IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8086 OF 2017

1. Avinash Madhukar Kharat)
Age 41,Occu: Nil,)
R/o Kharatwadi, Tal Walwa,)
District Sangli)

2. Dhanaji Rajaram Patil)
Age 45, Occu: Nil)
R/o Sakhrale, Tal. Walwa)
District – Sangli) ….Petitioners

V/s.
1.The State of Maharashtra)
through its department of)
Forest and Land Revenue)

2.The State of Maharashtra)
through its department of)
Law and Justice)

3. The Sub-Divisional Officer,)
Sangli, District- Sangli)

4. Tehsildar)
Islampur, District- Sangli)

5. The Collector)
Sangli, District – Sangli) …Respondents

Mr. Ashutosh Kumbhakoni, Senior Advocate a/w Mr. Nilesh Wabale i/b Mr.Umesh Mankapure for Petitioner.
Mr. A.I. Patel, Addl. G.P. a/w Mr. K.S. Thorat, AGP for State-Respondents.

CORAM : K.R. SHRIRAM &
DR. N.K. GOKHALE, JJ.
DATED : 31st AUGUST 2023

(ORAL JUDGMENT PER K. R. SHRIRAM J.) :

1. Petitioners are impugning an order dated 27th April 2017 passed

by Respondent No.3 – Sub Divisional Officer dismissing petitioner's appeal that was filed under Section 247 of the Maharashtra Land Revenue Code, 1966 (the MLRC).

2. Petitioners had filed an appeal before Respondent No.3 under Section 247 of the MLRC impugning an order dated 31st July 2016 passed by Respondent No.4. Petitioners appeal came to be dismissed by the impugned order dated 27th April 2017, copy whereof is annexed at Exhibit "G" to the petition, on the grounds that petitioners did not deposit 25% of the amount payable as per first proviso to Sub Section (2) of Section 256 of the MLRC. The impugned order states that unless this 25% of amount payable is deposited even an appeal would not lie.

3. Mr. Kumbhakoni appearing for petitioners submitted that Section 247 of the MLRC that provides for Appeal and Appellate Authorities does not mention about any pre-deposit for filing the appeal or hearing of the appeal. Mr. Kumbhakoni submitted that pre-deposit will apply only when an party applies for a stay of execution of the order under Section 256 of the MLRC.

4. Mr. Patel appearing for respondents reiterated what Respondent No.3 has stated in the impugned order.

5. Section 247 and Section 256 of the MLRC read as under :

Section 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.

Section 256 - Stay of execution of orders

(1) A Revenue or Survey Officer who has passed any order or his successor in office may, at any time before the expiry of the period, prescribed for appeal, direct the execution of such order to be stayed for such time as he thinks fit, provided no appeal has been filed.
(2) The appellate authority may, at any time, direct the execution of the order appealed from, to be stayed for such time as it may think fit:

[Provided that, where an order against which appeal is preferred involves payment of any amount to the Government, the execution of such order shall not be stayed unless the appellant deposits twenty-five per cent. of such amount payable to the Government under the order impugned:

Provided further that, in exceptional cases, the appellate authority may, after recording the reasons in writing therefor, suitably reduce such amount of deposit:

Provided also that, the amount to be deposited by the appellant as specified above shall be adjusted against the amount found payable to the Government under the final orders passed in appeal and in case the amount finally found payable to the Government is less than the amount deposited by the appellant, the excess amount shall be refunded to the Appellant without any interest.]

(3) The authority exercising the powers of revision or review may direct the execution of the order under revision or review, as the case may be, to be stayed for such time as it may think fit:

[Provided that, where an order against which application for

revision or review is filed involves payment of any amount to the Government, execution of such order shall not be stayed unless the applicant deposits twenty five per cent. of such amount payable to the Government under the order impugned :

Provided further that, in exceptional cases, the authority exercising the powers of revision or review may, after recording the reasons in writing therefor, suitably reduce such amount of deposit :

Provided also that, the amount deposited by the applicant as aforesaid shall be adjusted against the amount found payable to the Government under the final orders passed in revision or review proceedings and in case the amount finally found payable to the Government is less than the amount deposited by the applicant, the excess amount shall be refunded to the applicant without any interest:

Provided also that, the provisions contained in the above provisos shall not be applicable in case the authority exercises the powers of revision or review of any order suo motu.]

(4) The appellate authority or the authority exercising the powers of revision or review may set aside or modify any direction made under sub-section (1).

(5) The Revenue or the Survey Officer or the authority directing the execution of an order to be stayed may impose such conditions or order such security to be furnished as he or it thinks fit.
(6) No order directing the stay of execution of any order shall be passed, except in accordance with the provisions of this section.

The third proviso to Sub Section (2) of Section 256 of the MLRC are came to be inserted by Maharashtra 27 of 2016 dated 22nd August 2016 with effect from 22nd August 2016.

6. Section 247 of the MLRC provides that an appeal shall lie from any decision or order passed by a Revenue or a Survey Officer specified in column (I) of Schedule (E) under the 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 Officers specified in column (I) of the said

schedule. Counsel agree that Tahsildar is an officer in a Sub Division sub ordinate to the Sub Divisional Officer. The appellate authority to whom an appeal under Section 247 against the order of Tahsildar will lie is the Sub Divisional Officer. Counsel agree that in this case against the order passed by Respondent No.4 the appeal was correctly preferred before Respondent No.3. What we have to consider is whether Respondent No.3 was justified in dismissing the appeal in limini on the basis that an appeal itself would lie only if the pre condition of deposit of 25% of the amount payable to the Government is complied with.

7. In our view, Respondent No.3 was not justified in dismissing the appeal. This is because Section 247 of the MLRC does not prescribe any pre-deposit. It only says that an appeal shall lie from any decision or order passed by the Tahsildar to Sub Divisional Officer. Petitioners have preferred such an appeal. The pre-deposit of 25% or lesser amount would only arise if the Revenue or Survey Officer, in this case Respondent No.4 – Tahsildar who had passed any order or a successor in office directs execution of the order passed which is in appeal before the appellate authority. The appellate authority, when the party seeks a stay of execution of such an order in such a situation shall stay the order if the party deposit 25% of such amount payable to the Government. The second proviso of Sub Section (2) of Section 256 also gives the discretion to the appellate authority, in exceptional cases, after recording reasons in writing therefor, to reduce such

amount of deposit. Therefore, the question of directing deposit of 25% of the amount demanded or a lesser amount itself would arise only if the party applies for stay and execution of the order passed by the Revenue Officer before the appellate authority. If any such application is filed, the appellate authority may hear and dispose the appeal on merits without insisting on pre-deposit. We would also add that this pre-deposit also would arise only if the party is applying for stay even if he has filed the stay application.

8. In the case at hand, no stay application under Section 256 of the MLRC has been filed. Therefore, we hereby quash and set aside the order dated 27th April 2017 impugned in the petition and restore the appeal to the file of Respondent No.3 who shall hear the appeal and dispose it on merits.

The issue of pre-deposit can be considered by Respondent no.3 as and when petitioner files a stay application and moves for hearing of the stay application.

9. In view of this view expressed by us on the provisions of Section 247 read with Section 256 of the MLRC, Mr. Kumbhakoni states that he is not pressing for prayer clause – (a) in the petition.

10. We clarify that we have not expressed any opinion on the merits of the appeal or any stay application that petitioners may choose to file if

Respondent No.4 proceeds to execute the order impugned in the appeal. The appeal to be disposed within 12 weeks from the date this order is uploaded.

11. Petition disposed.

(DR. N.K. GOKHALE, J.) **(K.R. SHRIRAM, J.)**