IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3072 OF 2022

Nitin Jagannath Shelar and Ors. … Petitioners
Versus
State of Maharashtra & Ors. … Respondents

…

Mr. Nikhilesh D. Pote, a/w. Mr. Tanmay Jadhav for Petitioner.
Mr. C. D. Mali, AGP for Respondent Nos.1 to 3.
Mr. R. D. Soni, a/w. Mr. Tushar R. Monaiyah i/b. Ram & Co. for Respondent No.4.

…

CORAM: SANDEEP V. MARNE, J.
DATE : 01 NOVEMBER 2023.

P. C.:

Challenge in the present petition is to Order dated 10 November 2016 passed by the Minister-Revenue by which the Order passed by the Sub-Divisional Officer (**SDO**), Pune on 11 April 2016 has been set aside. By its Order dated 11 April 2016, the SDO had condoned delay in filing RTS/Revision No.83 of 2013 and has admitted the Revision for hearing.

2. I have heard Mr. Pote, the learned counsel appearing for Petitioner, Mr. Soni the learned counsel appearing for Respondent No.4 and Mr. Mali, the learned AGP.

3. Mr. Pote would raise the issue of maintainability of Revision filed by Respondent No.4 directly before the State Government. According to Mr. Pote for challenging SDO's Order dated 11 April 2016, Respondent No.4 had the remedy of filing Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (**Code**) before the Collector. That therefore, filing of Revision directly before the State Government was impermissible. He would further submit that provisions of Section 252 of the Code would not be attracted in the present case. That the SDO had merely condoned delay and there is no prohibition under Section 252 on filing Appeal in respect of an order condoning the delay.

4. So far as the merits of the Order passed by the Minister-Revenue is concerned, Mr. Pote would submit that SDO has arrived at a finding that Mutation Entry No.4798 was fraudulently recorded in absence of any document. That on the contrary the predecessor-in-title of Petitioners was armed with a registered sale deed. That therefore the SDO must be permitted to examine the correctness of Mutation Entry No.4798, which is genesis of subsequent entries. That for setting aside Mutation Entry resulting out of fraud, no period of limitation would apply.

5. So far as the first objection of the Petitioner about maintainability of direct Revision filed by Respondent No.4 before the State Government is concerned, Section 252 of the Code 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.

6. Thus, in respect of any Order admitting an Appeal, no further Appeal can be filed under Section 252 of the Code. In the present case, the SDO has, while condoning delay, admitted Appeal filed by Petitioner for hearing. Therefore, the Order dated 11 April 2016 in addition to condoning the delay, also amounts to admission of the Appeal. In ***Ramanlal s/o. Kachardas Bakliwal & Anr. Vs. Niyaj Mohmmad Khan Akhil Khan & Ors.,*** 2004 (2) ALL MR 49 this Court was concerned with similar situation where, while condoning delay, the Appeal was admitted for hearing. This Court held that against such an order admitting the Appeal for hearing, no further Appeal is maintainable. Correct remedy is to file Revision under provisions of Section 257 of the Code. In this regard it would be apposite to quote entire Judgment in **Ramanlal Kachardas Bakliwal** (supra) which reads thus:-

> Heard. Rule. Rule made returnable forthwith. By consent of parties, taken up for final hearing.
>
> 2. It is the case of the petitioners that mutation entry is revenue records was taken in the name of the petitioners, way back in the year 1980. According to the petitioner, after a lapse of about 22 years, the respondent No.1 to 6, moved the Superintendent of Land Records by filing an appeal as the mutation entry was taken by the city Survey Officer and in the

said appeal, filed two applications, one for seeking condonation of delay in filing of the appeal and the second for stay of the mutation entry recorded in the year 1980. The Superintendent of Land Records, condoned the delay and proceed to admit the appeal. He also passed interim orders granting stay to the mutation entry taken in the year 1980.

3. Aggrieved by the orders passed by the Superintendent of Land Records, the petitioners preferred a revision before the State Government. The petitioners were served with a communication from the State Govt. that the petitioners should filed a proper appeal before the Deputy Director of Land Records, challenging the order passed by the Superintendent of Land Records dated 30-1- 2003. By so advising the petitioners to prefer an appeal before the said authority, the State Govt. proceeded to grant stay to the impugned order dated 30-1-2003. Obviously, the stay order was passed so as to enable the petitioners to move the appellant authority.

