of Maharashtra Land Revenue Code, it is only in the event of an appeal being admitted that the prohibition to entertain an appeal under Section 252 comes into play. It was further observed that *“in so far as Section 257 is concerned, it postulates 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, calling for and examining 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. Hence, the power under Section 257 is vested in the State Government or a Revenue or Survey Officer not inferior in rank to an Assistant or Deputy Collector, or the Superintendent of Land Records". It was held that since there was no order admitting the appeal, the appellate powers under Section 252 as well as the power under Section 257 could be exercised by the Addl. Collector, to whom Sub-Divisional Officer was subordinate.

9. In the instant case, the Sub Divisional officer has condoned the delay and admitted the appeal, hence the appeal was not maintainable. The only remedy available to the Petitioner was to file revision application. The SDO being subordinate to the Addl. Collector, the Addl. Collector was competent to hear and decide the revision application. Under the circumstances, the impugned order cannot be sustained. Hence, the same is quashed and set aside. The matter is remitted to the Addl. Collector with directions to decide the appeal after hearing the respective parties.

10. The Collector shall make an endeavor to decide the appeal expeditiously and in any event within six months from the date of this order.

(ANUJA PRABHUDESSAI, J.)