

25 September 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14068 OF 2022

Morena Foods Private Limited

....Petitioner

V/s.

Sharda Jangannath Jambhulkar and Ors.

...Respondents

WITH

WRIT PETITION NO. 13558 OF 2022

Santosh Jaidu Gadage and Ors.

...Petitioners

V/s.

Sharda Jagannath Jambhulkar & Ors.

...Respondents

Mr. Rajesh N. Kachare a/w. Ms. Sonal Dabholkar, for the Petitioner in both the petitions.

Mr. Mandar Soman a/w. Ms. Ruchika Indalkar, Mr. Ajaz Khan, Ms. Saaniya Sait i/by. Mr. Devendra Avhad, for Respondent No.1 in both the petitions.

Mr. P.P. Pujari, AGP for Respondent Nos. 7 to 11 in WP-14068-2022 for Respondent Nos. 5 to 9 in WP-13558-2022.

CORAM : SANDEEP V. MARNE, J.

DATED : 25 September 2023.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. With the consent of learned counsels appearing for the parties, Petitions are taken up for hearing.

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2. By these petitions, Petitioners challenges the order dated 22 June 2022 passed by the Minister, Revenue allowing the Revision filed by the Respondent No.1 and setting aside the orders passed by the Additional Commissioner, Konkan, Additional Collector, Raigad and Sub-Divisional Officer, Khalapur and directing the Sub-Divisional Officer, Khalapur to examine the merits of the Mutation Entry No.815 relating to legal heirs of Mahadu Halya Gadge (Patil).

3. Writ Petition No. 14068-2022 is filed by Morena Foods (Private) Limited, who claims to have purchased property bearing Survey No.5, Hissa No.1B vide registered sale-deed dated 19 August 1985 from Jaitu Mahadu Gadge (Patil). Writ Petition No.-13558-2022 is filed by Santosh Jaitu Gadge and Others who claim to be the legal heirs of Jaitu Mahadu Gadge (Patil).

4. Briefly stated, facts of the case are that one Mahadu Halya Gadge (Patil) was the tenant in respect of various properties, as more particularly stated in Mutation Entry No. 815 including the property bearing Survey No.5, Hissa No.1B. After the death of Mahadu Halya Gadge (Patil), the name of his son, Jaitu Mahadu Gadge (Patil) was entered in the revenue records on 24 February 1972. After taking necessary permissions, Petitioner- Morena Foods (Private) Limited acquired land bearing Survey No.35, Hissa No.1B from Jaitu Mahadu Gadge (Patil) vide registered sale-deed dated 19 August 1985. Accordingly, Mutation Entry No.1015 was certified in the Revenue

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Records on 13 September 1985 mutating Petitioner's name to the records of rights of the land.

5. Respondent No.1 is the daughter of Bam Mahadu Gadge, who was another son of Mahadu Halya Gadge (Patil). It is Petitioners' case that there was oral partition between the family prior to the year 1985, under which the land bearing Survey No.5, Hissa No.1B came to the share of the other son Jaitu Mahadu Gadge (Patil) and the other son Bam Mahadu Gadge (Patil) did not have any share in the same. Respondent No.1 initiated proceedings in the year 2016 for challenging Mutation Entry No. 815 by filing R.T.S. (Appeal) No. 33/2016 before the Sub-Divisional Officer, Khalapur praying for inclusion of her name in the revenue records as a co-sharer in respect of the land bearing Survey No.5, Hissa No.1B. By order dated 19 December 2016, the Sub-Divisional Officer rejected the Appeal on the ground of delay observing that Respondent No.1 can claim her succession rights before the Civil Court. Petitioner was apparently not made party to RTS Appeal No. 33/2016.

6. Respondent No. 1 thereafter filed appeal before the Additional Collector challenging SDO's decision. By order dated 30 July 2018, the Additional Collector rejected the Appeal on the ground of delay and confirmed SDO's decision. Respondent No.1 preferred RTS Revision No.94/2019 before the Additional Commissioner, Konkan, who also dismissed the Revision by order dated 7 February 2020. Respondent No.1 thereafter filed Revision Application before the

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Minister- Revenue who has proceeded to allow the same by impugned order dated 22 June 2022 by condoning the delay and directing the SDO to investigate the rights of legal heirs of Mahadu Halya Gadge (Patil). Petitioner is aggrieved by the order of the Minister dated 22 June 2022 and has filed the present petition.