4. Shri. Bajaj, the learned counsel for the petitioners has pointed out that the order of admission of appeal by condoning the delay in preferring the same, is an order referable to Section 251 of the Maharashtra Land Revenue Code, 1966, whereas, order granting stay is referable to Section 252 of the Code. A conjoint reading of Sections 251 and 252 reveals that no appeal shall lie from an order admitting an appeal, so also, no appeal lies from an order granting or rejecting an application for stay, by virtue of sub-section (3) of Section 252. As an appeal has been expressly barred against the orders passed by the Superintendent of Land Records, by Section 252, Section 247 is not attracted at all.

Section 247 provides that only in the absence of express provision, an appeal shall lie from any decision or order passed by the revenue or survey officer, specified in Column No.1 of Schedule E under the Code, to the Officers specified in Column No.2 of the Schedule. Section 247 operate as and when there is no specific provision made elsewhere in the code. As the impugned orders are referable to Section 251 and 252 of the Maharashtra Land Revenue Code, Section 247 cannot have any

> application and having regard to the mandate of Section 259, where-ever, it is provided in the code that a decision or order is given finality, meaning thereby, when no appeal lies from any such decision or order, it shall be permissible for the State Govt. alone to modify, annul or reverse any such decision or order under the provisions of Section 257. Section 257 provides remedy by way of revision. Reading of Sections 251,252 and 259 makes it amply clear that the petitioners had rightly filed a revision and the order impugned dated 5-3- 2003 passed by the State Government directing the petitioners to file an appeal instead of revision is illegal and improper. In the result, writ petition deserves to be allowed. Hence, I pass the following order :-
>
> > "Writ petition is allowed. The impugned order dated 5-3-2003 passed by the State Govt., directing the petitioners to file an appeal is quashed and set aside. I proceed to hold that the revision filed by the petitioners is maintainable in law and the State Govt. is obliged to decide the same in accordance with law. It is made clear that it shall be open for the petitioner to move the State Govt. seeking appropriate interim orders in regard to stay of the impugned order, so as to enable the petitioners to move for interim relief in the pending revision before the State Govt. I continue the interim order passed by the State Govt. dated 5-3-2003, staying the order passed by the Superintendent of Land Records dated 30-1-2003, for a period of eight weeks from today."
>
> Rule is made absolute in above terms, with no orders as to costs.

7. In my view therefore, the State Government has rightly entertained the Revision filed by Respondent No.4 under provisions of Section 257 of the Code.

8. So far as the merits of the decision of SDO is concerned, he has proceeded to condone delay of over 65 years in respect of challenge to the mutation entry No.4798 effected in the year 1951. It is Petitioner's case that the said mutation entry No.4798 could not have been effected in absence of any registered document in favour of Mahadeo Shivram Yadav. According to Petitioner, the predecessors-in-title of the Petitioner have purchased the land in question by way of registered sale deed dated 13 July 1945 and that in such circumstances, the registered sale deed would take precedence over un-registered document/oral arrangement. This might be a correct ground for the Petitioner to claim an entitlement in the land in question. It is well settled law that revenue entries are made only for fiscal purposes and are not determinative of rights and entitlements of the parties to the land in question. Accordingly, if the Petitioners want to claim right, title or interest in the land in question, they will have to file a Suit in the appropriate Civil Court. The SDO had clearly erred in condoning delay over 65 years for the purpose of reopening proceedings relating to mutation No.4798 effected in the year 1951. Though not fully relevant to the present case, the Proviso added to Section 257 of the Code in the year 2016 in fact bars the Revenue Authorities from entertaining proceedings after expiry of 05 years without seeking prior approval of the State Government. Though that amendment is effected in the year 2016 and may not be directly relevant to the Appeal filed by the Petitioners in the year 2013, the intent and object behind enacting such provision must be borne in mind.

9. In my view, SDO had clearly erred in condoning delay over 65 years in filing Appeal by the Petitioners. The Minister-Revenue has rightly set aside the Order of SDO. I do not find any merit in the petition. The Writ Petition, being devoid of merits, deserves to be rejected. Needless to say that the Petitioner is at liberty to adopt such legal remedies as are available in law to claim title in the land in question. The revenue entries would be subject to the decision by Civil Court. All contentions of parties in that regard are kept open.

10. Writ Petition is accordingly rejected without any order as to costs.

SANDEEP V. MARNE, J.