IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 897 OF 2021

Gulabi Shaikh Rashid
Vs.
Shaikh Bashir Shaikh Lal and Ors.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. C.A. Babrekar, Advocate for petitioner.
Mr. E.N. Quazi, Advocate for respondent No.1.
Mr. D.P. Thakare, Addl. GP for respondents/State.

CORAM : MANISH PITALE J.

DATE : 07.04.2022.

Mr.S.S.Alaspurkar, learned counsel who was appearing for respondent No.1 is discharged from appearing on behalf of said respondent, as Mr.E.N.Quazi, learned counsel has entered appearance on behalf of the said respondent.

2. Heard learned counsel for the rival parties.

3. By the present writ petition, the petitioner has challenged order dated 07.10.2020, passed by the Sub-Divisional Officer, whereby delay in filing an appeal has been condoned and a finding is rendered that the appeal deserves to be considered on merits.

4. A preliminary objection is raised on behalf of respondent No.1, to the effect that under the Maharashtra Land Revenue Code, 1966, there is an alternative efficacious remedy available to the petitioner and that therefore, the present writ petition ought not to be entertained by this Court.

5. It is submitted that exception to the Rule of alternative remedy is not made out by the petitioner in the present case, for the reason that it is not even the case of the petitioner that the impugned order is either violating principles of natural justice or it can said to be an order passed without jurisdiction.

6. Reliance is placed on Section 247 of the aforesaid Code, which provides for appeals and appellate authorities before whom such appeals can be filed. On this basis, it is submitted that the petitioner could file an appeal before the Collector, as the impugned order is passed by the Sub-Divisional Officer.

7. On the other hand, it is submitted on behalf of the petitioner that Section 252 of the Code would apply and that no appeal could be maintained by the petitioner for the reason that the impugned order is an order admitting appeal by the Sub-Divisional Officer.

8. This Court has considered the preliminary objection with reference to the provisions of the aforesaid Code. Section 247 of the Code reads as follows:

> *"247. Appeal and appellate authorities :*
>
> *(1) 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 under this Code or any other law for the time being in force to the officer specified 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.*
>
> ***Provided that,*** *in no case the number of appeals shall exceed two.*
>
> *(2) When on account of promotion or change of designation, an appeal against any decision or order lies under this Section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code."*

9. Seclude-E pertaining to the aforesaid provision provides the appellate authorities in the context of orders passed by Revenue Officers. It is an undisputed fact that when the order is passed by the Sub-Divisional Officer, the appellate authority is the

Collector or such other Officer delegated with the powers of the Collector by the State Government in that behalf.

10. Since the learned counsel for the petitioner has relied upon Section 252 of the Code, it would be necessary to refer to the same. It reads thus:

> *"**252. Appeal shall not be against certain orders***
>
> *No appeal shall lie from an order -*
>
> *(a) admitting an appeal or an application for review under Section 251;*
>
> *(b) rejecting an application for revision or review; or*
>
> *(c) granting or rejecting an application for stay."*

11. This Court has perused the impugned order passed by the Sub-Divisional Officer. It cannot be said that it is an order admitting an appeal and it is certainly not an order on an application for review or revision and therefore, Section 252 of the Code is not applicable.

12. A perusal of the Section 247 of the Code, quoted above, would show that any decision or order passed by the Revenue Officer, can be made subject matter of appeal before the appellate authority. In the present case, the impugned order certainly qualifies as a decision or an order, amenable to appeal before the Collector under Section 247 of the Code read with Schedule-E thereof.

13. Therefore, this Court finds substance in the preliminary objection raised on behalf of respondent No.1 and it is found that the present writ petition cannot be entertained, as there is alternative efficacious statutory remedy available to the petitioner to raise grievance against the impugned order passed by the Sub-Divisional Officer.

14. In view of the above, the writ petition is dismissed.

15. Needless to say, the petitioner may avail of the aforesaid alternative remedy, available under the Code. If the petitioner chooses to avail of such a remedy, it shall be considered by the appellate authority in accordance with law.

16. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions.

JUDGE

Prity

PRITY S GABHANE

Digitally signed by PRITY S GABHANE
Date: 2022.04.08 10:47:12 +0530