7. Mr. Kachare, the learned counsel appearing for Petitioner would submit that the impugned Order passed by the Minister-Revenue is *ex-facie* illegal as inordinate delay of 44 years is condoned by erroneously invoking the provisions of Proviso to Section 257 (1) of the Maharashtra Land Revenue Code 1966 (**Code**). That Mutation Entry No.815 which is sought to be challenged by Respondent No.1 has been certified on 24 February 1972 and there was delay of 44 long years in challenging the same. He would submit that the Minister could not have relied upon the Proviso to Section 257(1) for the purpose of granting *post-facto* permission for initiation of time barred proceedings as what is contemplated under the Proviso is a 'prior permission'. That a detailed procedure is required to be followed for grant of such permission by issuance of notice to the affected parties, grant of opportunity of hearing to them and by passing detailed and reasoned order. That in the present case, no proposal was filed either by the SDO or by Respondent No.1 seeking leave of the State Government under the Proviso to Section 257(1) and in such circumstances, while deciding the proceedings arising out of refusal to condone the delay by lower authorities, the Minister-Revenue could not have proceeded to grant *post-facto* leave under the Proviso to Section 257(1). In support of his contentions, Mr. Kachare

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would rely upon the judgment of Division Bench of this Court in the case of **Pankaj Unit No.1 Housing Development Company Private Limited and Ors. V/s. The State of Maharashtra, through the Additional Chief Secretary and Ors.** (2022) 6 AIR Bom R 338.

8. Alternatively, Mr. Kachare would submit that the amended provisions of Section 257(1) of the Code are not applicable to the present case as the application of Respondent No. 1 before SDO was in January 2016, i.e. before introduction of amendment on 5 February 2016. That therefore the Minister-Revenue could not have invoked power of granting permission under Proviso to Section 257(1) in the present case.

9. *Per-contra*, Mr. Soman the learned counsel appearing for Respondent No.1 would oppose the petition and support the order passed by the Minister-Revenue. He would submit that the State Government is empowered to grant leave under the Proviso to Section 257(1) for initiation of proceedings by the Sub-Divisional Officer in respect of mutation entry effected prior to expiry of period of five years. That in the present case, since the Sub-Divisional Officer had failed to take prior permission under the Act, the Minister-Revenue has rightly granted such permission. That the order passed by the Minister-Revenue is a well-reasoned order passed after grant of due opportunity of hearing to all the parties. That this Court would be loathe in interfering with the decision of the State Government in granting permission under Proviso to Section 257(1). That there being no perversity in the findings

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recorded by the Minister-Revenue, interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is not warranted. He would pray for dismissal of the petition.

10. I have considered the submissions. In the present case, there is no dispute to the position that Mutation Entry No.815, which is sought to be disturbed by proceedings filed at the instance of Respondent No.1 in the year 2016, was certified on 24 February 1972. With a view to arrest tendency on the part of the revenue officials in reopening mutation entries after indefinite period of time, the provisions of sub-section (1) of Section 257 of the Code have been amended by Maharashtra Act No. 11 of 2016 w.e.f. 5 February 2016. Amended Sub-section 1 of Section 257 of the Code provides thus:

257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers.-(1) 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, may call for and examine 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.

Provided that, no such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the sub-ordinate officer except with the previous permission of the State Government.

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11. There is thus a complete and absolute bar on the revenue authorities from initiating any proceedings under Proviso to Section 257(1) after expiry of five years from the date of decision of the subordinate officer, except with the previous permission of the State Government. In *Pankaj Unit No.1 Housing Development Company Private Limited* (supra), the Division Bench of this Court has examined the scope of Proviso added to Section 257(1). This Court held in paras- 81, 82, 83, 84, 105, 127, 131 as under :

81. On 5th February, 2016, Maharashtra Ordinance No. III of 2016 was replaced by the Maharashtra Act No. XI of 2016. A proviso is inserted under section 257(1) of the MLR Code i.e. "provided that, no such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the subordinate officer. Further proviso was inserted by Maharashtra Act VI of 2018 in the said section 257(1) with the words "except with the previous permission of the State Government".

82. A perusal of the Statement of Objects and Reasons in respect of the said proviso inserted by the Maharashtra Act, 2018 indicates that the said proviso is inserted with a view that if any case is decided on the basis of the false and insufficient information and the concerned aggrieved person fail to make an application for revision before expiry of five years from the date of decision or order of the subordinate officer, only with the prior permission of the Government such belated Revision Application can be considered. The said amendment was inserted suitably so as to enable the revision of such cases by the revisional authority only with the previous permission of the Government.

