

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 WRIT PETITION NO.10894 OF 2022

**PANDIT YASHWANTRAO PAWAR AND OTHER
VERSUS
THE DISTRICT SUPERINTENDENT OSMANANBAD AND OTHER**

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Advocate for Petitioners: Mr. Madake Datta A.

AGP for Respondent/State: Mr. N. T. Bhagat

Advocate for Respondent Nos.2 to 4:

Mr. Amol Jagtap

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CORAM: ARUN R. PEDNEKER, J.

DATE: 18th JANUARY, 2023

PER COURT:

1. Heard.

2. Mr. Jagtap, learned counsel appearing for the respondents relying upon the judgment of the Hon'ble Supreme Court in case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra and others, 2015 (6) Mh.L.J. 915, submits that there is an alternate remedy available to challenge the impugned order before the authorities constituted under the Maharashtra Land Revenue Code, 1966.

3. The learned counsel for the petitioners submits that no notice was issued by the authority, which has passed order under Section 247 of the Maharashtra Land Revenue Code, 1966 and as such, this court should entertain the present petition.

4. I find that the grievance of the petitioners can be effectively redressed before the authority constituted under the Act. The writ jurisdiction is normally exercised, if there is no effective alternate remedy is available, although existence of such remedy would not bar the jurisdiction of this court. However, the principles of exercise of writ jurisdiction are summarized in the case of Magadh Sugar and Energy Ltd. Vs. State of Bihar, AIR ONLINE 2021 SC 770 as under:-

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax v. M/sCommercial Steel Limited²². In State of HP v. Gujarat Ambuja Cement Ltd.²³ this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

"23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. ITO [(1970) 2 SCC 355 : AIR 1971 SC 33] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition."

5. It is not the case that the authority which passed the impugned order does not have the jurisdiction to entertain the proceedings and that the impugned order is without jurisdiction. The petitioners can approach the alternate forum for appropriate remedy. All the contentions of the parties are kept open.

6. Since the learned counsel for the petitioners submits that the authority below, which exercised the power under Section 247 of the Maharashtra Land Revenue Code, 1966 has passed the order without notice to the petitioner and has condoned the delay of more than 4 years, it would be expedient that in the event the petitioners approaches the appellate authority the authority shall decide the appeal as expeditiously as possible.

7. The Writ Petition stands disposed of.

[ARUN R. PEDNEKER, J.]