83. It is clear beyond reasonable doubt that earlier provisions prescribing restriction not to file any proceedings under section 257(2) by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the subordinate officer is suitably amended and is though permissible but with prior permission of the State

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Government. Such permission can be granted only (1) in the event of the case having been decided on the basis of the false or insufficient information and (II) the concerned aggrieved person fail to make an application for the reasons before expiry of five years from the date of decision or order of the subordinate officer. It is thus clear that the revisional authority who did not have power to decide any revision application under section 257(2) after expiry of a period of five years from the date of decision or order of subordinate officer is conferred with the jurisdiction to decide such revision application even after expiry of five years provided prior permission of the State Government is obtained by any revenue or survey officer.

84. In our view, there is no substance in the submission of the learned senior counsel for the Municipal Corporation or by the learned A.G.P. that the said order passed by the State Government granting such permission in favour of the respondent no. 3 Corporation to initiate the revision application can be construed as an administrative order. The said order entails civil consequences to the petitioners and large number of buyers of flat and commercial units who would be aggrieved by granting such permission. The rights which are already accrued in favour of such parties who have been benefited by the orders passed by the authority and who have acted upon such orders for last more than five decades cannot be taken away by granting such ex-parte permission by the State Government. There is no merit in the submission made by the learned A.G.P. for the respondents stating that the said order passed by the State Government granting such permission does not cause any prejudice of any nature whatever to the petitioner. The submission of the learned A.G.P. that the State Government has not decided any issue on merits is mutually destructive with the other pleas raised by her.

105. In our view, since the order passed by the State Government granting such permission after expiry of 55 years in favour of the respondent no. 3 Corporation to initiate the revision application entails civil consequences and would affect large numbers of flat/unit holders in whose favour rights are already vested, the State Government could not have passed such order mechanically and that also without application of mind and without following the principles of natural justice.

127 It is not in dispute that the Municipal Corporation had already Initiated such revision application before the Commissioner, Konkan Division without obtaining prior permission from the State

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Government in view of there being delay of more than 5 years from the date of the impugned order. The State Government has no power to grant such permission post facto. The said revision application filed by the respondent no. 3 thus was not maintainable itself on this ground. There is no merit in the submission of the learned senior counsel that by granting permission in favour of the respondent no. 3 Corporation to initiate the revision application, title of the petitioners would not be affected. Various rights already accrued in favour of the petitioner and large number of unit holders are sought to be reopened by the respondent no. 3 Corporation after expiry of 55 years.

131. In our view, while considering the order passed by the State Government granting such permission after expiry of 55 years in favour of the Municipal Corporation, the State Government was required to give reason as to whether the application for seeking such permission by the respondent no. 3 Corporation was in compliance with the conditions set out in the proviso to Section 257(1) of the MLR Code including the question as to whether the respondent no. 3 Corporation had explained the gross delay of 55 years in filing revision application or not. There is also no merit in the submission of the learned senior counsel for the Municipal Corporation that the reasons are not contemplated under Section 257(1) while granting permission to the applicant for initiating revision application after a period of 5 years.

12. Thus, it is necessary for any applicant initiating proceedings under sub-sections (1) or (2) of Section 257 of the Code to seek prior permission of the State Government if an order is sought to be challenged after expiry of period of five years. Therefore, while filing RTS Appeal No.33/2016 before the Sub-Divisional officer, it was incumbent for Respondent No.1 to seek prior permission of the State Government. It was not permissible for the Sub-Divisional Officer to even take cognizance of RTS Appeal No.33/2016 in absence of prior permission being granted by the State Government. However, it appears that the Sub-Divisional Officer has completely ignored the provisions of

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Proviso to Section 257(1) and entertained RTS Appeal No. 33/2016 in absence of prior permission of the State Government. He rejected the Appeal on the ground of delay. The Sub-Divisional Officer's decision has been upheld by Additional Collector and Additional Commissioner. Thus, there is patent error in exercise of jurisdiction by the Sub-Divisional Officer in entertaining RTS Appeal No. 33/2016.

13. The next issue is whether this patent error committed by the Sub-Divisional Officer in entertaining RTS Appeal No. 33/2016 in revision proceedings can be corrected by the State Government in exercise of revisionary jurisdiction while examining the correctness of Sub-Divisional Officer's decision in refusing to condone the delay. In my view, the Minister was essentially examining the correctness of Sub-Divisional Officer's decision in not condoning the delay. While examining that decision, it was not open for the State Government to exercise power under the Proviso to sub-section (1) of Section 257 by granting permission for initiation of proceedings. The word used in the Proviso is "prior". There is a purpose behind adding a Proviso to sub-section (1) to Section 257. The objective is to arrest the tendency in reopening the mutation entries after indefinite time. The Proviso seeks to impose a complete prohibition on the Revenue Authorities from initiating any proceedings after lapse of period of five years. Therefore, proceedings which are initiated contrary to the Proviso to sub-section (1) of Section 257 by the Sub-Divisional Officer cannot subsequently be ratified by the State Government, while exercising power of revision. The correct procedure is to first obtain prior permission of the State

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Government and then take cognizance of the proceedings. The orders passed in proceedings for which prior permission is not obtained under the Proviso would be nullity. It would be impermissible to infuse life into such void order by granting *post-facto* permission by the State Government, that too, in proceedings filed for revising the orders passed by the lower authorities. The Proviso mandates that grant of prior permission must be considered by the State Government before any decision is taken by the lower Authorities. While examining correctness of the decision taken by the lower Authorities, the State Government cannot grant a *post-facto* permission under Proviso.

14. Thus, the permission now sought to be granted by the Minister is a *post-facto* permission after the proceedings are already initiated by the Sub-Divisional Officer in the year 2016 and the Revisions were taken up before the Minister. Therefore, the permission now sought to be granted by the State Government vide impugned order is clearly unsustainable.

15. Mr. Kachare did attempt to argue that the RTS Appeal No. 33/2016 was filed by Respondent No.1 in January 2016 i.e. before the introduction of Proviso to Section 257(1) on 5 February 2016. However mere filing of application by Respondent No.1 before coming into effect of the Maharashtra Act XI of 2016 would be immaterial. The embargo under the Proviso is to 'initiation' of proceedings. Cognizance of application of Respondent No. 1 is taken by the Sub-Divisional Officer after 5 February 2016 by which time, the

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amended Proviso was already inserted in Section 257(1). The Sub-Divisional Officer has taken cognizance of the proceedings and rendered his decision on 19 December 2016 when he did not have any jurisdiction to do so in absence of any prior permission of the State Government.

16. I am therefore of the view that the order passed by the Minister on 22 June 2022 seeking to grant permission for initiation of proceedings under the Proviso to Section 257(1) is clearly erroneous and the same deserves to be set aside. However, it does not mean that Respondent No.1 would be rendered completely remediless. As held above, it was incumbent for the Sub-Divisional Officer to ensure grant of prior permission by the State Government before taking cognizance of the RTS Appeal No.33/2016. Therefore, RTS Appeal No.33/2016 will have to be restored on the file of the Sub-Divisional Officer by granting opportunity to Respondent No.1 to apply to the State Government for grant of prior permission for initiation of proceedings by the Sub-Divisional Officer.

17. Accordingly, I proceed to pass the following order :

(i) The Order passed by the Minister-Revenue is set aside. Similarly, the Orders passed by the Sub-Divisional Officer on 19 December 2016, by Additional Collector on 30 July 2018 and by Additional Commissioner on 7 February 2020 are also

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set aside. RTS Appeal No.33/2016 is restored on the file of the Sub-Divisional Officer, Khalapur.

(ii) Respondent No.1 is granted opportunity to file a proper application before the State Government for grant of prior permission under the Proviso to Sub-section 1 of Section 257. If such application is filed by Respondent No.1, the State Government shall proceed to decide the same on its own merits without being influenced by any of the observations made by the Minister- Revenue in his order dated 22 June 2022 or by any of the authorities below him, by issuing notices to all affected parties, including the Petitioner and after granting opportunity of hearing to them. Only in the event of the State Government granting prior permission under Proviso to Sub-section 1 of Section 257 of the Code, the Sub-Divisional Officer shall entertain and proceed to decide RTS Appeal No. 33/2016. In the event of refusal by the State Government to grant prior permission, RTS Appeal No. 33/2016 filed before the Sub-Divisional Officer, Khalapur shall stand automatically dismissed.

18. All contentions of the parties on merits of the matter are left open. Writ Petitions are accordingly disposed of.

SANDEEP V. MARNE, J.

Note : Corrections are carried out in the cause-title pursuant to speaking to minutes order dated 31 October 2023.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

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